is barred by the Eleventh Amendment. The Tribe's claim was based on federal law—Executive Orders issued in the 1870s, prior to Idaho statehood. The portion of Justice Kennedy's opinion that represented the opinion of the Court concluded that the Tribe's "unusual" suit was "the functional equivalent of a quiet title action which implicates special sovereignty interests." [156] The case was "unusual" because state ownership of submerged lands traces to the Constitution through the "equal footing doctrine," and because navigable waters "uniquely implicate sovereign interests." [157] This was therefore no ordinary property dispute in which the state would retain regulatory control over land regardless of title. Rather, grant of the "far-reaching and invasive relief" sought by the Tribe "would diminish, even extinguish, the State's control over a vast reach of lands and waters long . . . deemed to be an integral part of its territory." [158]

A separate part of Justice Kennedy's opinion, joined only by Chief Justice Rehnquist, advocated more broad scale diminishment of *Young*. The two would apply case-by-case balancing, taking into account the availability of a state court forum to resolve the dispute and the importance of the federal right at issue. Concurring Justice O'Connor, joined by Justices Scalia and Thomas, rejected such balancing. *Young* was inapplicable, Justice O'Connor explained, because "it simply cannot be said" that a suit to divest the state of all regulatory power over submerged lands "is not a suit against the State." [159]

Addressing a suit by an independent state agency against state health officials, the Court, quoting *Pennhurst*, reiterated "that the general criterion for determining when a suit is in fact against the sovereign is the effect of the relief sought." [160]

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[156] 521 U.S. at 281.
[157] 521 U.S. at 284.
[158] 521 U.S. at 282.
[159] 521 U.S. at 296.
[160] Virginia Office for Protection and Advocacy v. Stewart, 563 U.S. ___, No. 09–529, slip op. at 8 (2011) (quoting Pennhurst State School & Hospital v. Halderman, 465 U.S. at 107). Federal law offered states funding to improve services for the developmentally disabled and mentally ill on condition that, *inter alia*, the states designate a private or independent state entity to seek remedies for incidents of neglect and abuse. Virginia was one of eight states to establish a state entity to exercise this authority.