No. 98-436

In the Supreme Court of the United States

OCTOBER TERM, 1998

JOHN H. ALDEN, ET AL., PETITIONERS

v.

STATE OF MAINE

ON WRIT OF CERTIORARI
TO THE SUPREME JUDICIAL COURT OF MAINE

BRIEF FOR THE UNITED STATES

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QUESTIONS PRESENTED

1. Whether the Supremacy Clause of the United States Constitution requires a state court to entertain a claim brought by a state employee against a state employer under the Fair Labor Standards Act (FLSA), 29 U.S.C. 201 *et seq.*, notwithstanding a state-law defense of sovereign immunity.

2. Whether the Supremacy Clause requires a state court to entertain such a claim when it entertains analogous state-law claims.

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OPINIONS BELOW

The opinion of the Maine Supreme Judicial Court (Pet. App. 1a-13a) is reported at 715 A.2d 172. The opinion of the Maine Superior Court (Pet. App. 14a-24a) is unreported.

JURISDICTION

The judgment of the Maine Supreme Judicial Court was entered on August 4, 1998. The petition for a writ of certiorari was filed on September 14, 1998, and was granted on November 7, 1998. 119 S. Ct. 443. The jurisdiction of this Court rests on 28 U.S.C. 1257(a). On December 14, 1998, the Court granted the motion of the United States to intervene in the case pursuant to 28 U.S.C. 2403.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I, Section 8, Clause 3 (the Commerce Clause), Article VI, Clause 2 (the Supremacy Clause), and the Eleventh Amendment of the United States Constitution are reproduced in the appendix to the brief. App., *infra*, 1a. Sections 3(x), 7(a)(1), 16 and 17 of the Fair Labor Standards Act are also reproduced in relevant part in the appendix to this brief. App., *infra*, 2a-5a.

STATEMENT

1. a. The Fair Labor Standards Act (FLSA), 29 U.S.C. 201 *et seq.*, requires employers covered by the Act to pay their employees a minimum wage and to compensate overtime work at one and one-half times the regular rate of pay. 29 U.S.C. 206, 207 (1994 & Supp. II 1996). As originally enacted, the FLSA did not apply to state or federal employees. In 1966, Congress extended FLSA coverage to employees of state-owned hospitals, schools, nursing homes, and mental institutions. Fair Labor Standards Amendments of 1966, Pub. L. No. 89-601, § 102, 80 Stat. 831. In *Maryland* v. *Wirtz*, 392 U.S. 183 (1968), the Court upheld that extension as a valid exercise of Congress's power to regulate interstate commerce. See U.S. Const., Art. I, § 8, Cl. 3.

In 1974, Congress extended FLSA coverage to most state and federal employees. Fair Labor Standards Amendments of 1974, Pub. L. No. 93-259, 88 Stat. 55; see 29 U.S.C. 203(d) and (x). In order to accommodate the special concerns of state and local governments, Congress exempted from overtime requirements certain categories of state and local government employees, such as elected officials, their personal staff, and certain of their appointees and advisers. See 29 U.S.C.

203(e)(2)(C). Congress also created special overtime rules for law-enforcement personnel: such employees need not be paid premium overtime compensation until they have worked 171 hours over a period of 28 days. 29 U.S.C. 207(k); 29 C.F.R. 553.230.

In *National League of Cities* v. *Usery*, 426 U.S. 833, 852 (1976), the Court held that the FLSA's minimum-wage and overtime provisions could not constitutionally be applied to state employees engaged in traditional governmental activities. In *Garcia* v. *San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985), the Court overruled *National League of Cities* and held that the FLSA's minimum-wage and overtime protections for state employees do not contravene any affirmative limit on Congress's power under the Commerce Clause. Following *Garcia*, Congress amended the FLSA to address specific concerns of state and local governments. Fair Labor Standards Amendments of 1985, Pub. L. No. 99-150, §§ 2-7, 99 Stat. 787-790. In particular, Congress deferred the effective date of certain provisions of the FLSA; it added new provisions relating to compensatory time in lieu of overtime, special details, and volunteers; and it exempted employees of the legislative branches of States, as well as the States' political subdivisions. *Ibid.*

b. The FLSA provides that "[a]ny employer who violates the provisions of section 206 or section 207 of [Title 29] shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages." 29 U.S.C. 216(b). The FLSA then establishes three distinct causes of action against employers who have committed violations of the Act and incurred the resulting liability. An employee may sue for unpaid

minimum wages or overtime compensation and an equal amount of liquidated damages (29 U.S.C. 216(b)); the Secretary of Labor may sue on behalf of employees for unpaid minimum wages or overtime compensation and an equal amount of liquidated damages (29 U.S.C. 216(c)); and the Secretary of Labor may sue for injunctive relief, including an injunction against the withholding of previously unpaid minimum wages or overtime compensation (29 U.S.C. 217).

At the time that the FLSA was first extended to state employees, the private right of action in Section 216(b) provided:

> Any employer who violates the provisions of section 6 or section 7 of this Act shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and an additional equal amount as liquidated damages. Action to recover such liability may be maintained in any court of competent jurisdiction.

52 Stat. 1069. In *Employees of the Department of Public Health & Welfare of Missouri* v. *Department of Public Health & Welfare of Missouri*, 411 U.S. 279 (1973) (*Missouri Employees*), the Court held that, because Section 216(b) did not specifically refer to an action against a *state* employer, Section 216(b) would not, in light of the principles embodied in the Eleventh Amendment, be construed to authorize a private right of action against a state employer in federal court. *Id.* at 284-286. The Court noted that Section 216(b) arguably authorized a private action against a state employer in state court, but it did not resolve that question. *Id.* at 287. See also *id.* at 287-298 (Marshall, J., concurring in the result) (concluding that the then-

applicable version of Section 216(b) overcame a State's common-law immunity to suit and provided for suits against a State in state court, but did not overcome the constitutional limitations on federal judicial power embodied in the Eleventh Amendment).

In response to *Missouri Employees*, Congress amended Section 216(b) to make clear that a private suit can be brought against a state employer. S. Rep. No. 690, 93d Cong., 2d Sess. 26-27 (1974); H.R. Rep. No. 913, 93d Cong., 2d Sess. 41 (1974). As amended, Section 216(b) provides that an action for unpaid wages or overtime compensation and liquidated damages "may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees." 29 U.S.C. 216(b). The Act defines a "public agency" to include "the government of a State" or "any agency of * * * a State." 29 U.S.C. 203(x).[1]

c. Like the FLSA, Maine law generally requires employers to pay their employees a minimum wage and one and one-half times the regular rate for overtime work. See Me. Rev. Stat. Ann. tit. 26, § 664 (West 1998). State employees are generally covered by the state minimum wage laws, see *id.* § 663(10), and may bring suit in state court to recover unpaid wages, an equal amount of liquidated damages, and attorney's fees, *id.* § 670. As a matter of state substantive law,

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[1] The amendment to Section 216(b) also makes clear that federal employees may bring an FLSA action against the Federal government. 29 U.S.C. 203(x) (defining "public agency" to include "the Government of the United States" or "any agency of the United States"); see also 29 U.S.C. 204(f) (allocating authority to the Office of Personnel Management to enforce the Act with respect to federal employees, but reserving the right of employees to bring an action for backpay and liquidated damages).

however, the State has exempted itself from the state-law requirement of paying one and one-half times the regular rate for overtime work. See *id.* § 664(3)(D).

2. a. Petitioners are state probation officers and juvenile case workers who are employed by the State of Maine. Pet. App. 14a. They filed suit in the United States District Court for the District of Maine against the State, alleging that the State had failed to pay them overtime compensation as required by the FLSA. *Ibid.* Petitioners sought backpay and liquidated damages. *Ibid.* The State asserted that petitioners are professionals and therefore exempt from the overtime provisions of the Act. The district court ruled in petitioners' favor on the substantive statutory issue, holding that petitioners are covered by the Act and that they were entitled to overtime compensation in accordance with the special rules that apply to law-enforcement personnel. *Mills* v. *Maine*, 839 F. Supp. 3 (D. Me. 1993). Following the district court's ruling, the State began to pay petitioners for overtime work. Pet. App. 15a. The parties disagreed, however, on the amount of backpay owed to petitioners. The district court referred that issue to a special master. *Id.* at 14a.

Before the issue of backpay was resolved, this Court decided *Seminole Tribe* v. *Florida*, 517 U.S. 44 (1996). Pet. App. 15a. In *Seminole Tribe*, the Court held that the Eleventh Amendment generally prevents a federal district court from exercising jurisdiction under Article III over a private suit against an unconsenting State, and that Congress lacks power under the Commerce Clause to circumvent that limitation on federal judicial power. 517 U.S. at 72-73. In light of that ruling, the federal district court dismissed petitioners' action for lack of subject-matter jurisdiction, and the Court of

Appeals for the First Circuit affirmed. *Mills* v. *Maine*, 118 F.3d 37 (1st Cir. 1997).

b. After the dismissal of their federal court action, petitioners filed suit against the State in Maine Superior Court. Pet. App. 14a. As in their federal court suit, petitioners alleged that the State had violated the FLSA's overtime requirements, and they sought backpay and liquidated damages. *Ibid.* The State asserted sovereign immunity as an affirmative defense. *Id.* at 15a. Accepting that defense, the Superior Court entered judgment in favor of the State. *Id.* at 14a-24a. The Superior Court held that "in Maine the doctrine of state sovereign immunity has incorporated the principles of Eleventh Amendment immunity," so that "if a plaintiff can't seek damages against the state for violations of a federal law in federal court, the plaintiff can't seek damages in state court either." *Id.* at 20a.

c. The Maine Supreme Judicial Court affirmed. Pet. App. 1a-13a. The court held that "[i]f Congress cannot force the states to defend in federal court against claims by private individuals, it similarly cannot force the states to defend in their own courts against these same claims." *Id.* at 4a. The court reasoned that "the Eleventh Amendment and state sovereign immunity are analogous, to the extent that both protect the State from being forced by an act of Congress to defend against a federal cause of action brought by a private individual." *Ibid.* To hold that a State that is immune from suit in federal court must defend against that same suit in its own courts, the court concluded, "would effectively vitiate the Eleventh Amendment." *Ibid.*

The court acknowledged that the "Eleventh Amendment does not explicitly protect the states from suit in their own courts." Pet. App. 5a. Relying on *Seminole Tribe*, however, the court concluded that the Eleventh

Amendment "reflects but one aspect of the states' inherent, more sweeping immunity from suits brought by private parties." *Id.* at 6a.

Two justices dissented. Pet. App. 7a-14a. They concluded that the Supremacy Clause (which the majority did not address) makes the FLSA fully enforceable in state court, even though petitioners could not bring a similar suit in federal court by virtue of the Eleventh Amendment's limitation on the federal judicial power. The dissent reasoned that "the Supremacy Clause makes that statute the law in every State, fully enforceable in state court," *id.* at 10a (quoting *Hilton* v. *South Carolina Pub. Rys. Comm'n*, 502 U.S. 197, 207 (1991)), and that "[t]o the extent that Maine's common law doctrine of sovereign immunity conflicts with the provisions of the FLSA which subject the State to liability in state court, the Supremacy Clause resolves that conflict in favor of the FLSA," *id.* at 12a. The dissent also concluded that the majority erred in relying on *Seminole Tribe*, because "state courts are not Article III courts, and the 'Eleventh Amendment does not apply in state courts.'" *Id.* at 8a-9a.

SUMMARY OF ARGUMENT

A. In the Fair Labor Standards Act (FLSA), Congress has provided that state employees who do not receive the wages to which they are entitled under the Act have a right to seek make-whole relief in a state court of competent jurisdiction. In this case, it is clear that petitioners filed their action in such a court, the Superior Court of Maine, which is a court of general jurisdiction that adjudicates a broad range of cases, including monetary claims against the State. The question presented is whether the state court may nonetheless refuse to entertain petitioners' cause of

action under the FLSA by relying on the sovereign immunity defense asserted by the State.

B. The answer is supplied by the Supremacy Clause of the Constitution, Art. VI, Cl. 2, which makes federal law the "supreme Law of the Land," and directs that "the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." By its terms, the Supremacy Clause makes a federal law as much the law in the States as laws passed by the state legislature, and it charges state courts with a coordinate responsibility to enforce that law according to their regular modes of procedure. That rule applies equally to actions against a State. When "a federal statute does impose liability upon the States, the Supremacy Clause makes that statute the law in every state, fully enforceable in state court." *Hilton* v. *South Carolina Pub. Rys. Comm'n*, 502 U.S. 197, 207 (1991). The Superior Court was therefore required by the terms of the Supremacy Clause to enforce petitioners' FLSA claim, notwithstanding any defense that state law might afford to a claim brought under state law.

A state court's duty to enforce federal law is subject to a narrow exception—a state court may refuse enforcement when it has a "valid excuse." *Howlett* v. *Rose*, 496 U.S. 356, 369 (1990). An excuse is not valid, however, if it discriminates against federal law or if it directly conflicts with federal law. Maine's sovereign immunity defense does both. It discriminates against federal law because Maine courts entertain monetary claims against the State under state law, including wage claims by state employees. And more fundamentally, the sovereign immunity defense conflicts with federal law, because, in amending the FLSA in 1974, Congress clearly intended to impose liability on the

States for unpaid wages and to confer on state employees a personal right to recover the amounts they are owed.

C. There is no federal constitutional principle of state sovereign immunity that overrides a state court's general duty under the Supremacy Clause to enforce federal law. The Eleventh Amendment, by its terms, creates a limitation only on "[t]he Judicial power of the United States," and this Court has repeatedly stated that the Eleventh Amendment does not apply to suits brought in state court.

Nor does the Constitution otherwise confer or codify a rule of state sovereign immunity that restricts the power of Congress to create a federal cause of action enforceable against a State in state court. The common-law principle that a State cannot be sued in its own courts without its consent is based "on the logical and practical ground that there can be no legal right as against the authority that makes the law upon which the right depends." *Kawananakoa* v. *Polyblank*, 205 U.S. 349, 353 (1907). Once the States agreed to give Congress power under Article I of the Constitution to make the law on which a right depends, and agreed that such a law would be the "supreme Law of the Land"—binding on "the Judges in every State, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding"—they effectively empowered Congress (in the case of federal claims) to remove or temper the "logical and practical ground" on which the doctrine of a sovereign's immunity in its own courts depended.

This Court's decisions firmly support that conclusion. The holding in *Nevada* v. *Hall*, 440 U.S. 410 (1979), that the Constitution does not protect one State from being sued in another State's courts, makes clear that the

Constitution does not address the question whether a State can be sued in a forum other than federal court. The holding in *Hilton*, that States are subject to private suit in state court under the Federal Employers' Liability Act, necessarily rejects the view that States enjoy the same constitutional immunity from suit in their own courts that they enjoy in federal court. And the same is true of *Reich* v. *Collins*, 513 U.S. 106 (1994), which holds that a State that has collected taxes through compulsion in violation of the Constitution must provide a state-court refund remedy, even though the State would not be subject to suit in federal court.

Seminole Tribe v. *Florida*, 517 U.S. 44 (1996), does not lead to a contrary conclusion. The holding and rationale of that case are that the Eleventh Amendment restricts the judicial power of the federal courts under Article III, and that Article I cannot be used to circumvent that limitation. That decision does not supply a basis for concluding that there is a free-floating constitutional principle of sovereign immunity that is wholly unanchored in the Eleventh Amendment's text and its exclusive focus on "[t]he Judicial power of the United States."

D. Private enforcement of FLSA claims in state court that cannot be brought in federal court protects the personal rights of employees and respects state sovereignty. Congress determined that a private remedy was necessary to ensure that state employees receive the wages to which they are entitled by federal law. Because the Secretary of Labor's resources are limited, an action by the Secretary is not an adequate substitute for the private right of action that Congress deemed necessary. A private right of action in state court also does not raise the same federalism concerns that such an action in federal court raises. For a State,

a state court is not "the instrument of a distant, disconnected sovereign," *Hess* v. *Port Auth. Trans-Hudson Corp.*, 513 U.S. 30, 41 (1994), but an integral part of the State itself. The availability of a state court as a forum also furthers a State's interest in playing a role in defining the contours of federal law and in integrating federal and state law into a single body of law governing the conduct of state officials. That interest would be impaired if the only means of enforcement were a suit by the Secretary of Labor, who could be expected to file suit in federal court. In light of the Supremacy Clause and those considerations, any interest the State has in asserting immunity in this case must give way to the overriding interest in the vindication of federal law.

ARGUMENT

MAINE COURTS MAY NOT REFUSE, ON THE BASIS OF A DEFENSE OF SOVEREIGN IMMUNITY, TO ENTERTAIN A SUIT BROUGHT BY STATE EMPLOYEES AGAINST A STATE EMPLOYER UNDER THE FAIR LABOR STANDARDS ACT

The Fair Labor Standards Act (FLSA), 29 U.S.C. 201 *et seq.*, generally requires employers covered by the Act to pay their employees a minimum wage and to compensate overtime work at one and one-half times the regular rate of pay, and it renders "[a]ny employer" that violates those requirements liable for the unpaid minimum wages and overtime compensation. The substantive validity of those provisions as applied to state employees was resolved in *Garcia* v. *San Antonio*

Metropolitan Transit Authority, 469 U.S. 528 (1985), and is not at issue here.[2]

The question presented in this case concerns how those provisions may be enforced against state employers. In the wake of *Seminole Tribe* v. *Florida*, 517 U.S. 44 (1996), federal courts of appeals have concluded that the Eleventh Amendment forecloses a private action against a State in federal court, but that such an action may be maintained in state court. *Wilson-Jones* v. *Caviness*, 99 F.3d 203, 211 (1996), amended by 107 F.3d 358 (6th Cir. 1997); *Aaron* v. *Kansas*, 115 F.3d 813, 817 (10th Cir. 1997); see also *Rehberg* v. *Department of Pub. Safety*, 946 F. Supp. 741, 743 (S.D. Iowa 1996), aff'd, 117 F.3d 1423 (8th Cir. 1997) (Table); *Velasquez* v. *Frapwell*, 160 F.3d. 389, 394 (7th Cir. 1998) (Posner, C.J.) (reaching similar conclusion under the Uniformed Services Employment and Reemployment Act), petition for reh'g pending, No. 95-1547. A number of state courts have agreed. *Jacoby* v. *Arkansas Dep't of Educ.*, 962 S.W.2d 773 (Ark. 1998), petition for cert. pending, No. 98-4; *Bunch* v. *Robinson*, 712 A.2d 585 (Md. Ct. Spec. App.), cert. granted, 718 A.2d 234 (Md. Oct. 7, 1998); *Ahern* v. *New York*, 676 N.Y.S.2d 232 (App. Div. 1998); *Whittington* v. *New Mexico Dep't of Pub. Safety*, 996 P.2d 188 (N.M. Ct. App.), cert. denied, No. 25,364 (N.M. Oct. 14, 1998).

In this case, however, the Maine Supreme Judicial Court held that state courts may refuse, based on a defense of sovereign immunity, to entertain a suit brought by state employees under the FLSA. Under that

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[2] The Court recently denied certiorari in a case in which the petitioner and its amici asked the Court to reconsider the decision in *Garcia*. See *Anne Arundel County* v. *West*, 119 S. Ct. 607 (Dec. 7, 1998).

decision, unless a State consents to suit, the minimum wage and overtime provisions of the Act that this Court upheld in *Garcia* could be enforced against the State only by the Secretary of Labor, who does not have the resources to ensure comprehensive enforcement. The Maine Supreme Judicial Court's decision therefore is of profound concern to the United States.

As we explain below, the holding of the Maine Supreme Judicial Court cannot be sustained. Congress has specifically conferred a right on state employees under the FLSA to sue in state court to recover the amounts owed to them by their state employer in unpaid minimum wages or overtime compensation. The Supremacy Clause requires a state court to entertain a federal cause of action if its ordinary jurisdiction is appropriate to the task; state-law defenses to liability and to suit do not furnish a valid excuse for refusing to do so. There is no sovereign immunity exception to that mandate of the Supremacy Clause. Although the Eleventh Amendment embodies a constitutional restriction on the exercise of the judicial power of the United States by Article III courts to entertain a suit against a State without its consent, the Eleventh Amendment does not apply in state courts. Nor does the Constitution elsewhere confer on the States a defense of sovereign immunity in state court. The availability of a state forum to entertain FLSA claims ensures protection for the personal rights of employees to recover the compensation owed to them under federal law. It also respects state sovereignty by ensuring that suits against the State are resolved by a court "ordained" by the State itself, not "the instrument of a distant, disconnected sovereign," *Hess* v. *Port Auth. Trans-Hudson Corp.*, 513 U.S. 30, 41 (1994), and it furthers the State's interest in integrating federal

sources of law into the state system for the regulation of the conduct of state officials.

A. PETITIONERS HAVE A RIGHT UNDER THE FLSA TO BRING THEIR SUIT IN STATE COURT

Under the FLSA, employees who do not receive the wages to which they are entitled under the Act have a right to seek make-whole relief. That right is conferred by 29 U.S.C. 216(b), which provides in relevant part:

> Any employer who violates the [minimum wage or overtime] provisions of section 206 or section 207 of this title shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. * * * An action to recover the liability prescribed * * * may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated.

The text of Section 216(b) makes three points clear. First, Congress provided that "[a]ny employer" who violates Section 206 or 207 "shall be liable" to the employees affected in the amount of their unpaid minimum wages or overtime compensation, and that state employees shall have the same right to make-whole relief as other employees covered by the Act. Thus, Section 216(b) specifically provides that an action may be brought against "any employer (including a public agency)" to recover "the liability prescribed," and the Act defines a "public agency" to include "the government of a State" as well as "any agency of * * * a

State." 29 U.S.C. 203(x). Second, Congress did not limit employees to asserting their claims in federal court; Section 216(b) expressly provides that an action for backpay and liquidated damages may be maintained "in any * * * State court of competent jurisdiction" as well. Third, by authorizing FLSA suits to be brought in a state court of "competent jurisdiction," Congress made clear that a state court is required to hear an FLSA claim when "its ordinary jurisdiction, as prescribed by local laws, is appropriate to the occasion." *Second Employers' Liability Cases*, 223 U.S. 1, 56-57 (1912) (interpreting similar language in the Federal Employers' Liability Act).

Petitioners in this case filed an FLSA action in the Superior Court of Maine, alleging that the State had failed to pay them overtime compensation as required by the Act, and seeking backpay and liquidated damages as provided for by Section 216(b). It is undisputed that the "ordinary jurisdiction" of the Superior Court of Maine is "appropriate" for entertaining petitioners' FLSA claim. *Second Employers' Liability Cases*, 223 U.S. at 57. The Superior Court is a court of general subject matter jurisdiction, and it is authorized to provide both legal and equitable relief. Me. Rev. Stat. Ann. tit. 4, § 105 (West 1998). Consistent with that general authority, the Superior Court has jurisdiction over actions for backpay and liquidated damages under the State's own minimum-wage and overtime laws against employers generally. *Id.* tit. 26, § 670. It also has jurisdiction over other actions brought against the State in "a variety of its capacities," *Howlett* v. *Rose*, 496 U.S. 356, 379 (1990), including in its capacity as employer. And in particular, the Superior Court is authorized to hear claims by state employees alleging that the State has failed to pay the minimum wage

required by state law. Me. Rev. Stat. Ann. tit. 26, §§ 664, 670 (West 1998) (minimum wage); see also *id.* § 833 (whistle blower); *id.* § 844 (family medical leave); *id.* tit. 5, §§ 4551 *et seq.* (human rights); *id.* tit. 39-A, § 101 (workers' compensation). The Superior Court is therefore fully "competent" to hear petitioners' FLSA claims within the meaning of Section 216(b).[3] That court is not free to refuse to entertain those FLSA claims based on a defense of sovereign immunity.

B. UNDER THE SUPREMACY CLAUSE, THE SUPERIOR COURT OF MAINE IS REQUIRED TO ENTERTAIN PETITIONERS' FLSA CLAIMS

1. When Congress provides for a federal claim to be heard in state court, the extent of a state court's duty to enforce that claim is governed by the Supremacy Clause of the Constitution, Art. VI, Cl. 2. The Supremacy Clause makes federal law the "supreme Law of the Land," and it directs that "the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." By its terms, the Supremacy Clause makes federal laws "as much laws in the States as laws passed by the state legislature" and "charges state courts with a coordinate responsibility to enforce that law according to their regular modes of procedure." *Howlett*, 496 U.S. at 367. "The existence of the jurisdiction [in the state court] creates an implication of a duty to exercise it." *Id.* at 369-370. That is so, under the terms of

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[3] As a result, "[t]his case does not present the questions whether Congress can require the States to create a forum with the capacity to enforce federal statutory rights or to authorize service of process on parties who would not otherwise be subject to the court's jurisdiction." *Howlett*, 496 U.S. at 378.

the Supremacy Clause, notwithstanding "any Thing in the Constitution or Laws of any State to the Contrary"—including any defense to liability or suit that state law might afford to a state-law cause of action.

Consistent with that understanding, the first Congress "conferred jurisdiction upon the state courts to enforce important federal civil laws, and succeeding Congresses conferred on the states jurisdiction over federal crimes and actions for penalties and forfeitures." *Testa* v. *Katt*, 330 U.S. 386, 389-390 (1947); see also *Printz* v. *United States*, 521 U.S. 898, 905-907 (1997). Those early laws establish that, from the beginning, the Supremacy Clause was "understood to permit imposition of an obligation on state *judges* to enforce federal prescriptions, insofar as those prescriptions related to matters appropriate for the judicial power." *Printz*, 521 U.S. at 907. "It is understandable why courts should have been viewed distinctively in this regard; unlike legislatures and executives, they applied the law of other sovereigns all the time. The principle underlying so-called 'transitory' causes of action was that laws which operated elsewhere created obligations in justice that courts of the forum state would enforce." *Ibid*.

There was a period between 1800 and 1876 in which "this Court and state courts broadly questioned the power and duty of state courts to exercise their jurisdiction to enforce United States civil and penal statutes or the power of the Federal Government to require them to do so." *Testa*, 330 U.S. at 390. In *Claflin* v. *Houseman*, 93 U.S. 130 (1876), however, this Court returned to the original understanding of the Supremacy Clause, explaining that, by virtue of that Clause, "[t]he laws of the United States are laws in the several

States, and just as much binding on the citizens and courts thereof as the State laws are." *Id.* at 136. That has been the understanding ever since. As the Court explained in the *Second Employers' Liability Cases*, 223 U.S. at 57:

> The suggestion that the act of Congress is not in harmony with the policy of the State, and therefore that the courts of the State are free to decline jurisdiction, is quite inadmissible, because it presupposes what in legal contemplation does not exist. When Congress, in the exertion of the power confided to it by the Constitution, adopted that act, it spoke for all the people and all the States, and thereby established a policy for all. That policy is as much the policy of Connecticut as if the act had emanated from its own legislature, and should be respected accordingly in the courts of the State.

See also *Testa*, 330 U.S. at 393, 394 ("the policy of the federal Act is the prevailing policy in every state," and state courts "with jurisdiction adequate and appropriate under established local law" are "not free to refuse enforcement" of the federal law); *Howlett*, 496 U.S. at 367 (quoted at p. 17, *supra*); *id.* at 371-372; *Printz*, 521 U.S. at 928-929 ("*Testa* stands for the proposition that state courts cannot refuse to apply federal law—a conclusion mandated by the terms of the Supremacy Clause ('the Judges in every State shall be bound [by federal law]')."); accord *New York* v. *United States*, 505 U.S. 144, 178-179 (1992); *FERC* v. *Mississippi*, 456 U.S. 742, 760-761, 769 (1982); *id.* at 776 n.1, 784-785 (O'Connor, J., concurring in the judgment and dissenting in part); *Palmore* v. *United States*, 411 U.S. 389, 402 (1973); *Tafflin* v. *Levitt*, 493 U.S. 455, 469-470 (1990) (Scalia, J., concurring).

This rule applies equally to laws authorizing suits against the States. As the Court unequivocally stated in *Hilton* v. *South Carolina Public Railways Commission*, 502 U.S. 197, 207 (1991), when "a federal statute does impose liability upon the States, the Supremacy Clause makes that statute the law in every State, fully enforceable in state court."

2. The principle that state courts have a duty under the Supremacy Clause to enforce federal law is generally subject to a narrow exception: a state court may refuse enforcement of a federal claim when it has a "valid excuse." *Howlett*, 496 U.S. at 369 (quoting *Douglas* v. *New York, N.H. & H. R.R.*, 279 U.S. 377, 387-388 (1929)). That exception, however, applies only where the court is not one of general (or otherwise appropriate) jurisdiction, see *Howlett*, 496 U.S. at 372 ("The requirement that a state court of competent jurisdiction treat federal law as the law of the land does not necessarily include within it a requirement that the State create a court competent to hear the case in which the federal claim is presented."), or federal law gives the state court discretion to decline to exercise its jurisdiction, see *id.* at 374-375 & n.19; *Douglas*, 279 U.S. at 387-388; *Second Employers' Liability Cases*, 223 U.S. at 57.

Maine has advanced no such "valid excuse" here. A state court may not evade its duty under the Supremacy Clause by recognizing a state-law defense of sovereign immunity where that defense would be inconsistent with a federal statute that subjects the State to liability and suit. And more particularly here, it may not do so where, as in this case, the state court is authorized to adjudicate monetary claims against the State under state law. We shall discuss first the latter

(and more particular) ground for rejecting the State's defense of immunity in this case.

a. An excuse for declining to entertain a federal cause of action is not "valid" under this Court's Supremacy Clause jurisprudence if it "discriminate[s] against rights arising under federal laws." *McKnett* v. *St. Louis & San Francisco Ry.*, 292 U.S. 230, 233 (1934). For example, in *Testa*, Rhode Island refused to entertain actions under the Emergency Price Control Act, 50 U.S.C. App. 901 *et seq.*, because it viewed the Act's provision for treble damages as "penal" in nature. 330 U.S. at 387-388. The State, however, "conceded that this same type of claim arising under Rhode Island law would be enforced by that State's courts[,]" and "[i]ts courts ha[d] enforced claims for double damages growing out of the Fair Labor Standards Act." *Id.* at 394. The Court held that, "[u]nder these circumstances the State courts [were] not free to refuse enforcement" of a claim under the Emergency Price Control Act. *Ibid.*

Similarly, in *Howlett*, a Florida state court had refused to entertain an action under 42 U.S.C. 1983 against a local school board on the ground that such actions were barred by sovereign immunity under state law. 496 U.S. at 364. The State, however, exercised jurisdiction over state tort claims of the same general "type," *id.* at 378, such as actions against state entities for failure of their officials adequately to police a parking lot and for the negligence of such officers in arresting a person on the roadside, *id.* at 380. This Court held that, in those circumstances, the State's refusal to take cognizance of the federal cause of action "flatly violates the Supremacy Clause." *Id.* at 380-381.

b. More generally and fundamentally, the Supremacy Clause is violated if a state court refuses to

enforce a federal law when federal law requires it to do so. Even if the State's refusal to entertain a federal claim is based on a state defense or other rule that applies equally to both federal and state claims of the same type, that refusal is not valid when the rule "is inconsistent with or violates federal law." *Howlett*, 496 U.S. at 371. For example, in *Dice* v. *Akron, C. & Y. R.R.*, 342 U.S. 359 (1952), Ohio law made negligence a question for the jury, but reserved for the judge the question of fraud in the release of rights. The Court first held that federal law, not state law, governed the question of the validity of a release of rights under the Federal Employers' Liability Act (FELA), 45 U.S.C. 51 *et seq.*, for "[m]anifestly the federal rights affording relief to injured railroad employees under a federally declared standard could be defeated if states were permitted to have the final say as to what defenses could and could not be properly interposed to suits under the Act." 342 U.S. at 361. The Court then considered the validity, as applied to a suit under the FELA, of the general division of fact-finding responsibility under state law, which permitted judges rather than juries to decide the issue of fraud in a release. *Id.* at 362-363. Notwithstanding the neutrality of that rule, the Court held that it could not be applied in actions under the FELA. The Court reasoned that the Supremacy Clause required the Ohio courts to permit juries to decide the issue of fraud in FELA cases because the right to a jury trial is "part and parcel of the remedy afforded railroad workers under the Employers Liability Act." *Id.* at 363.

Similarly, in *Felder* v. *Casey*, 487 U.S. 131 (1988), Wisconsin law provided that no action could be brought against a local government or official unless the claimant provided a notice of claim within 120 days of

the alleged injury, and that rule applied equally to state and federal causes of action against local governments. *Id*. at 144. This Court held that Wisconsin could not apply its notice-of-claim rule to actions brought in state court under Section 1983. The Court reasoned that the notice-of-claim rule impermissibly burdened the right guaranteed by Section 1983 to recover for deprivations of civil rights and was therefore preempted by the Supremacy Clause. *Id*. at 153[4]; see also *General Oil Co.* v. *Crain*, 209 U.S. 211, 226 (1908) (State may not apply generally-applicable rule of sovereign immunity to preclude an action against a state official for prospective

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[4] The Court explained:

> Wisconsin's notice-of-claim statute undermines this "uniquely federal remedy" in several important respects. First, it conditions the right of recovery that Congress has authorized, and does so for a reason manifestly inconsistent with the purposes of the federal statute: to minimize governmental liability. Nor is this condition a neutral and uniformly applicable rule of procedure; rather, it is a substantive burden imposed only upon those who seek redress for injuries resulting from the use or misuse of governmental authority.
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> * * * States, however, may no more condition the federal right to recover for violations of civil rights than bar that right altogether, particularly where those conditions grow out of a waiver of immunity which, however necessary to the assertion of state-created rights against local governments, is entirely irrelevant insofar as assertion of the federal right is concerned, see *Martinez* [v. *California*, 444 U.S. 277,] 284 [(1980)], and where the purpose and effect of those conditions, when applied in § 1983 actions, is to control the expense associated with the very litigation Congress has authorized.

487 U.S. at 141, 144 (citation omitted).

relief to prevent a constitutional violation, since that would leave "an easy way * * * open to prevent the enforcement of many provisions of the Constitution").

3. Under this Court's decisions, therefore, Maine's assertion in state court of a defense of sovereign immunity was not a valid basis for the state court to refuse to enforce petitioners' FLSA claims against the State. Maine's sovereign immunity defense both discriminates against claims brought under federal law and, more generally and fundamentally, is inconsistent with federal law.

a. Maine law expressly permits monetary claims to be brought against the State in state court. Indeed, Maine courts entertain such claims against the State specifically in its capacity as an employer, including wage claims for violations of the State's minimum-wage law. Me. Rev. Stat. Ann. tit. 26, §§ 664, 670 (West 1998) (minimum wage); see also *id.* § 833 (whistle blower); *id.* § 844 (family medical leave); *id.* tit. 5, §§ 4551 *et seq.* (human rights); *id.* tit. 39-A, § 101 (workers' compensation). Especially in these circumstances, the State's assertion of sovereign immunity as a defense to a claim under the FLSA constitutes impermissible discrimination against a federal claim.

The State asserts (Br. in Opp. 21-22) that there is no discrimination because petitioners are seeking one and one-half times their regular rate of pay for overtime work, and Maine courts do not entertain such state-law claims against the State. But the State's failure to entertain state-law overtime claims against the State for one and one-half times the regular rate of pay reflects nothing more than the State's substantive policy judgment that the State should not be required to pay its employees a premium overtime rate in the first place. Me. Rev. Stat. Ann. tit. 26, § 664(3)(D) (West

1998) (exempting public employees from overtime provision). A state court may not decline to enforce the FLSA, however, because it disagrees with the policy judgment made by Congress, which this Court upheld in *Garcia*, regarding the rate of compensation it must pay to its employees. See, *e.g.*, *Testa*, 330 U.S. at 390, 392.

Accordingly, as the decisions in *Testa* and *Howlett* demonstrate, a finding of discrimination against a federal claim, in violation of the Supremacy Clause, does not depend on the existence of a state claim that is identical to the federal claim in every detail. Rather, discrimination exists when the State entertains suits of the same general type. *Howlett*, 496 U.S. at 361, 378, 380 (state court must entertain Section 1983 action alleging that school's search of car and suspension of student from school violated the Constitution where state court entertained state-law tort suits against state entities, including school boards, and against state officers); *Testa*, 330 U.S. at 394 (state court must entertain treble-damage price-control claim where state court would enforce same type of claim under state law and had enforced double-damage FLSA claim); see also *Second Employers' Liability Cases*, 223 U.S. at 57 (action under FELA is sufficiently analogous to state-law claims for personal injury and wrongful death).

When a state court's basis for refusing to entertain a federal monetary claim is a sovereign immunity defense, the relevant question—for the specific purpose of assessing the issue of discrimination—is whether the state court entertains state-law monetary claims against the State in which the State does not recognize sovereign immunity as a defense. At the very least, however, when a State entertains state-law *wage* claims against the State, but refuses to entertain federal-law

wage claims against the State, it discriminates against the federal wage claim. Such discrimination "flatly violates the Supremacy Clause." *Howlett*, 496 U.S. at 380-381.[5]

b. Apart from the issue of discrimination, Maine's sovereign immunity defense also directly conflicts with federal law. The text of Section 216(b) expressly provides that any employer who violates the FLSA's minimum wage or overtime requirements "shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages." 29 U.S.C. 216(b). It further provides that "[a]n action to recover the liability * * * may be maintained against any employer (including a public agency)." *Ibid.* The Act defines a public agency to include "the government of a State." 29 U.S.C. 203(x). Because the statutory text makes clear that employers who violate the FLSA "shall be liable" to the affected employees for the unpaid wages or overtime compensation, extends such liability to any employer (including "the government of a State"), and authorizes suits in state court against all

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[5] If the issue of discrimination were assessed at the level of detail suggested by the State, the States could far more readily assert an excuse that masked the State's substantive disagreement with federal policy—a per se impermissible basis for refusing to enforce a federal claim. *Second Employers' Liability Cases*, 223 U.S. at 57 ("The suggestion that the act of Congress is not in harmony with the policy of the State, and therefore that the courts of the State are free to decline jurisdiction is quite inadmissible."). When the issue of discrimination is assessed at the appropriate level of generality, it substantially diminishes the danger that the State's excuse reflects mere disagreement with the substantive policy of federal law.

such employers (including the State), the FLSA leaves no room for a state-law defense of sovereign immunity.

Indeed, as previously discussed (see p. 5, *supra*), the whole point of the 1974 amendment to Section 216(b) was to make clear that state employees could file suit against a state employer under Section 216(b) and to override any claim of sovereign immunity that would otherwise stand in the way of such a claim. S. Rep. No. 690, *supra*, at 27-28; H.R. Rep. No. 913, *supra*, at 41. For that reason, the defense of sovereign immunity asserted by the State in this case would "stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Felder*, 487 U.S. at 138 (quoting *Perez* v. *Campbell*, 402 U.S. 637, 649 (1971), and *Hines* v. *Davidowitz*, 312 U.S. 52, 67 (1941)). It therefore conflicts with, and is preempted by, Section 216(b), quite aside from the fact that the defense impermissibly discriminates against the federal FLSA claim. See, *e.g.*, *Howlett*, 496 U.S. at 376-383.

C. THERE IS NO CONSTITUTIONAL PRINCIPLE OF STATE SOVEREIGN IMMUNITY THAT LIMITS THE POWER OF CONGRESS TO PROVIDE FOR A SUIT AGAINST A STATE IN A STATE COURT OF COMPETENT JURISDICTION

The Maine Supreme Judicial Court held that the Eleventh Amendment to the Constitution and the principle of sovereign immunity that it embodies afford a defense to petitioners' FLSA claims in state court, notwithstanding Congress's express provision for such suits. That holding rests on a misunderstanding of both the Eleventh Amendment and the constitutional principle of sovereign immunity reflected in that Amendment.

1. The Eleventh Amendment provides that "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 Citizens of another State, or by Citizens or Subjects of any Foreign State." By its terms, the Eleventh Amendment tracks Article III and creates a limitation only on "[t]he Judicial power of the United States." It does not limit the jurisdiction of state courts, or affect Congress's power to create a cause of action that may be enforced in those courts.

This Court's decisions are consistent with that understanding of the Eleventh Amendment. The Court has repeatedly stated that the Eleventh Amendment does not preclude the assertion of federal claims in state court. See *Hilton*, 502 U.S. at 204-205 ("[A]s we have stated on many occasions, 'the Eleventh Amendment does not apply in state courts.'"); *Will* v. *Michigan Dep't of State Police*, 491 U.S. 58, 63-64 (1989) (same); *Maine* v. *Thiboutot*, 448 U.S. 1, 9 n.7 (1980) ("No Eleventh Amendment question is present, of course, where an action is brought in a state court since the Amendment, by its terms, restrains only '[t]he Judicial power of the United States.'"); *Nevada* v. *Hall*, 440 U.S. 410, 420-421 (1979).

The Eleventh Amendment's limitation "is, without question, a reflection of concern for the sovereignty of the States, but in a particular limited context." *Employees of Dep't of Pub. Health & Welfare of Missouri* v. *Department of Pub. Health & Welfare of Missouri*, 411 U.S. 279, 293 (1973) (*Missouri Employees*) (Marshall, J., concurring). "The issue is not the general immunity of the States from private suit * * * but merely the susceptibility of the States to suit before federal tribunals." *Id.* at 293-294. The Eleventh

Amendment restricts the federal judicial power over the States because of the "problems of federalism inherent in making one sovereign appear against its will in the courts of the other." *Ibid*; see also *Atascadero State Hosp.* v. *Scanlon*, 473 U.S. 234, 239-240 n.2 (1985) (approving Justice Marshall's concurrence in *Missouri Employees*). The Eleventh Amendment therefore is not implicated when Congress authorizes a suit to be brought against a State in state court.

2. Nor does the Constitution otherwise confer or codify a rule of state sovereign immunity that restricts the power of Congress to create a federal cause of action that is enforceable against a State in state court. Before the Constitution was adopted, there was an established common-law principle that a State could not be sued in its own courts without its consent. *Nevada* v. *Hall*, 440 U.S. at 414-416. That principle, however, was based on concepts "quite different," *id.* at 414, from those that justified a sovereign's immunity "in the courts of another sovereign," *ibid.*—namely, "on the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends." *Nevada* v. *Hall*, 440 U.S. at 415, 416 & n.10 (quoting *Kawananakoa* v. *Polyblank*, 205 U.S. 349, 353 (1907)). But once the States agreed to give Congress power under Article I of the Constitution to "make the law on which [a] right depends," and agreed that such a law would be the "supreme Law of the Land"—binding on "the Judges of every State, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding"—they effectively empowered Congress (in the case of federal claims) to remove or temper the "logical and practical ground" on

which the doctrine of a sovereign's immunity in its own courts depended.

To the extent that a State is the authority that makes the law enforceable in its courts, the State retains a corresponding immunity from suit without its consent. But where Congress enacts a law, that law "is as much the policy of the State as if the act had emanated from its own legislature, and should be respected accordingly in the courts of the State." *Howlett*, 496 U.S. at 371 (quoting *Second Employers' Liability Cases*, 223 U.S. at 57). In other words, when, as here, Congress has acted pursuant to one of its enumerated powers and provided for a cause of action against the State enforceable in state court, Congress is, along with the Maine Legislature, "the authority that makes the law on which [petitioners'] right depends." *Nevada* v. *Hall*, 440 U.S. at 416 (quoting *Kawananakoa*, 205 U.S. at 353). Since the FLSA, which for present purposes is part of the law of the State of Maine,[6] precludes the assertion of a defense of sovereign immunity, there is no "logical and practical ground" in the substantive law of the State—"the law on which [petitioners'] right depends"—that would preclude a suit against the State in its own courts. *Ibid.*

3. The Court's actual holding in *Nevada* v. *Hall* also illustrates that the constitutional principle of sovereign immunity is limited to protecting States against private suits in federal court, and that it does not address suits against a State in another forum. There, the Court held that the Constitution does not protect one State from

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[6] "The laws of the United States are laws in the several States," and together with any state law that is not in conflict, they become "the law of the land for the State." *Howlett*, 496 U.S. at 367 (quoting *Claflin* v. *Houseman*, 93 U.S. at 136-137).

being sued in another State's courts. 440 U.S. at 418-427. The Court noted that "language used by this Court in cases construing" the Eleventh Amendment's limits on federal judicial power, as well as "language used during the debates on ratification of the Constitution," manifested a "widespread acceptance of the view that a sovereign State is never amenable to suit without its consent." *Id.* at 420. The Court explained, however, that "all of these cases, and all of the relevant debate, concerned questions of federal-court jurisdiction and the extent to which the States, by ratifying the Constitution and creating federal courts, had authorized suits against themselves in those courts." *Id.* at 420-421. The cases and the debate therefore "[did] not answer the question whether the Constitution places any limit on the exercise of one State's power to authorize its courts to assert jurisdiction over another State." *Id.* at 421. Since there was no basis in the Constitution for imposing such a limit, the Court refused to imply one. *Id.* at 424-427.

Nevada v. *Hall* makes clear that the constitutional principle of sovereign immunity does not mean that States can never be subjected to suit without their consent. Instead, the Framers of the Constitution were concerned with a narrower question—whether the States could be subjected to suit in federal court. Just as there is nothing in the Constitution that protects one State from being sued in the courts of another State, so too there is nothing in the Constitution that prevents a State from being sued in its own courts for a violation of federal law when Congress authorizes such an action. Indeed, because Congress has power under Article I to "make the law on which [a] right depends" (*Kawananakoa*, 205 U.S. at 353), because such a law is the "supreme Law of the Land," binding on "the Judges of

every State" (Article VI, Clause 2), and because that law "is as much the policy of [a] State as if the act had emanated from its own legislature, and should be respected accordingly in the courts of the State," (*Howlett*, 496 U.S. at 371 (quoting *Second Employers' Liability Cases*, 223 U.S. at 57)), it is inherent in the structure of the Constitution that Congress may provide for such a suit.

4. *Hilton* strongly supports that conclusion. In *Hilton*, the Court held that a private action for damages under the FELA could be enforced against a state employer in state court even though the Court had already made clear in *Welch* v. *Texas Department of Highways & Public Transportation*, 483 U.S. 468 (1987), that the same suit would be barred by the Eleventh Amendment if brought in federal court. 502 U.S. at 201-203.

The State in that case argued that there were principles of sovereign immunity inherent in the Constitution that required Congress to clearly manifest its intent to subject States to suit in state court, and that the FELA did not contain such a clear statement. No. 90-848 Resp. Br., at 14. The Court rejected that argument on the ground that the clear statement rule is a "rule of constitutional law based on the Eleventh Amendment," and "the Eleventh Amendment does not apply in state courts." 502 U.S. at 204-205. Viewing the question before it as "a pure question of statutory construction," the Court concluded that principles of stare decisis required adhering to the Court's previous holding in *Parden* v. *Terminal Railway of the Alabama State Docks Department*, 377 U.S. 184 (1964), that the FELA subjects state employers to liability. 502 U.S. at 205; see also *ibid.* ("The issue in *Will* [v. *Michigan Dep't of State Police*, *supra*] and in this case is different from

the issue in our Eleventh Amendment cases in a fundamental respect: The latter cases involve the application of a rule of constitutional law, while the former cases apply an ordinary rule of statutory construction. *Will*, *supra*, at 65.").

If, as the Maine Supreme Judicial Court concluded, a State's immunity from suit in its own courts has the same federal constitutional status as a State's immunity from suit in federal court, this Court in *Hilton* would have been required to apply a clear statement rule, rather than treating the question before it as a pure question of statutory interpretation. That is so because the clear statement rule is a component of the Eleventh Amendment, *Dellmuth* v. *Muth*, 491 U.S. 223, 227-228 (1989), and thus would also have been a component of an equivalent constitutional immunity from suit in state court. By failing to apply the clear statement rule, and treating the question before it as solely one of statutory construction governed by principles of stare decisis, the Court in *Hilton* necessarily rejected the Maine Supreme Judicial Court's premise in this case that States enjoy the same constitutional immunity from suit in their own courts that they enjoy in federal court. Thus, the analysis the Court employed in *Hilton* substantially refutes respondent's argument that the Constitution of the United States confers on the States a defense of immunity in state court, where Congress (as in the FELA and FLSA) has expressly subjected the State to liability and suit. That import of *Hilton* is strongly reinforced by the Court's concluding statement that when "a federal statute does impose liability upon the States, the Supremacy Clause makes that statute the law in every State, fully enforceable in state court." 502 U.S. at 207.

5. *Reich* v. *Collins*, 513 U.S. 106 (1994), lends additional support for that conclusion. In that case, the Court reaffirmed a long line of cases holding that a State that has collected taxes, through compulsion, in violation of the Constitution must provide a tax refund remedy, "the sovereign immunity States traditionally enjoy in their own courts notwithstanding." *Id.* at 109-110. The Court noted that a state court must furnish such a remedy, even though "the sovereign immunity States enjoy in *federal* court, under the Eleventh Amendment, does generally bar tax refund claims from being brought in that forum." *Id.* at 110.

Reich involved a state court's duty to provide a remedy against the State for a violation of the Constitution. There is no basis, however, for distinguishing that case from one in which Congress, acting pursuant to its powers under the Constitution, has created a cause of action against the State enforceable in state court. The Supremacy Clause makes both the "Constitution" *and* "the Laws of the United States" the "supreme Law of the Land," and binds state judges equally to each. Thus, whether the claim arises under the Constitution or a law of the United States, the Supremacy Clause requires the state court to entertain the action, "the sovereign immunity States traditionally enjoy in their own courts notwithstanding." *Reich*, 513 U.S. at 110.

6. In holding that the Constitution restricts Congress's power to provide for a private action against a State in state court, the Maine Supreme Judicial Court relied heavily on *Seminole Tribe*. That decision, however, does not justify the Maine Supreme Judicial Court's holding.

In *Seminole Tribe*, the Court reaffirmed that the constitutional principle of sovereign immunity extends

beyond the literal language of the Eleventh Amendment, which restricts only the diversity jurisdiction of the federal courts, and reaches all private federal-court actions for damages against unconsenting States. 517 U.S. at 54. The Court's decision, however, does not support the conclusion that there is a free-floating constitutional principle of sovereign immunity that is wholly unanchored from the Eleventh Amendment's text and its exclusive focus on "[t]he Judicial power of the United States." To the contrary, the Court repeatedly stated that the constitutional principle of sovereign immunity operates as a limitation on federal judicial power. *Ibid.* ("For over a century we have reaffirmed that federal jurisdiction over suits against unconsenting States 'was not contemplated by the Constitution when establishing the judicial power of the United States.' "); *id.* at 64 ("It was well established in 1989 when *Union Gas* was decided that the Eleventh Amendment stood for the constitutional principle that state sovereign immunity limited the federal courts' jurisdiction under Article III."); *id.* at 65 ("[I]t had seemed fundamental that Congress could not expand the jurisdiction of the federal courts beyond the bounds of Article III."); *id.* at 72-73 ("The Eleventh Amendment restricts the judicial power under Article III, and Article I cannot be used to circumvent the constitutional limitations placed upon federal jurisdiction."). The Maine Supreme Judicial Court's reliance on *Seminole Tribe* as a basis for refusing to entertain petitioners' FLSA claim is therefore misplaced.

The State also relies (Br. in Opp. 7 n.3) on broad statements in some opinions that suggest that a State cannot be sued in any court without its consent. See generally *Briscoe* v. *Bank of Kentucky*, 36 U.S. (11 Pet.) 257, 321 (1837); *Beers* v. *Arkansas*, 61 U.S. (20

How.) 527, 529 (1857); *Cunningham* v. *Macon & B. R.R.*, 109 U.S. 446, 451 (1883); *Hans* v. *Louisiana*, 134 U.S. 1, 16 (1890); *Ex parte New York*, 256 U.S. 490, 497 (1921); *Monaco* v. *Mississippi*, 292 U.S. 313, 322-323 (1934). This Court reviewed many of those same cases in *Nevada* v. *Hall*, however, and concluded that they were directed to the question whether a State could be sued without its consent in federal court, and did not resolve the question whether a State could be sued in another forum. 440 U.S. at 420-421 & n.20 (citing as examples *Hans* and *Monaco*); *id.* at 437-439 (Rehnquist, J., dissenting) (relying on *Beers* and *Cunningham* to support the view that a State may not be sued without its consent in the courts of another State). Isolated statements in *Seminole Tribe* that mirror the earlier expressions of state sovereign immunity to private suits in general (see, *e.g.*, 517 U.S. at 58, 69, 70-71 & nn. 12, 13, 14) likewise do not resolve the question, particularly given *Seminole Tribe*'s description of the Eleventh Amendment elsewhere in the opinion as directed only to the jurisdiction of the federal courts. For the reasons stated in *Nevada* v. *Hall*, and because the statements in *Seminole Tribe* and prior cases cannot be reconciled with the decisions in *Hall*, *Hilton*, and *Reich*, they are not controlling here.

D. ENFORCEMENT OF THE FLSA IN STATE COURT AS PROVIDED BY CONGRESS PROTECTS THE PERSONAL RIGHTS OF EMPLOYEES AND DOES NOT IMPLICATE THE CONCERNS FOR STATE SOVEREIGNTY THAT UNDERLIE THE CONSTITUTIONAL DOCTRINE OF STATE IMMUNITY FROM SUIT IN FEDERAL COURT

The Maine Supreme Judicial Court concluded that it would make no sense to hold that the Constitution

prevents Congress from authorizing an action against the State in federal court, but permits Congress to authorize employees to recover the wages to which they are entitled by bringing an action in state court. That conclusion ignores the distinction drawn by the Constitution itself between the two forums, as well as the very different balance of federal and state interests that are implicated in the two situations.

1. When state employees are barred from bringing an action for make-whole relief in federal court, the sole consequence is that they must seek such relief in a different forum. If state employees are precluded from seeking such relief in state court as well, however, vindication of their substantive federal rights would be severely threatened.

The State suggests (Br. in Opp. 18-19) that the FLSA may still be enforced through actions brought by the Secretary of Labor. In 1974, however, Congress determined, based on experience under the Act, "that the enforcement capability of the Secretary of Labor is not alone sufficient to provide redress in all or even a substantial portion of the situations where compliance is not forthcoming voluntarily." S. Rep. No. 690, *supra*, at 27. Congress also concluded that, "[s]ince the 1974 Amendments extend FLSA coverage to additional state government employees, it is now all the more necessary that employees in this category be empowered themselves to pursue vindication of their rights." *Ibid.* We have been informed by the Department of Labor that its more recent experience confirms Congress's judgment that private enforcement is necessary to ensure that state employees receive the wages to which they are entitled by federal law.

Moreover, every employee, public or private, has a personal employment relationship with his or her

employer, under which services are exchanged in return for compensation paid by the employer in accordance with contractual obligations and applicable state or federal law. And insofar as the FLSA is concerned, Congress has declared that any employer (including a State or state agency) "shall be liable" to each individual employee personally for the amount of any unpaid minimum wages or overtime compensation owing under the Act and has conferred a personal right on the employee to recover the amounts owed. 29 U.S.C. 216(b). The Constitution should not be construed to require that Congress leave the vindication of a right so integral to personal autonomy and well-being as the recovery of wages due under federal law in exchange for one's own labor to either the discretion of the State that owes the wages or the discretion of federal officials who must operate under their own enforcement priorities and resource limitations. Consistent with the premises of our constitutional structure, then, it was entirely appropriate for Congress to "create[] obligations in justice that courts of the forum state would enforce." *Printz*, 521 U.S. at 907.

The State also suggests (Br. in Opp. 18-19) that enforcement of the Act may be accomplished through actions against state officials for prospective relief under *Ex parte Young*, 209 U.S. 123 (1908). Under the FLSA, however, only the Secretary of Labor may seek prospective relief. 29 U.S.C. 211(a), 217. Employees may seek only back wages and liquidated damages; they may not seek prospective relief. 29 U.S.C. 216(b). The *Ex parte Young* alternative proposed by the State is therefore illusory here.

Even if the FLSA were amended to permit private actions for prospective relief, moreover, that would not give employees any legal mechanism for obtaining the

wages to which they are entitled for the work they have *already* performed. *Edelman* v. *Jordan*, 415 U.S. 651, 664-665 (1974). If an employer withheld wages that an employee had already earned, an order that did no more than direct the employer to compensate future overtime work in accordance with the law would not satisfy the most fundamental principle of remedial adequacy: It would not place the injured employee "in the [economic] situation he would have occupied if the wrong had not been committed." *Wicker* v. *Hoppock*, 73 U.S. (6 Wall.) 94, 99 (1867). And, correspondingly, such an order would result in an unjustified windfall for the employer. Furthermore, for employees who have been laid off, or who have changed employers, moved into an exempt position, or lost the opportunity for overtime work, prospective relief is no relief at all. For those employees, "it is damages or nothing." *Bivens* v. *Six Unknown Named Agents*, 403 U.S. 388, 410 (1971) (Harlan, J., concurring). Thus, even if an *Ex parte Young* action were available, it would not be an adequate substitute for the private right of action for backpay and liquidated damages that Congress deemed necessary for enforcement of the Act.

In *Hilton*, this Court recognized the importance of the availability of a state forum for ensuring that rights guaranteed by federal law can be effectively vindicated when a federal forum is closed by virtue of the Eleventh Amendment. In holding that a private FELA action may be brought against a state employer in state court even though such a suit would be barred in federal court, the Court stressed that "the most vital consideration of our decision today * * * is that to confer immunity from state-court suit would strip all FELA * * * protection from workers employed by the States." 502 U.S. at 203.

If a State may refuse to entertain a private FLSA suit against a state employer, it would not strip state employees of *all* federal protection. For the reasons discussed above, however, the result could be to prevent effective vindication of rights guaranteed by federal law in many cases. In other situations, moreover, a ruling that Congress is constitutionally barred from providing for private suits against a State in state court unless the State itself consents *would* strip state employees of all federal protections. That would occur if Congress chose not to vest administrative and enforcement authority in a federal agency, and instead addressed the problem at hand by enacting a personal federal right to a monetary recovery to be privately enforced in the accustomed manner. Congress did just that, for example, in the FELA, the statute at issue in *Hilton*. It is by no means evident that respect for state sovereignty and autonomy would be best served by an interpretation of the Constitution that required Congress to interpose a federal agency between a State and one of its employees, with the consequence that the enforcement action would, in all likelihood, be shifted from state to federal court.

2. A private right of action in state court does not raise the same federalism concerns that arise when one sovereign is made to appear in the courts of another. For the State, a state court is not "the instrument of a distant, disconnected sovereign." *Hess* v. *Port Auth. Trans-Hudson Corp.*, 513 U.S. at 41. To the contrary, the state court is "ordained" by the State itself, *ibid.*, and indeed is an integral *part* of the State.

For that reason, there is a fundamental difference between a federal district court instructing a state agency on its obligations under federal law, and a state court performing that role. The holding in *Great*

Northern Life Insurance Co. v. *Read*, 322 U.S. 47, 54 (1944), that a State's waiver of immunity from suit in its own courts does not waive a State's immunity from suit in federal court, and the holding in *Younger* v. *Harris*, 401 U.S. 37 (1971), that a federal court may not enjoin a state criminal prosecution when the claim asserted could be raised in an ongoing state proceeding, both reflect a recognition that federal-court enforcement of federal law against a State raises serious federalism concerns that are simply not present when state courts enforce federal law. So, too, does the Tax Injunction Act, 28 U.S.C. 1341, which bars a federal court from enjoining the collection of state taxes when there is an adequate remedy in state court.

3. What is more, one of the principal bases for state sovereign immunity in federal court is inapposite when the suit is brought in state court. Foreclosing the availability of a federal court as a forum for a private FLSA suit against the State furthers the State's interest in playing a role in interpreting the contours of federal law and in integrating federal and state law into a single body of law governing the conduct of those within the State.

> In the States there is an ongoing process by which state courts and state agencies work to elaborate an administrative law designed to reflect the State's own rules and traditions * * *. Where, as here, the parties invoke federal principles to challenge state administrative action, the courts of the State have a strong interest in integrating those sources of law within their own system for the proper judicial control of state officials.

Idaho v. *Coeur D'Alene Tribe*, 521 U.S. 261, 276 (1997) (principal opinion). Often, both federal and state law

might apply to a particular transaction or subject matter, and adjudication in state court allows a single court to resolve issues under both bodies of law and to construe state law harmoniously with federal law. "The two together form one system of jurisprudence, which constitutes the law of the land for the State." *Howlett*, 496 U.S. at 367 (quoting *Claflin* v. *Houseman*, 93 U.S. at 136-137). Preservation of that role for the state courts supports the constitutionally-based immunity of the States in federal court confirmed by the Eleventh Amendment; but that rationale does not support recognition of a constitutionally-based immunity of the States in the state courts themselves.

If a private right of action could not be brought in state court, enforcement of the FLSA against state employers would depend entirely on enforcement by the Secretary of Labor, who could be expected to bring such suits in federal court and who would not in any event be authorized to enforce any corresponding provisions of state law that might govern the same subject matter. That would leave state courts without any role in clarifying the contours of federal law in cases involving state employers, and would make it more difficult to harmonize the interpretation of federal and state law as applied to state employees. In contrast, if a private suit may be brought in state court, most FLSA litigation against the States would be conducted in state courts, furthering the States' vital interest in having their own courts interpret and integrate federal law as it applies to state officials.

4. One of the interests the Eleventh Amendment furthers is protection of a State's treasury, *Hess*, 513 U.S. at 39, and that interest is also implicated in suits brought against the State in state court. The Constitution, however, does not entirely insulate a State's

treasury from the effects of federal law. This Court sustained the constitutionality of the FLSA's minimum-wage and overtime provisions notwithstanding their impact on state treasuries. *Garcia*, *supra.* This Court has also held that prospective relief under *Ex parte Young* is available even when the impact on the state treasury is quite significant. *Milliken* v. *Bradley*, 433 U.S. 267 (1977); *Jordan*, 415 U.S. at 667. And this Court's decisions establish that the Secretary of Labor may bring an action against a State to recover backpay and liquidated damages regardless of its impact on the state treasury. *United States* v. *Texas*, 143 U.S. 621, 644-645 (1892); see *Missouri Employees*, 411 U.S. at 285-286.

Thus, while a State has an important interest in protecting its treasury, that interest does not override all others. In light of the Supremacy Clause, and the considerations discussed above, when Congress has authorized a private action against a State in state court for a violation of federal law, the State's interest in protecting its treasury must give way to the overriding interest in the vindication of federal law.[7]

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[7] That is particularly true in the circumstances presented here. A State's interest in determining when it will be subject to suit in its own courts for a violation of federal law loses all force when, as here, its courts entertain state-law claims of the same general type. A State does not have any legitimate interest in discriminating against the enforcement of a federal law that concededly applies to the State. Just as there is no implied sovereign immunity exception to the explicit duty of state courts under the Supremacy Clause to apply and enforce federal law as a general matter, there is no such exception to the particular obligation of the States under the Supremacy Clause not to discriminate against federal law or federal claims.

CONCLUSION

The judgment of the Maine Supreme Judicial Court should be reversed, and the case should be remanded for further proceedings.

Respectfully submitted.

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APPENDIX

CONSTITUTIONAL AND STATUTORY PROVISIONS

1. Article I, Section 8, Clause 3 of the United States Constitution provides as follows:

The Congress shall have Power

* * * * *

To regulate Commerce with foreign Nations, and among the several States, and with Indian Tribes.

2. Article VI, Clause 2 of the United States Constitution provides as follows:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, 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.

3. The Eleventh Amendment to the United States Constitution provides as follows:

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 Citizens of another State, or by Citizens or Subjects of any Foreign State.

4. 29 U.S.C. 203(x) provides as follows:

(x) "Public agency" means the Government of the United States; the government of a State or political subdivision thereof; any agency of the United States (including the United States Postal Service and Postal Rate Commission), a State, or a political subdivision of a State; or any interstate governmental agency.

5. 29 U.S.C. 207(a)(1) provides as follows:

(a) Employees engaged in interstate commerce; addditional applicability to employees pursuant to subsequent amendatory provisions

(1) Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

6. 29 U.S.C. 216(b) and (c) provide as follows:

(b) Damages; right of action; attorney's fees and costs; termination of right of action

Any employer who violates the provisions of section 206 or section 207 of this title shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Any employer who violates the provisions of section 215(a)(3) of this title shall be liable for such legal or equitable relief as

may be appropriate to effectuate the purposes of section 215(a)(3) of this title, including without limitation employment, reinstatement, promotion, and the payment of wages lost and an additional equal amount as liquidated damages. An action to recover the liability prescribed in either of the preceding sentences may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated. No employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action. The right provided by this subsection to bring an action by or on behalf of any employee, and the right of any employee to become a party plaintiff to any such action, shall terminate upon the filing of a complaint by the Secretary of Labor in an action under section 217 of this title in which (1) restraint is sought of any further delay in the payment of unpaid minimum wages, or the amount of unpaid overtime compensation, as the case may be, owing to such employee under section 206 or section 207 of this title by an employer liable therefor under the provisions of this subsection or (2) legal or equitable relief is sought as a result of alleged violations of section 215(a)(3) of this title.

(c) Payment of wages and compensation; waiver of claims; actions by the Secretary; limitation of actions

The Secretary is authorized to supervise the payment of the unpaid minimum wages or the unpaid overtime compensation owing to any employee or employees under section 206 or section 207 of this title, and the agreement of any employee to accept such payment shall upon payment in full constitute a waiver by such employee of any right he may have under subsection (b) of this section to such unpaid minimum wages or unpaid overtime compensation and an additional equal amount as liquidated damages. The Secretary may bring an action in any court of competent jurisdiction to recover the amount of unpaid minimum wages or overtime compensation and an equal amount as liquidated damages. The right provided by subsection (b) of this section to bring an action by or on behalf of any employee to recover the liability specified in the first sentence of such subsection and of any employee to become a party plaintiff to any such action shall terminate upon the filing of a complaint by the Secretary in an action under this subsection in which a recovery is sought of unpaid minimum wages or unpaid overtime compensation under sections 206 and 207 of this title or liquidated or other damages provided by this subsection owing to such employee by an employer liable under the provisions of subsection (b) of this section, unless such action is dismissed without prejudice on motion of the Secretary. Any sums thus recovered by the Secretary of Labor on behalf of an employee pursuant to this subsection shall be held in a special deposit account and shall be paid, on order of the Secretary of Labor, directly to the employee or employees affected. Any

such sums not paid to an employee because of inability to do so within a period of three years shall be covered into the Treasury of the United States as miscellaneous receipts. In determining when an action is commenced by the Secretary of Labor under this subsection for the purposes of the statutes of limitations provided in section 255(a) of this title, it shall be considered to be commenced in the case of any individual claimant on the date when the complaint is filed if he is specifically named as a party plaintiff in the complaint, or if his name did not so appear, on the subsequent date on which his name is added as a party plaintiff in such action.

7. 29 U.S.C. 217 provides as follows:

The district courts, together with the United States District Court for the District of the Canal Zone, the District Court of the Virgin Islands, and the District Court of Guam shall have jurisdiction, for cause shown, to restrain violations of section 215 of this title, including in the case of violations of section 215(a)(2) of this title the restraint of any withholding of payment of minimum wages or overtime compensation found by the court to be due to employees under this chapter (except sums which employees are barred from recovering, at the time of the commencement of the action to restrain the violations, by virtue of the provisions of section 255 of this title).