

The primary focus of SCotUS in deciding Eleventh Amendment cases has been to protect state treasuries. While permitting suits against state officials named in their individual capacities seeking money damages, courts have at times recharacterized the suit as against the state instead depending on the claim itself.

The *Ex Parte Young* doctrine allows for a private individual to sue a state official in his individual capacity for the violations of that private individual's rights committed by that state official in his official capacity. Additionally, §1983 and the *Monroe* doctrine stand for a private individual's ability to obtain damages from state officials in their individual capacity in a suit over the deprivation of the private individual's rights. However, in cases such as *Edelman* and *Ford Motor Co.*, where the Court has identified the state as the "actual party in interest," the fact that a plaintiff has named a state official as defendant in his individual capacity makes no difference; the Eleventh Amendment still bars recovery of damages.

A theory addressing this conflict has arisen which concerns the nature of the claim and not the remedy sought after. Several legal scholars, such as John Jeffries and Pamela Karlan, assert that where the claim against the official in his individual capacity "sounds in contract" rather than tort, the state is the real party in interest. In *Edelman*, the assertion that the director of the Illinois Department of Public Aid would pay out of his own pocket for benefits previously withheld from plaintiffs was rejected by the Court, and the defendant was recharacterized. This notion is apparent in *Mello* where a plaintiff attempted to sue the members of the Nevada Retirement Board in their individual capacities to recover benefits owed to him under a previously repealed retirement plan. The court there found that the benefits owed to Mello under that retirement plan would have to be paid for by the state itself, and not out of the pockets of the members of the Retirement Board. However, in the Second Circuit decision, *Dwyer*, a claim for

wrongful termination brought against the responsible official, Regan, in his individual capacity could collect damages but not back pay. The court found that the damages related to Dwyer's wrongful termination could be collected directly from Regan, but the back pay would have to be collected from the state.

The rationale behind the distinction between damages related to a tort claim and those related to a contract claim reaches back to the first litigation concerning the Eleventh

Amendment: the repayment of debts owed by state governments out of state treasuries. Since *Chisolm*, the Court and the circuits have denied plaintiffs' attempts to obtain damages from a state official in his individual capacity over claims concerning a state's prior contractual or statutory obligation to pay such individuals. In such instances, courts will likely disregard the plaintiff's pleadings and recharacterize the named defendant in the complaint, barring the suit under the Eleventh Amendment.