of Florida v. Florida,[35] that Congress lacks the power under Article I to abrogate state immunity under the Eleventh Amendment, and with its ruling in *Alden v. Maine*[36] that the broad principle of sovereign immunity reflected in the Eleventh Amendment bars suits against states in *state* courts as well as federal.

Having previously reserved the question of whether federal statutory rights could be enforced in *state* courts,[37] the Court in *Alden v. Maine*[38] held that states could also assert Eleventh Amendment "sovereign immunity" in their own courts. Recognizing that the application of the Eleventh Amendment, which limits only the federal courts, was a "misnomer"[39] as applied to state courts, the Court nonetheless concluded that the principles of common law sovereign immunity applied absent "compelling evidence" that the states had surrendered such by the ratification of the Constitution. Although this immunity is subject to the same limitations as apply in federal courts, the Court's decision effectively limited the application of significant portions of federal law to state governments. Both *Seminole Tribe* and *Alden* were also 5–4 decisions with the four dissenting Justices maintaining that *Hans* was wrongly decided.

This now-institutionalized 5–4 split continued with *Federal Maritime Commission v. South Carolina State Ports Authority*,[40] which held that state sovereign immunity also applies to quasi-judicial proceedings in federal agencies. The operator of a cruise ship devoted to gambling had been denied entry to the Port of Charleston, and subsequently filed a complaint with the Federal Maritime Commission, alleging a violation of the Shipping Act of 1984.[41] Justice Breyer, writing for the four dissenting justices, emphasized the executive (as opposed to judicial nature) of such agency adjudications, and pointed out that the ultimate enforcement of such proceedings in federal court was exercised by a federal agency (as is allowed under the doctrine of sovereign immunity). The majority, however, while admitting to a "relatively barren historical record," presumed that when a proceeding was "unheard of" at the time of the founding of

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[35] 517 U.S. 44 (1996).

[36] 527 U.S. 706 (1999).

[37] Employees of the Dep't of Public Health and Welfare v. Department of Public Health and Welfare, 411 U.S. 279, 287 (1973).

[38] 527 U.S. 706 (1999).

[39] 527 U.S. at 713.

[40] 535 U.S. 743 (2002). Justice Breyer's dissenting opinion describes a need for "continued dissent" from the majority's sovereign immunity holdings. 535 U.S. at 788.

[41] 46 U.S.C. §§ 40101 *et seq.*