

JACKSON, J., concurring

SUPREME COURT OF THE STATE OF RIDGEWAY

STATE OF RIDGEWAY *v.* LX1NAS

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR
COURT OF RIDGEWAY

No. 22-01. Decided April 15, 2022

The petition for a writ of certiorari is denied.

JUSTICE JACKSON, with whom THE CHIEF JUSTICE joins, concurring in the denial of certiorari.*

Sovereign immunity is a very tricky concept with a lot of nuances around it. Petitioners cited *Ex parte Young*, 209 U. S. 123 (1908), many times as precedent, yet they do not address its material discontinuity, which is the fact that the opinion was authored by a federal court over a manner of State immunity in federal court. This is clear throughout the opinion when the court makes legal determinations such as, “[t]he State has no power to impart to its officer[s] immunity from responsibility to the supreme authority of the United States.” Furthermore, the foundation of *Ex parte Young* is one that does not hold any merit in the State courts because its application is narrowly centered around the federal courts regarding how the federal courts deal with State immunity. This interpretation of *Ex parte Young* has already been affirmed numerous times by the Supreme Court. “[*Ex parte Young*] allows certain private parties to seek judicial orders in federal court preventing state executive officials from enforcing state laws that are contrary to federal law.” See *Whole Woman’s Health v. Jackson*, 142 S. Ct. 522, 532 (2021). *Young* is about federalism and where the courts play in protecting the immunity of the States, and when such immunity ought to be denied when demanded by federal law.

* [NOTE: This opinion was filed April 18, 2022.]

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Finding precedent over nuanced common law doctrines such as sovereign immunity can be tough because oftentimes they are intertwined and knotted with local constitutional provision or statutes of that jurisdiction. As a preference, I only invoke case law from the Supreme Court of the United States when there is a controversy or claim of a right incorporated by the Constitution of the United States, or when there is a common-law precedent. In other occasions, one must be diligent and careful as to where you step when citing precedent. If respondent-plaintiffs were suing on grounds of a violation of a liberty or right ensured by the United States Constitution and creating a cause of action out of that violation using *Young* as a conduit for their claim, then the application of *Young* would be perfectly valid. Here, however, the cause of action arises out of a state statute.

The doctrine of sovereign immunity, without a bunch of legal technicalities can be summed up quite simply. The State cannot be sued without its consent. However, the State did give consent. Their consent is quite clear and no amount of case law may usurp the law passed by the Senate unless it is a direct interpretation of constitutional provision. It may be savvier to cite several cases than interpret a single statute, but it is clear as to where it resides in this action. If petitioners cannot identify a constitutional reason as to why the statute ought not to be applied then it must be applied notwithstanding any pre-existing case law. Case law cannot render obsolete nor circumvent the lawful authority of the Senate to legislate. It is a fool's errand to argue case law when there is a clear statutory basis for the claim.