

Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 98–436

JOHN H. ALDEN, ET AL., PETITIONERS v. MAINE

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT
OF MAINE

[June 23, 1999]

JUSTICE KENNEDY delivered the opinion of the Court.

In 1992, petitioners, a group of probation officers, filed suit against their employer, the State of Maine, in the United States District Court for the District of Maine. The officers alleged the State had violated the overtime provisions of the Fair Labor Standards Act of 1938 (FLSA), 52 Stat. 1060, as amended, 29 U. S. C. §201 *et seq.*, and sought compensation and liquidated damages. While the suit was pending, this Court decided *Seminole Tribe of Fla. v. Florida*, 517 U. S. 44 (1996), which made it clear that Congress lacks power under Article I to abrogate the States’ sovereign immunity from suits commenced or prosecuted in the federal courts. Upon consideration of *Seminole Tribe*, the District Court dismissed petitioners’ action, and the Court of Appeals affirmed. *Mills v. Maine*, 118 F. 3d 37 (CA1 1997). Petitioners then filed the same action in state court. The state trial court dismissed the suit on the basis of sovereign immunity, and the Maine Supreme Judicial Court affirmed. 715 A. 2d 172 (1998).

The Maine Supreme Judicial Court’s decision conflicts with the decision of the Supreme Court of Arkansas, *Jacoby v. Arkansas Dept. of Ed.*, 331 Ark. 508, 962 S. W. 2d

Opinion of the Court

773 (1998), and calls into question the constitutionality of the provisions of the FLSA purporting to authorize private actions against States in their own courts without regard for consent, see 29 U. S. C. §§216(b), 203(x). In light of the importance of the question presented and the conflict between the courts, we granted certiorari. 525 U. S. ____ (1998). The United States intervened as a petitioner to defend the statute.

We hold that the powers delegated to Congress under Article I of the United States Constitution do not include the power to subject nonconsenting States to private suits for damages in state courts. We decide as well that the State of Maine has not consented to suits for overtime pay and liquidated damages under the FLSA. On these premises we affirm the judgment sustaining dismissal of the suit.

I

The Eleventh Amendment makes explicit reference to the States' immunity from suits "commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U. S. Const., Amdt. 11. We have, as a result, sometimes referred to the States' immunity from suit as "Eleventh Amendment immunity." The phrase is convenient shorthand but something of a misnomer, for the sovereign immunity of the States neither derives from nor is limited by the terms of the Eleventh Amendment. Rather, as the Constitution's structure, and its history, and the authoritative interpretations by this Court make clear, the States' immunity from suit is a fundamental aspect of the sovereignty which the States enjoyed before the ratification of the Constitution, and which they retain today (either literally or by virtue of their admission into the Union upon an equal footing with the other States) except as altered by the plan of the Convention or certain constitutional Amendments.

Opinion of the Court

A

Although the Constitution establishes a National Government with broad, often plenary authority over matters within its recognized competence, the founding document “specifically recognizes the States as sovereign entities.” *Seminole Tribe of Fla. v. Florida*, *supra*, at 71, n. 15; accord, *Blatchford v. Native Village of Noatak*, 501 U. S. 775, 779 (1991) (“[T]he States entered the federal system with their sovereignty intact”). Various textual provisions of the Constitution assume the States’ continued existence and active participation in the fundamental processes of governance. See *Printz v. United States*, 521 U. S. 898, 919 (1997) (citing Art. III, §2; Art. IV, §§2–4; Art. V). The limited and enumerated powers granted to the Legislative, Executive, and Judicial Branches of the National Government, moreover, underscore the vital role reserved to the States by the constitutional design, see, *e.g.*, Art. I, §8; Art. II, §§2–3; Art. III, §2. Any doubt regarding the constitutional role of the States as sovereign entities is removed by the Tenth Amendment, which, like the other provisions of the Bill of Rights, was enacted to allay lingering concerns about the extent of the national power. The Amendment confirms the promise implicit in the original document: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” U. S. Const., Amdt. 10; see also *Printz*, *supra*, at 919; *New York v. United States*, 505 U. S. 144, 156–159, 177 (1992).

The federal system established by our Constitution preserves the sovereign status of the States in two ways. First, it reserves to them a substantial portion of the Nation’s primary sovereignty, together with the dignity and essential attributes inhering in that status. The States “form distinct and independent portions of the

Opinion of the Court

supremacy, no more subject, within their respective spheres, to the general authority than the general authority is subject to them, within its own sphere.” The Federalist No. 39, p. 245 (C. Rossiter ed. 1961) (J. Madison).

Second, even as to matters within the competence of the National Government, the constitutional design secures the founding generation’s rejection of “the concept of a central government that would act upon and through the States” in favor of “a system in which the State and Federal Governments would exercise concurrent authority over the people— who were, in Hamilton’s words, the only proper objects of government.” *Printz, supra*, at 919–920 (quoting The Federalist No. 15, at 109); accord, *New York, supra*, at 166 (“The Framers explicitly chose a Constitution that confers upon Congress the power to regulate individuals, not States”). In this the founders achieved a deliberate departure from the Articles of Confederation: Experience under the Articles had “exploded on all hands” the “practicality of making laws, with coercive sanctions, for the States as political bodies.” 2 Records of the Federal Convention of 1787, p. 9 (M. Farrand ed. 1911) (J. Madison); accord, The Federalist No. 20, at 138 (J. Madison & A. Hamilton); 3 Annals of America 249 (1976) (J. Iredell).

The States thus retain “a residuary and inviolable sovereignty.” The Federalist No. 39, at 245. They are not relegated to the role of mere provinces or political corporations, but retain the dignity, though not the full authority, of sovereignty.

B

The generation that designed and adopted our federal system considered immunity from private suits central to sovereign dignity. When the Constitution was ratified, it was well established in English law that the Crown could not be sued without consent in its own courts. See *Chisholm v. Georgia*, 2 Dall. 419, 437–446 (1793) (Iredell,

Opinion of the Court

J., dissenting) (surveying English practice); cf. *Nevada v. Hall*, 440 U. S. 410, 414 (1979) (“The immunity of a truly independent sovereign from suit in its own courts has been enjoyed as a matter of absolute right for centuries. Only the sovereign’s own consent could qualify the absolute character of that immunity”). In reciting the prerogatives of the Crown, Blackstone— whose works constituted the preeminent authority on English law for the founding generation— underscored the close and necessary relationship understood to exist between sovereignty and immunity from suit:

“And, first, the law ascribes to the king the attribute of sovereignty, or pre-eminence. . . . Hence it is, that no suit or action can be brought against the king, even in civil matters, because no court can have jurisdiction over him. For all jurisdiction implies superiority of power. . . .” 1 W. Blackstone, *Commentaries on the Laws of England* 234–235 (1765).

Although the American people had rejected other aspects of English political theory, the doctrine that a sovereign could not be sued without its consent was universal in the States when the Constitution was drafted and ratified. See *Chisholm*, *supra*, at 434–435 (Iredell, J., dissenting) (“I believe there is no doubt that neither in the State now in question, nor in any other in the Union, any particular Legislative mode, authorizing a compulsory suit for the recovery of money against a State, was in being either when the Constitution was adopted, or at the time the judicial act was passed”); *Hans v. Louisiana*, 134 U. S. 1, 16 (1890) (“The suability of a State, without its consent, was a thing unknown to the law. This has been so often laid down and acknowledged by courts and jurists that it is hardly necessary to be formally asserted”).

The ratification debates, furthermore, underscored the importance of the States’ sovereign immunity to the

Opinion of the Court

American people. Grave concerns were raised by the provisions of Article III which extended the federal judicial power to controversies between States and citizens of other States or foreign nations. As we have explained:

“Unquestionably the doctrine of sovereign immunity was a matter of importance in the early days of independence. Many of the States were heavily indebted as a result of the Revolutionary War. They were vitally interested in the question whether the creation of a new federal sovereign, with courts of its own, would automatically subject them, like lower English lords, to suits in the courts of the ‘higher’ sovereign.” *Hall, supra*, at 418 (footnote omitted).

The leading advocates of the Constitution assured the people in no uncertain terms that the Constitution would not strip the States of sovereign immunity. One assurance was contained in The Federalist No. 81, written by Alexander Hamilton:

“It is inherent in the nature of sovereignty not to be amenable to the suit of an individual *without its consent*. This is the general sense, and the general practice of mankind; and the exemption, as one of the attributes of sovereignty, is now enjoyed by the government of every State in the Union. Unless therefore, there is a surrender of this immunity in the plan of the convention, it will remain with the States, and the danger intimated must be merely ideal. . . . [T]here is no color to pretend that the State governments would, by the adoption of that plan, be divested of the privilege of paying their own debts in their own way, free from every constraint but that which flows from the obligations of good faith. The contracts between a nation and individuals are only binding on the conscience of the sovereign, and have no pretensions to a compulsive force. They confer no right of

Opinion of the Court

action independent of the sovereign Will. To what purpose would it be to authorize suits against States for the debts they owe? How could recoveries be enforced? It is evident that it could not be done without waging war against the contracting State; and to ascribe to the federal courts, by mere implication, and in destruction of the preexisting right of the State governments, a power which would involve such a consequence, would be altogether forced and unwarrantable.” *Id.*, at 487–488 (emphasis in original).

At the Virginia ratifying convention, James Madison echoed this theme:

“Its jurisdiction in controversies between a state and citizens of another state is much objected to, and perhaps without reason. It is not in the power of individuals to call any state into court. . . .

“. . . It appears to me that this [clause] can have no operation but this— to give a citizen a right to be heard in the federal courts, and if a state should condescend to be a party, this court may take cognizance of it.” 3 J. Elliot, *Debates on the Federal Constitution* 533 (2d ed. 1854) (hereinafter *Elliot’s Debates*).

When Madison’s explanation was questioned, John Marshall provided immediate support:

“With respect to disputes between a state and the citizens of another state, its jurisdiction has been decried with unusual vehemence. I hope no Gentleman will think that a state will be called at the bar of the federal court. Is there no such case at present? Are there not many cases in which the Legislature of Virginia is a party, and yet the State is not sued? It is not rational to suppose, that the sovereign power shall be dragged before a court. The intent is, to enable states to recover claims of individuals residing in

Opinion of the Court

other states. I contend this construction is warranted by the words. But, say they, there will be partiality in it if a State cannot be defendant . . . It is necessary to be so, and cannot be avoided. I see a difficulty in making a state defendant, which does not prevent its being plaintiff.” 3 *id.*, at 555.

Although the state conventions which addressed the issue of sovereign immunity in their formal ratification documents sought to clarify the point by constitutional amendment, they made clear that they, like Hamilton, Madison, and Marshall, understood the Constitution as drafted to preserve the States’ immunity from private suits. The Rhode Island Convention thus proclaimed that “[i]t is declared by the Convention, that the judicial power of the United States, in cases in which a state may be a party, does not extend to criminal prosecutions, or to authorize any suit by any person against a state.” 1 *id.*, at 336. The convention sought, in addition, an express amendment “to remove all doubts or controversies respecting the same.” *Ibid.* In a similar fashion, the New York Convention “declare[d] and ma[d]e known,” 1 *id.*, at 327, its understanding “[t]hat the judicial power of the United States, in cases in which a state may be a party, does not extend to criminal prosecutions, or to authorize any suit by any person against a state,” 1 *id.*, at 329. The convention proceeded to ratify the Constitution “[u]nder these impressions, and declaring that the rights aforesaid cannot be abridged or violated, and that the explanations aforesaid are consistent with the said Constitution, and in confidence that the amendments which shall have been proposed to the said Constitution will receive an early and mature consideration.” *Ibid.*

Despite the persuasive assurances of the Constitution’s leading advocates and the expressed understanding of the only state conventions to address the issue in explicit

Opinion of the Court

terms, this Court held, just five years after the Constitution was adopted, that Article III authorized a private citizen of another State to sue the State of Georgia without its consent. *Chisholm v. Georgia*, 2 Dall. 419 (1793). Each of the four Justices who concurred in the judgment issued a separate opinion. The common theme of the opinions was that the case fell within the literal text of Article III, which by its terms granted jurisdiction over controversies “between a State and Citizens of another State,” and “between a State, or the Citizens thereof, and foreign States, Citizens, or Subjects.” U. S. Const., Art. III, §2. The argument that this provision granted jurisdiction only over cases in which the State was a plaintiff was dismissed as inconsistent with the ordinary meaning of “between,” and with the provision extending jurisdiction to “Controversies between two or more States,” which by necessity contemplated jurisdiction over suits to which States were defendants. Two Justices also argued that sovereign immunity was inconsistent with the principle of popular sovereignty established by the Constitution, see 2 Dall., at 454–458 (Wilson, J.); *id.*, at 470–472 (Jay, C. J.); although the others did not go so far, they contended that the text of Article III evidenced the States’ surrender of sovereign immunity as to those provisions extending jurisdiction over suits to which States were parties, see *id.*, at 452 (Blair, J.); *id.*, at 468 (Cushing, J.).

Justice Iredell dissented, relying on American history, *id.*, at 434–435, English history, *id.*, at 437–446, and the principles of enumerated powers and separate sovereignty, *id.*, at 435–436, 448, 449–450. See generally *Hans*, 134 U. S., at 12 (“The other justices were more swayed by a close observance of the letter of the Constitution, without regard to former experience and usage Justice Iredell, on the contrary, contended that it was not the intention to create new and unheard of remedies, by subjecting sovereign States to actions at the suit of individuals,

Opinion of the Court

(which he conclusively showed was never done before,) but only . . . to invest the federal courts with jurisdiction to hear and determine controversies and cases, between the parties designated, that were properly susceptible of litigation in courts”).

The Court’s decision “fell upon the country with a profound shock.” 1 C. Warren, *The Supreme Court in United States History* 96 (rev. ed. 1926); accord, *Hans, supra*, at 11; *Principality of Monaco v. Mississippi*, 292 U. S. 313, 325 (1934); *Seminole Tribe*, 517 U. S., at 69. “Newspapers representing a rainbow of opinion protested what they viewed as an unexpected blow to state sovereignty. Others spoke more concretely of prospective raids on state treasuries.” D. Currie, *The Constitution in Congress: The Federalist Period 1789–1801*, p. 196 (1997).

The States, in particular, responded with outrage to the decision. The Massachusetts Legislature, for example, denounced the decision as “repugnant to the first principles of a federal government,” and called upon the State’s Senators and Representatives to take all necessary steps to “remove any clause or article of the Constitution, which can be construed to imply or justify a decision, that, a State is compellable to answer in any suit by an individual or individuals in any Court of the United States.” 15 *Papers of Alexander Hamilton* 314 (H. Syrett & J. Cooke eds. 1969). Georgia’s response was more intemperate: Its House of Representatives passed a bill providing that anyone attempting to enforce the *Chisholm* decision would be “guilty of felony and shall suffer death, without benefit of clergy, by being hanged.” Currie, *supra*, at 196.

An initial proposal to amend the Constitution was introduced in the House of Representatives the day after *Chisholm* was announced; the proposal adopted as the Eleventh Amendment was introduced in the Senate promptly following an intervening recess. Currie, *supra*, at 196. Congress turned to the latter proposal with great

Opinion of the Court

dispatch; little more than two months after its introduction it had been endorsed by both Houses and forwarded to the States. 4 Annals of Congress 25, 30, 477, 499 (1794); 1 Stat. 402.

Each House spent but a single day discussing the Amendment, and the vote in each House was close to unanimous. See 4 Annals, at 30–31, 476–478 (the Senate divided 23 to 2; the House 81 to 9). All attempts to weaken the Amendment were defeated. Congress in succession rejected proposals to limit the Amendment to suits in which “the cause of action shall have arisen before the ratification of the amendment,” or even to cases “[W]here such State shall have previously made provision in their own Courts, whereby such suit may be prosecuted to effect”; it refused as well to make an exception for “cases arising under treaties made under the authority of the United States.” 4 *id.*, 30, 476.

It might be argued that the *Chisholm* decision was a correct interpretation of the constitutional design and that the Eleventh Amendment represented a deviation from the original understanding. This, however, seems unsupported. First, despite the opinion of Justice Iredell, the majority failed to address either the practice or the understanding that prevailed in the States at the time the Constitution was adopted. Second, even a casual reading of the opinions suggests the majority suspected the decision would be unpopular and surprising. See, *e.g.*, 2 Dall., at 454–455 (Wilson, J.) (condemning the prevailing conception of sovereignty); *id.*, at 468 (Cushing, J.) (“If the Constitution is found inconvenient in practice in this or any other particular, it is well that a regular mode is pointed out for amendment”); *id.*, at 478–479 (Jay, C. J.) (“[T]here is reason to hope that the people of [Georgia] will yet perceive that [sovereign immunity] would not have been consistent with [republican] equality”); cf. *id.*, at 419–420 (attorney for Chisholm) (“I did not want the remonstrance

Opinion of the Court

of Georgia, to satisfy me, that the motion, which I have made is unpopular. Before that remonstrance was read, I had learnt from the acts of another State, whose will must be always dear to me, that she too condemned it"). Finally, two Members of the majority acknowledged that the United States might well remain immune from suit despite Article III's grant of jurisdiction over "Controversies to which the United States shall be a Party," see *id.*, at 469 (Cushing, J.); *id.*, at 478 (Jay, C. J.), and, invoking the example of actions to collect debts incurred before the Constitution was adopted, one raised the possibility of "exceptions," suggesting the rule of the case might not "extend to all the demands, and to every kind of action," see *id.*, at 479 (Jay, C. J.). These concessions undercut the crucial premise that either the Constitution's literal text or the principal of popular sovereignty necessarily overrode widespread practice and opinion.

The text and history of the Eleventh Amendment also suggest that Congress acted not to change but to restore the original constitutional design. Although earlier drafts of the Amendment had been phrased as express limits on the judicial power granted in Article III, see, *e.g.*, 3 Annals of Congress 651–652 (1793) ("The Judicial Power of the United States shall not extend to any suits in law or equity, commenced or prosecuted against one of the United States . . ."), the adopted text addressed the proper interpretation of that provision of the original Constitution, see U. S. Const., Amdt. 11 ("The Judicial Power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States . . ."). By its terms, then, the Eleventh Amendment did not redefine the federal judicial power but instead overruled the Court:

"This amendment, expressing the will of the ultimate sovereignty of the whole country, superior to all leg-

Opinion of the Court

islatures and all courts, actually reversed the decision of the Supreme Court. It did not in terms prohibit suits by individuals against the States, but declared that the Constitution should not be construed to import any power to authorize the bringing of such suits. . . . The supreme court had construed the judicial power as extending to such a suit, and its decision was thus overruled.” *Hans*, 134 U. S., at 11.

The text reflects the historical context and the congressional objective in endorsing the Amendment for ratification. Congress chose not to enact language codifying the traditional understanding of sovereign immunity but rather to address the specific provisions of the Constitution that had raised concerns during the ratification debates and formed the basis of the *Chisholm* decision. Cf. 15 Papers of Alexander Hamilton, at 314 (quoted *supra*, at 10). Given the outraged reaction to *Chisholm*, as well as Congress’ repeated refusal to otherwise qualify the text of the Amendment, it is doubtful that if Congress meant to write a new immunity into the Constitution it would have limited that immunity to the narrow text of the Eleventh Amendment:

“Can we suppose that, when the Eleventh Amendment was adopted, it was understood to be left open for citizens of a State to sue their own state in federal courts, whilst the idea of suits by citizens of other states, or of foreign states, was indignantly repelled? Suppose that Congress, when proposing the Eleventh Amendment, had appended to it a proviso that nothing therein contained should prevent a State from being sued by its own citizens in cases arising under the Constitution or laws of the United States, can we imagine that it would have been adopted by the States? The supposition that it would is almost an absurdity on its face.” *Hans*, *supra*, at 14–15.

Opinion of the Court

The more natural inference is that the Constitution was understood, in light of its history and structure, to preserve the States' traditional immunity from private suits. As the Amendment clarified the only provisions of the Constitution that anyone had suggested might support a contrary understanding, there was no reason to draft with a broader brush.

Finally, the swiftness and near unanimity with which the Eleventh Amendment was adopted suggest "either that the Court had not captured the original understanding, or that the country had changed its collective mind most rapidly." D. Currie, *The Constitution in the Supreme Court: The First Century* 18, n. 101 (1985). The more reasonable interpretation, of course, is that regardless of the views of four Justices in *Chisholm*, the country as a whole— which had adopted the Constitution just five years earlier— had not understood the document to strip the States' of their immunity from private suits. Cf. Currie, *The Constitution in Congress*, at 196 ("It is plain that just about everybody in Congress agreed the Supreme Court had misread the Constitution").

Although the dissent attempts to rewrite history to reflect a different original understanding, its evidence is unpersuasive. The handful of state statutory and constitutional provisions authorizing suits or petitions of right against States only confirms the prevalence of the traditional understanding that a State could not be sued in the absence of an express waiver, for if the understanding were otherwise, the provisions would have been unnecessary. The constitutional amendments proposed by the New York and Rhode Island Conventions undercut rather than support the dissent's view of history, see *supra*, at 8, and the amendments proposed by the Virginia and North Carolina Conventions do not cast light upon the original understanding of the States' immunity to suit. It is true that, in the course of all but eliminating federal-question

Opinion of the Court

and diversity jurisdiction, see 3 Elliot's Debates, at 660-661 (amendment proposed by the Virginia Convention limiting the federal-question jurisdiction to suits arising under treaties and the diversity jurisdiction to suits between parties claiming lands under grants from different states); 4 *id.*, at 246 (identical amendment proposed by the North Carolina Convention), the amendments would have removed the language in the Constitution relied upon by the *Chisholm* Court. While the amendments do reflect dissatisfaction with the scope of federal jurisdiction as a general matter, there is no evidence that they were directed toward the question of sovereign immunity or that they reflect an understanding that the States would be subject to private suits without consent under Article III as drafted.

The dissent's remaining evidence cannot bear the weight the dissent seeks to place on it. The views voiced during the ratification debates by Edmund Randolph and James Wilson, when reiterated by the same individuals in their respective capacities as advocate and Justice in *Chisholm*, were decisively rejected by the Eleventh Amendment, and General Pinkney did not speak to the issue of sovereign immunity at all. Furthermore, Randolph appears to have recognized that his views were in tension with the traditional understanding of sovereign immunity, see 3 Elliot's Debates, at 573 ("I think, whatever the law of nations may say, that any doubt respecting the construction that a state may be plaintiff, and not defendant, is taken away by the words *where a state shall be a party*"), and Wilson and Pinkney expressed a radical nationalist vision of the constitutional design that not only deviated from the views that prevailed at the time but, despite the dissent's apparent embrace of the position, remains startling even today, see *post*, at 18 (quoting with approval Wilson's statement that "the government of each state ought to be subordinate to the government of the

Opinion of the Court

United States”). Nor do the controversial early suits prosecuted against Maryland and New York reflect a widespread understanding that the States had surrendered their immunity to suit. Maryland’s decision to submit to process in *Vanstophorst v. Maryland*, 2 Dall. 401 (1791), aroused great controversy, see Marcus & Wexler, *Suits Against States: Diversity of Opinion In The 1790s*, 1993 J. Sup. Ct. History 73, 74–75, and did not go unnoticed by the Supreme Court, see *Chisholm*, 2 Dall., at 429–430 (Iredell, J., dissenting). In *Oswald v. New York*, the State refused to respond to the plaintiff’s summons until after the decision in *Chisholm* had been announced; even then it at first asserted the defense that it was “a free, sovereign and independent State,” and could not be “drawn or compelled” to defend the suit. Marcus & Wexler, *supra*, at 76–77 (internal quotation marks omitted). And, though the Court’s decision in *Chisholm* may have had “champions every bit as vigorous in defending their interpretation of the Constitution as were those partisans on the other side of the issue” *post*, at 37, the vote on the Eleventh Amendment makes clear that they were decidedly less numerous. See *supra*, at 11.

In short, the scanty and equivocal evidence offered by the dissent establishes no more than what is evident from the decision in *Chisholm*— that some members of the founding generation disagreed with Hamilton, Madison, Marshall, Iredell, and the only state conventions formally to address the matter. The events leading to the adoption of the Eleventh Amendment, however, make clear that the individuals who believed the Constitution stripped the States of their immunity from suit were at most a small minority.

Not only do the ratification debates and the events leading to the adoption of the Eleventh Amendment reveal the original understanding of the States’ constitutional immunity from suit, they also underscore the importance of sovereign immunity to the founding generation. Simply put, “The Constitution never would have been ratified if

Opinion of the Court

the States and their courts were to be stripped of their sovereign authority except as expressly provided by the Constitution itself.” *Atascadero State Hospital v. Scanlon*, 473 U. S. 234, 239, n. 2 (1985); accord, *Edelman v. Jordan*, 415 U. S. 651, 660 (1974).

C

The Court has been consistent in interpreting the adoption of the Eleventh Amendment as conclusive evidence “that the decision in *Chisholm* was contrary to the well-understood meaning of the Constitution,” *Seminole Tribe*, 517 U. S., at 69, and that the views expressed by Hamilton, Madison, and Marshall during the ratification debates, and by Justice Iredell in his dissenting opinion in *Chisholm*, reflect the original understanding of the Constitution. See, e.g., *Hans*, *supra*, at 12, 14–15, 18–19; *Principality of Monaco*, 292 U. S., at 325; *Edelman*, *supra*, at 660, n. 9; *Seminole Tribe*, *supra*, at 70, and nn. 12–13. In accordance with this understanding, we have recognized a “presumption that no anomalous and unheard-of proceedings or suits were intended to be raised up by the Constitution— anomalous and unheard of when the constitution was adopted.” *Hans*, 134 U. S., at 18; accord, *id.*, at 15. As a consequence, we have looked to “history and experience, and the established order of things,” *id.*, at 14, rather than “[a]dhering to the mere letter” of the Eleventh Amendment, *id.*, at 13, in determining the scope of the States’ constitutional immunity from suit.

Following this approach, the Court has upheld States’ assertions of sovereign immunity in various contexts falling outside the literal text of the Eleventh Amendment. In *Hans v. Louisiana*, the Court held that sovereign immunity barred a citizen from suing his own State under the federal-question head of jurisdiction. The Court was unmoved by the petitioner’s argument that the Eleventh Amendment, by its terms, applied only to suits brought by

Opinion of the Court

citizens of other States:

“It seems to us that these views of those great advocates and defenders of the Constitution were most sensible and just, and they apply equally to the present case as to that then under discussion. The letter is appealed to now, as it was then, as a ground for sustaining a suit brought by an individual against a State. The reason against it is as strong in this case as it was in that. It is an attempt to strain the Constitution and the law to a construction never imagined or dreamed of.” 134 U. S., at 14–15.

Later decisions rejected similar requests to conform the principle of sovereign immunity to the strict language of the Eleventh Amendment in holding that nonconsenting States are immune from suits brought by federal corporations, *Smith v. Reeves*, 178 U. S. 436 (1900), foreign nations, *Principality of Monaco*, *supra*, or Indian tribes, *Blatchford v. Native Village of Noatak*, 501 U. S. 775 (1991), and in concluding that sovereign immunity is a defense to suits in admiralty, though the text of the Eleventh Amendment addresses only suits “in law or equity,” *Ex parte New York*, 256 U. S. 490 (1921).

These holdings reflect a settled doctrinal understanding, consistent with the views of the leading advocates of the Constitution’s ratification, that sovereign immunity derives not from the Eleventh Amendment but from the structure of the original Constitution itself. See, *e.g.*, *Idaho v. Coeur d’Alene Tribe of Idaho*, 521 U. S. 261, 267–268 (1997) (acknowledging “the broader concept of immunity, implicit in the Constitution, which we have regarded the Eleventh Amendment as evidencing and exemplifying”); *Seminole Tribe*, *supra*, at 55–56; *Pennhurst State School and Hospital v. Halderman*, 465 U. S. 89, 98–99 (1984); *Ex parte New York*, *supra*, at 497. The Eleventh Amendment confirmed rather than established sovereign

Opinion of the Court

immunity as a constitutional principle; it follows that the scope of the States' immunity from suit is demarcated not by the text of the Amendment alone but by fundamental postulates implicit in the constitutional design. As we explained in *Principality of Monaco*:

“Manifestly, we cannot rest with a mere literal application of the words of §2 of Article III, or assume that the letter of the Eleventh Amendment exhausts the restrictions upon suits against non-consenting States. Behind the words of the constitutional provisions are postulates which limit and control. There is the essential postulate that the controversies, as contemplated, shall be found to be of a justiciable character. There is also the postulate that States of the Union, still possessing attributes of sovereignty, shall be immune from suits, without their consent, save where there has been a surrender of this immunity in the plan of the convention.” 292 U. S., at 322–323 (quoting *The Federalist* No. 81, at 487) (footnote omitted).

Or, as we have more recently reaffirmed:

“Although the text of the Amendment would appear to restrict only the Article III diversity jurisdiction of the federal courts, we have understood the Eleventh Amendment to stand not so much for what it says, but for the presupposition . . . which it confirms.’ *Blatchford v. Native Village of Noatak*, [*supra*, at 779]. That presupposition, first observed over a century ago in *Hans v. Louisiana*, [*supra*], has two parts: first, that each State is a sovereign entity in our federal system; and second, that “[i]t is inherent in the nature of sovereignty not to be amenable to the suit of an individual without its consent,”’*id.*, at 13 (emphasis deleted), quoting *The Federalist* No. 81, p. 487 . . .” *Seminole Tribe*, *supra*, at 54.

Opinion of the Court

Accord, *Puerto Rico Aqueduct and Sewer Authority v. Metcalf & Eddy, Inc.*, 506 U. S. 139, 146 (1993) (“The Amendment is rooted in a recognition that the States, although a union, maintain certain attributes of sovereignty, including sovereign immunity”).

II

In this case we must determine whether Congress has the power, under Article I, to subject nonconsenting States to private suits in their own courts. As the foregoing discussion makes clear, the fact that the Eleventh Amendment by its terms limits only “[t]he Judicial power of the United States” does not resolve the question. To rest on the words of the Amendment alone would be to engage in the type of ahistorical literalism we have rejected in interpreting the scope of the States’ sovereign immunity since the discredited decision in *Chisholm. Seminole Tribe*, 517 U. S., at 68; see also *id.*, at 69 (quoting *Principality of Monaco, supra*, at 326, and *Hans*, 134 U. S., at 15) (“[W]e long have recognized that blind reliance upon the text of the Eleventh Amendment is to strain the Constitution and the law to a construction never imagined or dreamed of”).

While the constitutional principle of sovereign immunity does pose a bar to federal jurisdiction over suits against nonconsenting States, see, e.g., *Principality of Monaco*, 292 U. S., at 322–323, this is not the only structural basis of sovereign immunity implicit in the constitutional design. Rather, “[t]here is also the postulate that States of the Union, still possessing attributes of sovereignty, shall be immune from suits, without their consent, save where there has been a surrender of this immunity in the plan of the convention.” *Ibid.* (quoting *The Federalist* No. 81, at 487); accord, *Blatchford, supra*, at 781; *Seminole Tribe, supra*, at 68. This separate and distinct structural principle is not directly related to the scope of the judicial power

Opinion of the Court

established by Article III, but inheres in the system of federalism established by the Constitution. In exercising its Article I powers Congress may subject the States to private suits in their own courts only if there is “compelling evidence” that the States were required to surrender this power to Congress pursuant to the constitutional design. *Blatchford*, 501 U. S., at 781.

A

Petitioners contend the text of the Constitution and our recent sovereign immunity decisions establish that the States were required to relinquish this portion of their sovereignty. We turn first to these sources.

1

Article I, §8 grants Congress broad power to enact legislation in several enumerated areas of national concern. The Supremacy Clause, furthermore, provides:

“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . , shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding.” U. S. Const., Art. VI.

It is contended that, by virtue of these provisions, where Congress enacts legislation subjecting the States to suit, the legislation by necessity overrides the sovereign immunity of the States.

As is evident from its text, however, the Supremacy Clause enshrines as “the supreme Law of the Land” only those federal Acts that accord with the constitutional design. See *Printz*, 521 U. S., at 924. Appeal to the Supremacy Clause alone merely raises the question whether a law is a valid exercise of the national power. See *The Federalist* No. 33, at 204 (A. Hamilton) (“But it will not follow from this doctrine that acts of the larger society

Opinion of the Court

which are *not pursuant* to its constitutional powers, but which are invasions of the residuary authorities of the smaller societies, will become the supreme law of the land”); *Printz, supra*, at 924–925.

The Constitution, by delegating to Congress the power to establish the supreme law of the land when acting within its enumerated powers, does not foreclose a State from asserting immunity to claims arising under federal law merely because that law derives not from the State itself but from the national power. A contrary view could not be reconciled with *Hans v. Louisiana, supra*, which sustained Louisiana’s immunity in a private suit arising under the Constitution itself; with *Employees of Dept. of Public Health and Welfare of Mo. v. Department of Public Health and Welfare of Mo.*, 411 U. S. 279, 283 (1973), which recognized that the FLSA was binding upon Missouri but nevertheless upheld the State’s immunity to a private suit to recover under that Act; or with numerous other decisions to the same effect. We reject any contention that substantive federal law by its own force necessarily overrides the sovereign immunity of the States. When a State asserts its immunity to suit, the question is not the primacy of federal law but the implementation of the law in a manner consistent with the constitutional sovereignty of the States.

Nor can we conclude that the specific Article I powers delegated to Congress necessarily include, by virtue of the Necessary and Proper Clause or otherwise, the incidental authority to subject the States to private suits as a means of achieving objectives otherwise within the scope of the enumerated powers. Although some of our decisions had endorsed this contention, see *Parden v. Terminal R. Co. of Ala. Docks Dept.*, 377 U. S. 184, 190–194 (1964); *Pennsylvania v. Union Gas Co.*, 491 U. S. 1, 13–23 (1989) (plurality opinion), they have since been overruled, see *Seminole Tribe, supra*, at 63–67, 72; *College Savings Bank v. Flor-*

Opinion of the Court

ida Prepaid Postsecondary Ed. Expense Bd., ante, p. ____.
As we have recognized in an analogous context:

“When a La[w] . . . for carrying into Execution’ the Commerce Clause violates the principle of state sovereignty reflected in the various constitutional provisions . . . it is not a La[w] . . . *proper* for carrying into Execution the Commerce Clause,’ and is thus, in the words of The Federalist, ‘merely [an] ac[t] of usurpation’ which ‘deserve[s] to be treated as such.’” *Printz*, supra, at 923–924 (quoting The Federalist No. 33, at 204 (A. Hamilton)) (ellipses and alterations in *Printz*).

The cases we have cited, of course, came at last to the conclusion that neither the Supremacy Clause nor the enumerated powers of Congress confer authority to abrogate the States’ immunity from suit in federal court. The logic of the decisions, however, does not turn on the forum in which the suits were prosecuted but extends to state-court suits as well.

The dissenting opinion seeks to reopen these precedents, contending that state sovereign immunity must derive either from the common law (in which case the dissent contends it is defeasible by statute) or from natural law (in which case the dissent believes it cannot bar a federal claim). See *post*, at 41. As should be obvious to all, this is a false dichotomy. The text and the structure of the Constitution protect various rights and principles. Many of these, such as the right to trial by jury and the prohibition on unreasonable searches and seizures, derive from the common law. The common-law lineage of these rights does not mean they are defeasible by statute or remain mere common-law rights, however. They are, rather, constitutional rights, and form the fundamental law of the land.

Although the sovereign immunity of the States derives at least in part from the common-law tradition, the struc-

Opinion of the Court

ture and history of the Constitution make clear that the immunity exists today by constitutional design. The dissent has provided no persuasive evidence that the founding generation regarded the States' sovereign immunity as defeasible by federal statute. While the dissent implies this view was held by Madison and Marshall, see *post*, at 20, nothing in the comments made by either individual at the ratification conventions states, or even implies, such an understanding. Although the dissent seizes upon Justice Iredell's statutory analysis in *Chisholm* in attempt to attribute this view to Justice Iredell, see *post*, at 30-31, citing *Chisholm*, 2 Dall., at 449 (Iredell, J., dissenting), Justice Iredell's views on the underlying constitutional question are clear enough from other portions of his dissenting opinion:

"So much, however, has been said on the Constitution, that it may not be improper to intimate that my present opinion is strongly against any construction of it, which will admit, under any circumstances, a compulsive suit against a State for the recovery of money. I think every word in the Constitution may have its full effect without involving this consequence, and that nothing but express words, or an insurmountable implication (neither of which I consider, can be found in this case) would authorize the deduction of so high a power." *Id.*, at 449-450.

Despite the dissent's assertion to the contrary, the fact that a right is not defeasible by statute means only that it is protected by the Constitution, not that it derives from natural law. Whether the dissent's attribution of our reasoning and conclusions to natural law results from analytical confusion or rhetorical device, it is simply inaccurate. We do not contend the founders could not have stripped the States of sovereign immunity and granted Congress power to subject them to private suit but only

Opinion of the Court

that they did not do so. By the same token, the contours of sovereign immunity are determined by the founders' understanding, not by the principles or limitations derived from natural law.

The dissent has offered no evidence that the founders believed sovereign immunity extended only to cases where the sovereign was the source of the right asserted. No such limitation existed on sovereign immunity in England, where sovereign immunity was predicated on a different theory altogether. See 1 F. Pollock & F. Maitland, *History of English Law* 518 (2d ed. 1909), quoted in *Nevada v. Hall*, 440 U. S., at 415, n. 6 ("[The King] can not be compelled to answer in his own court, but this is true of every petty lord of every petty manor"); accord, 3 W. Holdsworth, *A History of English Law* 465 (3d ed. 1927) ("[N]o feudal lord could be sued in his own court"). It is doubtful whether the King was regarded, in any meaningful sense, as the font of the traditions and customs which formed the substance of the common law, yet he could not be sued on a common-law claim in his own courts. And it strains credibility to imagine that the King could have been sued in his own court on, say, a French cause of action.

In light of the ratification debates and the history of the Eleventh Amendment, there is no reason to believe the founders intended the Constitution to preserve a more restricted immunity in the United States. On the contrary, Congress' refusal to modify the text of the Eleventh Amendment to create an exception to sovereign immunity for cases arising under treaties, see *supra*, at 11, suggests the States' sovereign immunity was understood to extend beyond state-law causes of action. And surely the dissent does not believe that sovereign immunity poses no bar to a state-law suit against the United States in federal court, or that the Federal Tort Claims Act effected a contraction, rather than an expansion, of the United States' amenability to suit.

Opinion of the Court

2

There are isolated statements in some of our cases suggesting that the Eleventh Amendment is inapplicable in state courts. See *Hilton v. South Carolina Public Railways Comm'n*, 502 U. S. 197, 204–205 (1991); *Will v. Michigan Dept. of State Police*, 491 U. S. 58, 63 (1989); *Atascadero State Hospital v. Scanlon*, 473 U. S., at 239–240, n. 2; *Maine v. Thiboutot*, 448 U. S. 1, 9, n. 7 (1980); *Nevada v. Hall*, 440 U. S., at 418–421. This, of course, is a truism as to the literal terms of the Eleventh Amendment. As we have explained, however, the bare text of the Amendment is not an exhaustive description of the States' constitutional immunity from suit. The cases, furthermore, do not decide the question presented here—whether the States retain immunity from private suits in their own courts notwithstanding an attempted abrogation by the Congress.

Two of the cases discussing state-court immunity may be dismissed out of hand. The footnote digressions in *Atascadero State Hospital* and *Thiboutot* were irrelevant to either opinion's holding or rationale. The discussion in *Will* was also unnecessary to the decision; our holding that 42 U. S. C. §1983 did not create a cause of action against the States rendered it unnecessary to determine the scope of the States' constitutional immunity from suit in their own courts. Our opinions in *Hilton* and *Hall*, however, require closer attention, for in those cases we sustained suits against States in state courts.

In *Hilton* we held that an injured employee of a state-owned railroad could sue his employer (an arm of the State) in state court under the Federal Employers' Liability Act (FELA), 53 Stat. 1404, 45 U. S. C. §§51–60. Our decision was “controlled and informed” by *stare decisis*. 502 U. S., at 201. A generation earlier we had held that because the FELA made clear that all who operated railroads would be subject to suit by injured workers, States

Opinion of the Court

that chose to enter the railroad business after the statute's enactment impliedly waived their sovereign immunity from such suits. See *Parden*, *supra*. Some States had excluded railroad workers from the coverage of their workers' compensation statutes on the assumption that FELA provided adequate protection for those workers. *Hilton*, *supra*, at 202. Closing the courts to FELA suits against state employers would have dislodged settled expectations and required an extensive legislative response. *Ibid*.

There is language in *Hilton* which gives some support to the position of petitioners here but our decision did not squarely address, much less resolve, the question of Congress' power to abrogate States' immunity from suit in their own courts. The respondent in *Hilton*, the South Carolina Public Railways Commission, neither contested Congress' constitutional authority to subject it to suits for money damages nor raised sovereign immunity as an affirmative defense. See Brief for Respondent in No. 90–848, O. T. 1991, pp. 7, n. 14, 21. Nor was the State's litigation strategy surprising. *Hilton* was litigated and decided in the wake of *Union Gas*, and before this Court's decisions in *New York*, *Printz*, and *Seminole Tribe*. At that time it may have appeared to the State that Congress' power to abrogate its immunity from suit in any court was not limited by the Constitution at all, so long as Congress made its intent sufficiently clear.

Furthermore, our decision in *Parden* was based on concepts of waiver and consent. Although later decisions have undermined the basis of *Parden*'s reasoning, see, *e.g.*, *Welch v. Texas Dept. of Highways and Public Transp.*, 483 U. S. 468, 476–478 (1987) (recognizing that *Parden* erred in finding a clear congressional intent to subject the States to suit); *College Savings Bank*, *ante*, at ____ (overruling *Parden*'s theory of constructive waiver), we have not questioned the general proposition that a State may waive its

Opinion of the Court

sovereign immunity and consent to suit, see *Seminole Tribe*, 517 U. S., at 65.

Hilton, then, must be read in light of the doctrinal basis of *Parden*, the issues presented and argued by the parties, and the substantial reliance interests drawn into question by the litigation. When so read, we believe the decision is best understood not as recognizing a congressional power to subject nonconsenting States to private suits in their own courts, nor even as endorsing the constructive waiver theory of *Parden*, but as simply adhering, as a matter of *stare decisis* and presumed historical fact, to the narrow proposition that certain States had consented to be sued by injured workers covered by the FELA, at least in their own courts.

In *Hall* we considered whether California could subject Nevada to suit in California's courts and determined the Constitution did not bar it from doing so. We noted that "[t]he doctrine of sovereign immunity is an amalgam of two quite different concepts, one applicable to suits in the sovereign's own courts and the other to suits in the courts of another sovereign." 440 U. S., at 414. We acknowledged that "[t]he immunity of a truly independent sovereign from suit in its own courts has been enjoyed as a matter of absolute right for centuries. Only the sovereign's own consent could qualify the absolute character of that immunity," *ibid*, that "the notion that immunity from suit is an attribute of sovereignty is reflected in our cases," *id.*, at 415, and that "[t]his explanation adequately supports the conclusion that no sovereign may be sued in its own courts without its consent," *id.*, at 416. We sharply distinguished, however, a sovereign's immunity from suit in the courts of another sovereign:

"[B]ut [this explanation] affords no support for a claim of immunity in another sovereign's courts. Such a claim necessarily implicates the power and authority

Opinion of the Court

of a second sovereign; its source must be found either in an agreement, express or implied, between the two sovereigns, or in the voluntary decision of the second to respect the dignity of the first as a matter of comity.” *Ibid.*

Since we determined the Constitution did not reflect an agreement between the States to respect the sovereign immunity of one another, California was free to determine whether it would respect Nevada’s sovereignty as a matter of comity.

Our opinion in *Hall* did distinguish a State’s immunity from suit in federal court from its immunity in the courts of other States; it did not, however, address or consider any differences between a State’s sovereign immunity in federal court and in its own courts. Our reluctance to find an implied constitutional limit on the power of the States cannot be construed, furthermore, to support an analogous reluctance to find implied constitutional limits on the power of the Federal Government. The Constitution, after all, treats the powers of the States differently from the powers of the Federal Government. As we explained in *Hall*:

“[I]n view of the Tenth Amendment’s reminder that powers not delegated to the Federal Government nor prohibited to the States are reserved to the States or to the people, the existence of express limitations on state sovereignty may equally imply that caution should be exercised before concluding that unstated limitations on state power were intended by the Framers.” *Id.*, at 425 (footnote omitted).

The Federal Government, by contrast, “can claim no powers which are not granted to it by the constitution, and the powers actually granted must be such as are expressly given, or given by necessary implication.” *Martin v. Hunter’s Lessee*, 1 Wheat. 304, 326 (1816); see also *City of*

Opinion of the Court

Boerne v. Flores, 521 U. S. 507, 516 (1997); *United States v. Lopez*, 514 U. S. 549, 552 (1995).

Our decision in *Hall* thus does not support the argument urged by petitioners here. The decision addressed neither Congress' power to subject States to private suits nor the States' immunity from suit in their own courts. In fact, the distinction drawn between a sovereign's immunity in its own courts and its immunity in the courts of another sovereign, as well as the reasoning on which this distinction was based, are consistent with, and even support, the proposition urged by the respondent here— that the Constitution reserves to the States a constitutional immunity from private suits in their own courts which cannot be abrogated by Congress.

Petitioners seek support in two additional decisions. In *Reich v. Collins*, 513 U. S. 106 (1994), we held that, despite its immunity from suit in federal court, a State which holds out what plainly appears to be “a clear and certain” postdeprivation remedy for taxes collected in violation of federal law may not declare, after disputed taxes have been paid in reliance on this remedy, that the remedy does not in fact exist. *Id.*, at 108. This case arose in the context of tax-refund litigation, where a State may deprive a taxpayer of all other means of challenging the validity of its tax laws by holding out what appears to be a “clear and certain” postdeprivation remedy. *Ibid.*; see also *Fair Assessment in Real Estate Assn., Inc. v. McNary*, 454 U. S. 100 (1981). In this context, due process requires the State to provide the remedy it has promised. *Cf. Hudson v. Palmer*, 468 U. S. 517, 539 (1984) (O'CONNOR, J., concurring). The obligation arises from the Constitution itself; *Reich* does not speak to the power of Congress to subject States to suits in their own courts.

In *Howlett v. Rose*, 496 U. S. 356 (1990), we held that a state court could not refuse to hear a §1983 suit against a school board on the basis of sovereign immunity. The

Opinion of the Court

school board was not an arm of the State, however, so it could not assert any constitutional defense of sovereign immunity to which the State would have been entitled. See *Mt. Healthy City Bd. of Ed. v. Doyle*, 429 U. S. 274, 280 (1977). In *Howlett*, then, the only question was “whether a state-law defense of ‘sovereign immunity’ is available to a school board otherwise subject to suit in a Florida court even though such a defense would not be available if the action had been brought in a federal forum.” 496 U. S., at 358–359. The decision did not address the question of Congress’ power to compel a state court to entertain an action against a nonconsenting State.

B

Whether Congress has authority under Article I to abrogate a State’s immunity from suit in its own courts is, then, a question of first impression. In determining whether there is “compelling evidence” that this derogation of the States’ sovereignty is “inherent in the constitutional compact,” *Blatchford*, 501 U. S., at 781, we continue our discussion of history, practice, precedent, and the structure of the Constitution.

1

We look first to evidence of the original understanding of the Constitution. Petitioners contend that because the ratification debates and the events surrounding the adoption of the Eleventh Amendment focused on the States’ immunity from suit in federal courts, the historical record gives no instruction as to the founding generation’s intent to preserve the States’ immunity from suit in their own courts.

We believe, however, that the founders’ silence is best explained by the simple fact that no one, not even the Constitution’s most ardent opponents, suggested the document might strip the States of the immunity. In light

Opinion of the Court

of the overriding concern regarding the States' war-time debts, together with the well known creativity, foresight, and vivid imagination of the Constitution's opponents, the silence is most instructive. It suggests the sovereign's right to assert immunity from suit in its own courts was a principle so well established that no one conceived it would be altered by the new Constitution.

The arguments raised against the Constitution confirm this strong inference. In England, the rule was well established that "no lord could be sued by a vassal in his own court, but each petty lord was subject to suit in the courts of a higher lord." *Hall*, 440 U. S., at 414–415. It was argued that, by analogy, the States could be sued without consent in federal court. *Id.*, at 418. The point of the argument was that federal jurisdiction under Article III would circumvent the States' immunity from suit in their own courts. The argument would have made little sense if the States were understood to have relinquished the immunity in all events.

The response the Constitution's advocates gave to the argument is also telling. Relying on custom and practice— and, in particular, on the States' immunity from suit in their own courts, see 3 Elliot's Debates, at 555 (Marshall)— they contended that no individual could sue a sovereign without its consent. It is true the point was directed toward the power of the Federal Judiciary, for that was the only question at issue. The logic of the argument, however, applies with even greater force in the context of a suit prosecuted against a sovereign in its own courts, for in this setting, more than any other, sovereign immunity was long established and unquestioned. See *Hall, supra*, at 414.

Similarly, while the Eleventh Amendment by its terms addresses only "the Judicial power of the United States," nothing in *Chisholm*, the catalyst for the Amendment, suggested the States were not immune from suits in their

Opinion of the Court

own courts. The only Justice to address the issue, in fact, was explicit in distinguishing between sovereign immunity in federal court and in a State's own courts. See 2 Dall., at 452 (Blair, J.) ("When sovereigns are sued in their own Courts, such a method [a petition of right] may have been established as the most respectful form of demand; but we are not now in a State-Court; and if sovereignty be an exemption from suit in any other than the sovereign's own Courts, it follows that when a State, by adopting the Constitution, has agreed to be amenable to the judicial power of the United States, she has, in that respect, given up her right of sovereignty").

The language of the Eleventh Amendment, furthermore, was directed toward the only provisions of the constitutional text believed to call the States' immunity from private suits into question. Although Article III expressly contemplated jurisdiction over suits between States and individuals, nothing in the Article or in any other part of the Constitution suggested the States could not assert immunity from private suit in their own courts or that Congress had the power to abrogate sovereign immunity there.

Finally, the Congress which endorsed the Eleventh Amendment rejected language limiting the Amendment's scope to cases where the States had made available a remedy in their own courts. See *supra*, at 11. Implicit in the proposal, it is evident, was the premise that the States retained their immunity and the concomitant authority to decide whether to allow private suits against the sovereign in their own courts.

In light of the language of the Constitution and the historical context, it is quite apparent why neither the ratification debates nor the language of the Eleventh Amendment addressed the States' immunity from suit in their own courts. The concerns voiced at the ratifying conventions, the furor raised by *Chisholm*, and the speed

Opinion of the Court

and unanimity with which the Amendment was adopted, moreover, underscore the jealous care with which the founding generation sought to preserve the sovereign immunity of the States. To read this history as permitting the inference that the Constitution stripped the States of immunity in their own courts and allowed Congress to subject them to suit there would turn on its head the concern of the founding generation— that Article III might be used to circumvent state-court immunity. In light of the historical record it is difficult to conceive that the Constitution would have been adopted if it had been understood to strip the States of immunity from suit in their own courts and cede to the Federal Government a power to subject nonconsenting States to private suits in these fora.

2

Our historical analysis is supported by early congressional practice, which provides “contemporaneous and weighty evidence of the Constitution’s meaning.” *Printz*, 521 U. S., at 905 (internal quotation marks omitted). Although early Congresses enacted various statutes authorizing federal suits in state court, see *id.*, at 906–907 (listing statutes); *Testa v. Katt*, 330 U. S. 386, 389–390 (1947), we have discovered no instance in which they purported to authorize suits against nonconsenting States in these fora. The “numerousness of these statutes [authorizing suit in state court], contrasted with the utter lack of statutes” subjecting States to suit, “suggests an assumed *absence* of such power.” 521 U. S., at 907–908. It thus appears early Congresses did not believe they had the power to authorize private suits against the States in their own courts.

Not only were statutes purporting to authorize private suits against nonconsenting States in state courts not enacted by early Congresses, statutes purporting to authorize such suits in any forum are all but absent from

Opinion of the Court

our historical experience. The first statute we confronted that even arguably purported to subject the States to private actions was the FEHA. See *Parden*, 377 U. S., at 187 (“Here, for the first time in this Court, a State’s claim of immunity against suit by an individual meets a suit brought upon a cause of action expressly created by Congress”). As we later recognized, however, even this statute did not clearly create a cause of action against the States. See *Welch*, 483 U. S., at 476–478. The provisions of the FLSA at issue here, which were enacted in the aftermath of *Parden*, are among the first statutory enactments purporting in express terms to subject nonconsenting States to private suits. Although similar statutes have multiplied in the last generation, “they are of such recent vintage that they are no more probative than the [FLSA] of a constitutional tradition that lends meaning to the text. Their persuasive force is far outweighed by almost two centuries of apparent congressional avoidance of the practice.” 521 U. S., at 918.

Even the recent statutes, moreover, do not provide evidence of an understanding that Congress has a greater power to subject States to suit in their own courts than in federal courts. On the contrary, the statutes purport to create causes of actions against the States which are enforceable in federal, as well as state, court. To the extent recent practice thus departs from longstanding tradition, it reflects not so much an understanding that the States have surrendered their immunity from suit in their own courts as the erroneous view, perhaps inspired by *Parden* and *Union Gas*, that Congress may subject nonconsenting States to private suits in any forum.

3

The theory and reasoning of our earlier cases suggest the States do retain a constitutional immunity from suit in their own courts. We have often described the States’

Opinion of the Court

immunity in sweeping terms, without reference to whether the suit was prosecuted in state or federal court. See, e.g., *Briscoe v. Bank of Kentucky*, 11 Pet. 257, 321–322 (1837) (“No sovereign state is liable to be sued without her consent”); *Board of Liquidation v. McComb*, 92 U. S. 531, 541 (1876) (“A State, without its consent, cannot be sued by an individual”); *In re Ayers*, 123 U. S. 443, 506 (1887) (same); *Great Northern Life Ins. Co. v. Read*, 322 U. S. 47, 51 (1944) (“The inherent nature of sovereignty prevents actions against a state by its own citizens without its consent”).

We have said on many occasions, furthermore, that the States retain their immunity from private suits prosecuted in their own courts. See, e.g., *Beers v. Arkansas*, 20 How. 527, 529 (1858) (“It is an established principle of jurisprudence in all civilized nations that the sovereign cannot be sued in its own courts, or in any other, without its consent and permission”); *Railroad Co. v. Tennessee*, 101 U. S. 337, 339 (1880) (“The principle is elementary that a State cannot be sued in its own courts without its consent. This is a privilege of sovereignty”); *Cunningham v. Macon & Brunswick R. Co.*, 109 U. S. 446, 451 (1883) (“It may be accepted as a point of departure unquestioned, that neither a State nor the United States can be sued as defendant in any court in this country without their consent, except in the limited class of cases in which a State may be made a party in the Supreme Court of the United States by virtue of the original jurisdiction conferred on this court by the Constitution”); *Louisiana ex rel. New York Guaranty & Indemnity Co. v. Steele*, 134 U. S. 230, 232 (1890) (finding a suit against a state official in state court to be “clearly within the principle” of the Eleventh Amendment decisions); *Hess v. Port Authority Trans-Hudson Corporation*, 513 U. S. 30, 39 (1994) (“The Eleventh Amendment largely shields the States from suit in federal court without their consent, leaving the parties

Opinion of the Court

with claims against a State to present them, if the State permits, in the State's own tribunals"); *Seminole Tribe*, 517 U. S., at 71, n. 14 ("[T]his Court is empowered to review a question of federal law arising from a state court decision where a State has consented to suit"); see also *Great Northern Life Ins. Co. v. Read*, 322 U. S., at 59 (Frankfurter, J., dissenting) ("The Eleventh Amendment has put state immunity from suit into the Constitution. Therefore, it is not in the power of individuals to bring any State into court— the State's or that of the United States— except with its consent"); accord, *id.*, at 51, 53 (majority opinion); cf. *Quern v. Jordan*, 440 U. S. 332, 440 (1979); *Green v. Mansour*, 474 U. S. 64, 71 (1985).

We have also relied on the States' immunity in their own courts as a premise in our Eleventh Amendment rulings. See *Hans*, 134 U. S., at 10 ("It is true the amendment does so read, and, if there were no other reason or ground for abating his suit, it might be maintainable; and then we should have this anomalous result [that a State may be sued by its own citizen though not by the citizen of another State, and that a State] may be thus sued in the federal courts, although not allowing itself to be sued in its own courts. If this is the necessary consequence of the language of the Constitution and the law, the result is no less startling and unexpected than [*Chisholm*]"); *id.*, at 18 ("The state courts have no power to entertain suits by individuals against a State without its consent. Then how does the Circuit Court, having only concurrent jurisdiction, acquire any such power?").

In particular, the exception to our sovereign immunity doctrine recognized in *Ex parte Young*, 209 U. S. 123 (1908), is based in part on the premise that sovereign immunity bars relief against States and their officers in both state and federal courts, and that certain suits for declaratory or injunctive relief against state officers must therefore be permitted if the Constitution is to remain the

Opinion of the Court

supreme law of the land. As we explained in *General Oil Co. v. Crain*, 209 U. S. 211 (1908), a case decided the same day as *Ex parte Young* and extending the rule of that case to state-court suits:

“It seems to be an obvious consequence that as a State can only perform its functions through its officers, a restraint upon them is a restraint upon its sovereignty from which it is exempt without its consent in the state tribunals, and exempt by the Eleventh Amendment of the Constitution of the United States, in the national tribunals. The error is in the universality of the conclusion, as we have seen. Necessarily to give adequate protection to constitutional rights a distinction must be made between valid and invalid state laws, as determining the character of the suit against state officers. And the suit at bar illustrates the necessity. If a suit against state officers is precluded in the national courts by the Eleventh Amendment to the Constitution, and may be forbidden by a State to its courts, as it is contended in the case at bar that it may be, without power of review by this court, it must be evident that an easy way is open to prevent the enforcement of many provisions of the Constitution See *Ex parte Young*, ante, p. 123, where this subject is fully discussed and the cases reviewed.” 209 U. S., at 226–227.

Had we not understood the States to retain a constitutional immunity from suit in their own courts, the need for the *Ex parte Young* rule would have been less pressing, and the rule would not have formed so essential a part of our sovereign immunity doctrine. See *Idaho v. Coeur d’Alene Tribe of Idaho*, 521 U. S., at 270–271 (principal opinion).

As it is settled doctrine that neither substantive federal law nor attempted congressional abrogation under Article

Opinion of the Court

I bars a State from raising a constitutional defense of sovereign immunity in federal court, see Part II–A–1, *supra*, our decisions suggesting that the States retain an analogous constitutional immunity from private suits in their own courts support the conclusion that Congress lacks the Article I power to subject the States to private suits in those fora.

4

Our final consideration is whether a congressional power to subject nonconsenting States to private suits in their own courts is consistent with the structure of the Constitution. We look both to the essential principles of federalism and to the special role of the state courts in the constitutional design.

Although the Constitution grants broad powers to Congress, our federalism requires that Congress treat the States in a manner consistent with their status as residuary sovereigns and joint participants in the governance of the Nation. See, *e.g.*, *United States v. Lopez*, 514 U. S., at 583 (concurring opinion); *Printz*, 521 U. S., at 935; *New York*, 505 U. S., at 188. The founding generation thought it “neither becoming nor convenient that the several States of the Union, invested with that large residuum of sovereignty which had not been delegated to the United States, should be summoned as defendants to answer the complaints of private persons.” *In re Ayers*, 123 U. S., at 505. The principle of sovereign immunity preserved by constitutional design “thus accords the States the respect owed them as members of the federation.” *Puerto Rico Aqueduct and Sewer Authority*, 506 U. S., at 146; accord, *Coeur d’Alene Tribe*, *supra*, at 268 (recognizing “the dignity and respect afforded a State, which the immunity is designed to protect”).

Petitioners contend that immunity from suit in federal court suffices to preserve the dignity of the States. Private

Opinion of the Court

suits against nonconsenting States, however, present “the indignity of subjecting a State to the coercive process of judicial tribunals at the instance of private parties,” *In re Ayers*, *supra*, at 505; accord, *Seminole Tribe*, 517 U. S., at 58, regardless of the forum. Not only must a State defend or default but also it must face the prospect of being thrust, by federal fiat and against its will, into the disfavored status of a debtor, subject to the power of private citizens to levy on its treasury or perhaps even government buildings or property which the State administers on the public’s behalf.

In some ways, of course, a congressional power to authorize private suits against nonconsenting States in their own courts would be even more offensive to state sovereignty than a power to authorize the suits in a federal forum. Although the immunity of one sovereign in the courts of another has often depended in part on comity or agreement, the immunity of a sovereign in its own courts has always been understood to be within the sole control of the sovereign itself. See generally *Hall*, 440 U. S., at 414–418. A power to press a State’s own courts into federal service to coerce the other branches of the State, furthermore, is the power first to turn the State against itself and ultimately to commandeer the entire political machinery of the State against its will and at the behest of individuals. Cf. *Coeur d’Alene Tribe*, *supra*, at 276. Such plenary federal control of state governmental processes denigrates the separate sovereignty of the States.

It is unquestioned that the Federal Government retains its own immunity from suit not only in state tribunals but also in its own courts. In light of our constitutional system recognizing the essential sovereignty of the States, we are reluctant to conclude that the States are not entitled to a reciprocal privilege.

Opinion of the Court

Underlying constitutional form are considerations of great substance. Private suits against nonconsenting States— especially suits for money damages— may threaten the financial integrity of the States. It is indisputable that, at the time of the founding, many of the States could have been forced into insolvency but for their immunity from private suits for money damages. Even today, an unlimited congressional power to authorize suits in state court to levy upon the treasuries of the States for compensatory damages, attorney’s fees, and even punitive damages could create staggering burdens, giving Congress a power and a leverage over the States that is not contemplated by our constitutional design. The potential national power would pose a severe and notorious danger to the States and their resources.

A congressional power to strip the States of their immunity from private suits in their own courts would pose more subtle risks as well. “The principle of immunity from litigation assures the states and the nation from unanticipated intervention in the processes of government.” *Great Northern Life Ins. Co. v. Read*, 322 U. S., at 53. When the States’ immunity from private suits is disregarded, “the course of their public policy and the administration of their public affairs” may become “subject to and controlled by the mandates of judicial tribunals without their consent, and in favor of individual interests.” *In re Ayers*, *supra*, at 505. While the States have relinquished their immunity from suit in some special contexts— at least as a practical matter— see Part III, *infra*, this surrender carries with it substantial costs to the autonomy, the decisionmaking ability, and the sovereign capacity of the States.

A general federal power to authorize private suits for money damages would place unwarranted strain on the States’ ability to govern in accordance with the will of their citizens. Today, as at the time of the founding, the allocation of scarce resources among competing needs and

Opinion of the Court

interests lies at the heart of the political process. While the judgment creditor of the State may have a legitimate claim for compensation, other important needs and worthwhile ends compete for access to the public fisc. Since all cannot be satisfied in full, it is inevitable that difficult decisions involving the most sensitive and political of judgments must be made. If the principle of representative government is to be preserved to the States, the balance between competing interests must be reached after deliberation by the political process established by the citizens of the State, not by judicial decree mandated by the Federal Government and invoked by the private citizen. "It needs no argument to show that the political power cannot be thus ousted of its jurisdiction and the judiciary set in its place." *Louisiana v. Jumel*, 107 U. S. 711, 727–728 (1883).

By "split[ting] the atom of sovereignty," the founders established "two orders of government, each with its own direct relationship, its own privity, its own set of mutual rights and obligations to the people who sustain it and are governed by it." *Saenz v. Roe*, 526 U. S. ___, ___, n. 17 (1999), quoting *U. S. Term Limits, Inc. v. Thornton*, 514 U. S. 779, 838 (1995) (concurring opinion). "The Constitution thus contemplates that a State's government will represent and remain accountable to its own citizens." *Printz*, 521 U. S., at 920. When the Federal Government asserts authority over a State's most fundamental political processes, it strikes at the heart of the political accountability so essential to our liberty and republican form of government.

The asserted authority would blur not only the distinct responsibilities of the State and National Governments but also the separate duties of the judicial and political branches of the state governments, displacing "state decisions that go to the heart of representative government." *Gregory v. Ashcroft*, 501 U. S. 452, 461 (1991). A State is

Opinion of the Court

entitled to order the processes of its own governance, assigning to the political branches, rather than the courts, the responsibility for directing the payment of debts. See *id.*, at 460 (“Through the structure of its government, and the character of those who exercise government authority, a State defines itself as a sovereign”). If Congress could displace a State’s allocation of governmental power and responsibility, the judicial branch of the State, whose legitimacy derives from fidelity to the law, would be compelled to assume a role not only foreign to its experience but beyond its competence as defined by the very constitution from which its existence derives.

Congress cannot abrogate the States’ sovereign immunity in federal court; were the rule to be different here, the National Government would wield greater power in the state courts than in its own judicial instrumentalities. Cf. *Howlett*, 496 U. S., at 365 (noting the anomaly that would arise if “a State might be forced to entertain in its own courts suits from which it was immune in federal court”); *Hilton*, 502 U. S., at 206 (recognizing the “federalism-related concerns that arise when the National Government uses the state courts as the exclusive forum to permit recovery under a congressional statute”).

The resulting anomaly cannot be explained by reference to the special role of the state courts in the constitutional design. Although Congress may not require the legislative or executive branches of the States to enact or administer federal regulatory programs, see *Printz, supra*, at 935; *New York*, 505 U. S., at 188, it may require state courts of “adequate and appropriate” jurisdiction, *Testa*, 330 U. S., at 394, “to enforce federal prescriptions, insofar as those prescriptions relat[e] to matters appropriate for the judicial power,” *Printz, supra*, at 907. It would be an unprecedented step, however, to infer from the fact that Congress may declare federal law binding and enforceable in state courts the further principle that Congress’ authority to

Opinion of the Court

pursue federal objectives through the state judiciaries exceeds not only its power to press other branches of the State into its service but even its control over the federal courts themselves. The conclusion would imply that Congress may in some cases act only through instrumentalities of the States. Yet, as Chief Justice Marshall explained, “No trace is to be found in the constitution of an intention to create a dependence of the government of the Union on those of the States, for the execution of the great powers assigned to it. Its means are adequate to its ends; and on those means alone was it expected to rely for the accomplishment of its ends.” *McCulloch v. Maryland*, 4 Wheat. 316, 424 (1819); cf. *Osborn v. Bank of United States*, 9 Wheat. 738, 821 (1824) (“It is not insinuated, that the judicial power, in cases depending on the character of the cause, cannot be exercised in the first instance, in the Courts of the Union, but must first be exercised in the tribunals of the State”).

The provisions of the Constitution upon which we have relied in finding the state courts peculiarly amenable to federal command, moreover, do not distinguish those courts from the Federal Judiciary. The Supremacy Clause does impose specific obligations on state judges. There can be no serious contention, however, that the Supremacy Clause imposes greater obligations on state-court judges than on the Judiciary of the United States itself. The text of Article III, §1, which extends federal judicial power to enumerated classes of suits but grants Congress discretion whether to establish inferior federal courts, does give strong support to the inference that state courts may be opened to suits falling within the federal judicial power. The Article in no way suggests, however, that state courts may be required to assume jurisdiction that could not be vested in the federal courts and forms no part of the judicial power of the United States.

Opinion of the Court

We have recognized that Congress may require state courts to hear only “matters appropriate for the judicial power,” *Printz*, 521 U. S., at 907. Our sovereign immunity precedents establish that suits against nonconsenting States are not “properly susceptible of litigation in courts,” *Hans*, 134 U. S., at 12, and, as a result, that “[t]he entire judicial power granted by the Constitution’ does not embrace authority to entertain such suits in the absence of the State’s consent.” *Principality of Monaco*, 292 U. S., at 329 (quoting *Ex parte New York*, 256 U. S., at 497); accord, 292 U. S., at 322–323 (private suits against nonconsenting sovereigns are not “of a justiciable character”). We are aware of no constitutional precept that would admit of a congressional power to require state courts to entertain federal suits which are not within the judicial power of the United States and could not be heard in federal courts. As we explained in *Erie R. Co. v. Tompkins*, 304 U. S. 64 (1938):

“[T]he Constitution of the United States . . . recognizes and preserves the autonomy and independence of the States— independence in their legislative and independence in their judicial departments. Supervision over either the legislative or the judicial action of the States is in no case permissible except as to matters by the Constitution specifically authorized or delegated to the United States. Any interference with either, except as thus permitted, is an invasion of the authority of the State and, to that extent, a denial of its independence.” *Id.*, at 78–79.

In light of history, practice, precedent, and the structure of the Constitution, we hold that the States retain immunity from private suit in their own courts, an immunity beyond the congressional power to abrogate by Article I legislation.

Opinion of the Court

III

The constitutional privilege of a State to assert its sovereign immunity in its own courts does not confer upon the State a concomitant right to disregard the Constitution or valid federal law. The States and their officers are bound by obligations imposed by the Constitution and by federal statutes that comport with the constitutional design. We are unwilling to assume the States will refuse to honor the Constitution or obey the binding laws of the United States. The good faith of the States thus provides an important assurance that “[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land.” U. S. Const., Art. VI.

Sovereign immunity, moreover, does not bar all judicial review of state compliance with the Constitution and valid federal law. Rather, certain limits are implicit in the constitutional principle of state sovereign immunity.

The first of these limits is that sovereign immunity bars suits only in the absence of consent. Many States, on their own initiative, have enacted statutes consenting to a wide variety of suits. The rigors of sovereign immunity are thus “mitigated by a sense of justice which has continually expanded by consent the suability of the sovereign.” *Great Northern Life Ins. Co. v. Read*, 322 U. S., at 53. Nor, subject to constitutional limitations, does the Federal Government lack the authority or means to seek the States’ voluntary consent to private suits. Cf. *South Dakota v. Dole*, 483 U. S. 203 (1987).

The States have consented, moreover, to some suits pursuant to the plan of the Convention or to subsequent constitutional amendments. In ratifying the Constitution, the States consented to suits brought by other States or by the Federal Government. *Principality of Monaco, supra*, at 328–329 (collecting cases). A suit which is commenced and prosecuted against a State in the name of the United

Opinion of the Court

States by those who are entrusted with the constitutional duty to “take Care that the Laws be faithfully executed,” U. S. Const., Art. II, §3, differs in kind from the suit of an individual: While the Constitution contemplates suits among the members of the federal system as an alternative to extralegal measures, the fear of private suits against nonconsenting States was the central reason given by the founders who chose to preserve the States’ sovereign immunity. Suits brought by the United States itself require the exercise of political responsibility for each suit prosecuted against a State, a control which is absent from a broad delegation to private persons to sue nonconsenting States.

We have held also that in adopting the Fourteenth Amendment, the people required the States to surrender a portion of the sovereignty that had been preserved to them by the original Constitution, so that Congress may authorize private suits against nonconsenting States pursuant to its §5 enforcement power. *Fitzpatrick v. Bitzer*, 427 U. S. 445 (1976). By imposing explicit limits on the powers of the States and granting Congress the power to enforce them, the Amendment “fundamentally altered the balance of state and federal power struck by the Constitution.” *Seminole Tribe*, 517 U. S., at 59. When Congress enacts appropriate legislation to enforce this Amendment, see *City of Boerne v. Flores*, 521 U. S. 507 (1997), federal interests are paramount, and Congress may assert an authority over the States which would be otherwise unauthorized by the Constitution. *Fitzpatrick*, *supra*, at 456.

The second important limit to the principle of sovereign immunity is that it bars suits against States but not lesser entities. The immunity does not extend to suits prosecuted against a municipal corporation or other governmental entity which is not an arm of the State. See, *e.g.*, *Mt. Healthy City Bd. of Ed. v. Doyle*, 429 U. S., at 280;

Opinion of the Court

Lincoln County v. Luning, 133 U. S. 529 (1890). Nor does sovereign immunity bar all suits against state officers. Some suits against state officers are barred by the rule that sovereign immunity is not limited to suits which name the State as a party if the suits are, in fact, against the State. See, e.g., *In re Ayers*, 123 U. S., at 505–506; *Idaho v. Coeur d’Alene Tribe of Idaho*, 521 U. S., at 270 (“The real interests served by the Eleventh Amendment are not to be sacrificed to elementary mechanics of captions and pleading”). The rule, however, does not bar certain actions against state officers for injunctive or declaratory relief. Compare *Ex parte Young*, 209 U. S. 123 (1908), and *In re Ayers*, *supra*, with *Coeur d’Alene Tribe of Idaho*, *supra*, *Seminole Tribe*, *supra*, and *Edelman v. Jordan*, 415 U. S. 651 (1974). Even a suit for money damages may be prosecuted against a state officer in his individual capacity for unconstitutional or wrongful conduct fairly attributable to the officer himself, so long as the relief is sought not from the state treasury but from the officer personally. *Scheuer v. Rhodes*, 416 U. S. 232, 237–238 (1974); *Ford Motor Co. v. Department of Treasury of Ind.*, 323 U. S. 459, 462 (1945).

The principle of sovereign immunity as reflected in our jurisprudence strikes the proper balance between the supremacy of federal law and the separate sovereignty of the States. See *Pennhurst State School and Hospital v. Halderman*, 465 U. S., at 105. Established rules provide ample means to correct ongoing violations of law and to vindicate the interests which animate the Supremacy Clause. See *Green v. Mansour*, 474 U. S., at 68. That we have, during the first 210 years of our constitutional history, found it unnecessary to decide the question presented here suggests a federal power to subject nonconsenting States to private suits in their own courts is unnecessary to uphold the Constitution and valid federal statutes as the supreme law.

Opinion of the Court

IV

The sole remaining question is whether Maine has waived its immunity. The State of Maine “regards the immunity from suit as one of the highest attributes inherent in the nature of sovereignty,” *Cushing v. Cohen*, 420 A. 2d 919, 923 (Me. 1981) (quoting *Drake v. Smith*, 390 A. 2d 541, 543 (Me. 1978)), and adheres to the general rule that “a specific authority conferred by an enactment of the legislature is requisite if the sovereign is to be taken as having shed the protective mantle of immunity,” 420 A. 2d, at 923. Petitioners have not attempted to establish a waiver of immunity under this standard. Although petitioners contend the State has discriminated against federal rights by claiming sovereign immunity from this FLSA suit, there is no evidence that the State has manipulated its immunity in a systematic fashion to discriminate against federal causes of action. To the extent Maine has chosen to consent to certain classes of suits while maintaining its immunity from others, it has done no more than exercise a privilege of sovereignty concomitant to its constitutional immunity from suit. The State, we conclude, has not consented to suit.

V

This case at one level concerns the formal structure of federalism, but in a Constitution as resilient as ours form mirrors substance. Congress has vast power but not all power. When Congress legislates in matters affecting the States, it may not treat these sovereign entities as mere prefectures or corporations. Congress must accord States the esteem due to them as joint participants in a federal system, one beginning with the premise of sovereignty in both the central Government and the separate States. Congress has ample means to ensure compliance with valid federal laws, but it must respect the sovereignty of the States.

Opinion of the Court

In apparent attempt to disparage a conclusion with which it disagrees, the dissent attributes our reasoning to natural law. We seek to discover, however, only what the Framers and those who ratified the Constitution sought to accomplish when they created a federal system. We appeal to no higher authority than the Charter which they wrote and adopted. Theirs was the unique insight that freedom is enhanced by the creation of two governments, not one. We need not attach a label to our dissenting colleagues' insistence that the constitutional structure adopted by the founders must yield to the politics of the moment. Although the Constitution begins with the principle that sovereignty rests with the people, it does not follow that the National Government becomes the ultimate, preferred mechanism for expressing the people's will. The States exist as a refutation of that concept. In choosing to ordain and establish the Constitution, the people insisted upon a federal structure for the very purpose of rejecting the idea that the will of the people in all instances is expressed by the central power, the one most remote from their control. The Framers of the Constitution did not share our dissenting colleagues' belief that the Congress may circumvent the federal design by regulating the States directly when it pleases to do so, including by a proxy in which individual citizens are authorized to levy upon the state treasuries absent the States' consent to jurisdiction.

The case before us depends upon these principles. The State of Maine has not questioned Congress' power to prescribe substantive rules of federal law to which it must comply. Despite an initial good-faith disagreement about the requirements of the FLSA, it is conceded by all that the State has altered its conduct so that its compliance with federal law cannot now be questioned. The Solicitor General of the United States has appeared before this Court, however, and asserted that the federal interest in

Opinion of the Court

compensating the States' employees for alleged past violations of federal law is so compelling that the sovereign State of Maine must be stripped of its immunity and subjected to suit in its own courts by its own employees. Yet, despite specific statutory authorization, see 29 U. S. C. §216(c), the United States apparently found the same interests insufficient to justify sending even a single attorney to Maine to prosecute this litigation. The difference between a suit by the United States on behalf of the employees and a suit by the employees implicates a rule that the National Government must itself deem the case of sufficient importance to take action against the State; and history, precedent, and the structure of the Constitution make clear that, under the plan of the Convention, the States have consented to suits of the first kind but not of the second. The judgment of the Supreme Judicial Court of Maine is

Affirmed.