language,[108] and in at least one context, has eliminated the requirement of specific abrogation language altogether.[109]

Even before the decision in *Alden v. Maine*,[110] when the Court believed that Eleventh Amendment sovereign immunity did not apply to suits in state courts, the Court applied its rule of strict construction to require "unmistakable clarity" by Congress in order to subject states to suit.[111] Although the Court was willing to recognize exceptions to the clear statement rule when the issue involved subjection of states to suit in state courts, the Court also suggested the need for "symmetry" so that states' liability or immunity would be the same in both state and federal courts.[112]

Suits Against State Officials

Courts may open their doors for relief against government wrongs under the doctrine that sovereign immunity does not prevent a suit to restrain individual officials, thereby restraining the government as well.[113] The doctrine is built upon a double fiction: that for purposes of the sovereign's immunity, a suit against an official is not a suit against the government, but for the purpose of finding state action to which the Constitution applies, the official's conduct is that of the state.[114] The doctrine preceded but is most noteworthily associated with the decision in *Ex parte Young*,[115] a case that deserves the overworked adjective, seminal.

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[108] Kimel v. Florida Board of Regents, 528 U.S. 62, 74–78 (2000). In *Kimel*, statutory language authorized age discrimination suits "against any employer (including a public agency)," and a "public agency" was defined to include "the government of a State or political subdivision thereof." The Court found this language to be sufficiently clear evidence of intent to abrogate state sovereign immunity. The relevant portion of the opinion was written by Justice O'Connor, and joined by Chief Justice Rehnquist and Justices Stevens, Scalia, Souter, Ginsberg, Breyer and Stevens. *But see* Raygor v. Regents of the University of Minnesota, 534 U.S. 533 (2002) (federal supplemental jurisdiction statute which tolls limitations period for state claims during pendency of federal case not applicable to claim dismissed on the basis of Eleventh Amendment immunity).

[109] Central Virginia Community College v. Katz, 546 U.S. 356, 363 (2006) (abrogation of state sovereign immunity under the Bankruptcy Clause was effectuated by the Constitution, so it need not additionally be done by statute); id. at 383 (Justice Thomas dissenting).

[110] 527 U.S. 706 (1999).

[111] Will v. Michigan Dep't of State Police, 491 U.S. 58 (1989) (holding that states and state officials sued in their official capacity could not be made defendants in § 1983 actions in state courts).

[112] Hilton v. South Carolina Pub. Rys. Comm'n, 502 U.S. 197, 206 (1991) (interest in "symmetry" is outweighed by stare decisis, the FELA action being controlled by Parden v. Terminal Ry.).

[113] *See, e.g.*, Larson v. Domestic and Foreign Corp., 337 U.S. 682 (1949), where the majority and dissenting opinions cite both federal and Eleventh Amendment cases in a suit against a federal official. *See also* Tindal v. Wesley, 167 U.S. 204, 213 (1897), applying to the states the federal rule of United States v. Lee, 106 U.S. 196 (1882).

[114] C. Wright, The Law of Federal Courts § 48 (4th ed. 1983).

[115] 209 U.S. 123 (1908).