21-1232

No. 22 –

ORIGINAL

In the

Supreme Court of the United States

Paul C. Nordberg,

Petitioner

-v-

The Massachusetts Teachers' Retirement System

Respondent

On Petition for a Writ of Certiorari to the United States Court of Appeals for the 1st Circuit

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PETITION FOR A WRIT OF CERTIORARI

Paul C. Nordberg,
Petitioner, ***Pro-se***

3 Overhill Drive

Auburn, MA 01501-2406

Pauldeblee@aol.com

Tel: (508) 832-6443

QUESTIONS PRESENTED

1. Should the clear and unambiguous words of the 11th Amendment to the United States Constitution be the basis for judicial determinations relating to that Amendment?

2. Should the reasoning relating to the meaning of the 11th Amendment that is set forth in ***Hans v. Louisiana***; 10 S.Ct. 504 (1890) and its progeny be explicitly rejected by the current United States Supreme Court?

3. As a result, should the decisions of the United States Court of Appeals for the 1st Circuit in Nordberg -v- Massachusetts Teachers' Retirement System (Case No. 21-1006; United

States Court of Appeals for the 1st Circuit), dismissing this lawsuit as barred by the 11th Amendment be vacated?

CORPORATE DISCLOSURE

This lawsuit is an action by a single citizen against the Massachusetts Teachers' Retirement System. No corporate information exists that would need to be disclosed to the Court.

APPEALS COURT JUDGES WHO DECIDED MY APPEAL

- **Sandra L. Lynch**
- O. Rogeriee Thompson
- William J. Kayatta, Jr.

RELATED PROCEEDINGS

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii):

- Nordberg v. The Massachusetts Teachers' Retirement System; (Case No 19-40089-TSH – United States District Court for the District of Massachusetts, Worcester Division). Memorandum of Decision and Order on Defendants' Motion to Dismiss, entered November 30, 2020. (See **Exhibit No 1 in the Appendix)**

- Nordberg v. The Massachusetts Teachers' Retirement System; (Case No 19-40089-TSH – United States District Court for the District of Massachusetts, Worcester Division) ORDER

OF DISMISSAL entered on November 30, 2020 *(See* **Exhibit No 2 in the Appendix)**

- Paul C. Nordberg, Plaintiff/Appellant -v- The Massachusetts Teachers' Retirement System; Case No. 21-1006; United States Court of Appeals for the 1st Circuit; Judgment entered on October 20, 2021, affirming the dismissal of this lawsuit by the District Court pursuant to provisions of the 11th Amendment to the United States Constitution *(See* **Exhibit #3 in the Appendix)**

- Paul C. Nordberg, Plaintiff/Appellant -v- The Massachusetts Teachers' Retirement System; Case No. 21-1006; United States Court of Appeals for the 1st Circuit; Order of the Court

entered on February 14, 2022, **denying** Plaintiff/Appellant's petition for rehearing. *(See* **Exhibit No. 4 in the Appendix)**

- Paul C. Nordberg, Plaintiff/Appellant -v- The Massachusetts Teachers' Retirement System; Case No. 21-1006; United States Court of Appeals for the 1st Circuit; **MANDATE** filed by the Clerk of the Court on February 22, 2022.

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CONSTITUTIONAL PROVISIONS

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JURISDICTION

This lawsuit seeks relief under a federal statute, the Age Discrimination in Employment Act of 1967; 29 U.S.C. §621-734.

The **MANDATE** of the United States Court of Appeals for the 1st Circuit, entered on February 22, 2022, finalized this lawsuit's passage through the lower federal courts.

As set forth in Rule 13 of the United States Supreme Court, I have ninety (90) days, from February 14, 2022, to file and serve my petition seeking the issuance of a writ of certiorari.

INTRODUCTION

As Petitioner and Plaintiff in this lawsuit, I, Paul C. Nordberg, seek the entry of a decision by the United States Supreme Court holding that the 11th Amendment to the United States Constitution must be understood, accepted, and enforced on the basis that reflects the unambiguous meaning of the text of that Amendment.

In this lawsuit I have sought redress pursuant to the Age Discrimination in Employment Act of 1967 (29 U.S.C. §621-631 ("ADEA") against the Massachusetts Teachers' Retirement System ("MTRS"). The crux of my complaint is that the retirement benefit formula used by the MTRS systematically discriminates against educators who work beyond their 65th birthday(s). The United States District Court for the District of Massachusetts

and the United States Court of Appeals for the 1st Circuit have each dismissed my lawsuit on the basis that the 11th Amendment to the United States Constitution denies the federal court system jurisdiction to consider my lawsuit on its merits.

SUMMARY OF MY ARGUMENT

The 11th Amendment of the United States Constitution states 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 <u>another</u> State, or by Citizens or Subjects of any <u>Foreign</u> State."** [emphasis added]

Coupled with the provisions of Article III; §2 of the United States Constitution, the language of the 11th Amendment makes clear that – if I lived in a state other than Massachusetts – I could not sue the Commonwealth of Massachusetts under *ADEA*.

I am, however, a life-long resident of the Commonwealth. In my circumstances the clear words of Article III; §2 of the United States Constitution and the 11th Amendment to the United States Constitution provide me with the right to sue my home state, the Commonwealth of Massachusetts, for violating a federal statute, the ADEA..

Read as a simple, clear, and lucid statement in the English language, the 11th Amendment provides no insulation to the Commonwealth of Massachusetts from a lawsuit like mine.

Both the United States District Court and the United States Court of Appeals for the 1st Circuit have dismissed my lawsuit as barred by the provisions of the 11th Amendment to the United States Constitution.

What gave rise to the 11th Amendment was the case of Chisholm v. Georgia; 2 U.S. (2 Dall.) 419. In that lawsuit an individual who was not a resident of the State of Georgia sought to recover moneys allegedly owed to him for supplying materials to the State of Georgia during the Revolutionary War. The Supreme Court ruled that it had original jurisdiction to consider the case on its merits. In so deciding, the Supreme Court relied upon a provision in Article III Section 2 of the United States Constitution. That provision states that the federal judicial system has power to adjudicate, among other things, disputes:

"....between a State and citizens of another state.."

The 1793 decision in Chisholm was very unpopular. Its unpopularity was so great that the 11th Amendment was passed by the Congress (in May of 1794) and approved by 3/4ths of the states (in February of 1795). The entire process of overturning Chisholm, via an Amendment to the United States Constitution ratified less than three (3) years after the decision, evidences the broad-based support which then existed to overturn Chisholm.

The 1890 case which stood everything on its head is Hans v. State of Louisiana; 10 S.Ct. 504; 134 U.S.1. (1890). In Hans a person who was a resident of Louisiana sought to collect the interest due under borrowings (bonds) validly issued by the State of Louisiana. At page #4 the Supreme Court acknowledges that Hans' contention that the plain

language of the 11th Amendment provides Louisiana no safe haven:

> *"It is true the amendment does so read...*[in keeping with Hans' assertion he can sue the State of Louisiana for the money he is owed.]

The clear language of the 11th Amendment coupled with the provision of Article III Section 2:

> *"The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority....*

left no rational or lucid basis for the Supreme Court to rule as it did in Hans.

Lacking a rational basis to conclude that the federal courts lacked jurisdiction in Hans' case, the Supreme Court recited reasons why Hans should get his day in court as though under some theory they supported the notion he should be denied a trial.

For example:

The Hans Court (at pages 4-5) recites how Alexander Hamilton, in Federalist Paper No 81, argued that what is found in Article III, §2 of the United States Constitution would be a terrible mistake. Thereafter the authors of the Constitution and the state leaders who achieved its ratification, including the text in Article III Section 2 that Hamilton believed was ill-advised, acted contrary to Hamilton's views and advice. That Hamilton thought Article III Section 2 was poorly written cannot

rationally have the effect of making that part of the Constitution ineffective.

At page 6 the Hans Court says that the error made by the Supreme Court in Chisholm v Georgia was that it:

> *"Adhere[d] to the mere letter* [of the 11th Amendment]."

When the *mere letter* of a constitutional provision, is clear – that is all that should be adhered to. If the Constitution and/laws do not mean what they clearly state in plain English language, we cannot expect the people to be able to comply with the Constitution or the law(s) enacted pursuant to it.

At page #8 the Hans court postulated that the reason the 11th Amendment was so quickly enacted by the Congress and ratified by the states was that

states did not understand what they were doing. That Court recites its subjective view that - had the states understood the 11th Amendment - the then-Justices of the Supreme Court could not:

"...imagine that it would have been adopted by the states."

The legitimate responsibility of Justices of the Supreme Court is to construe the Constitution and statutes enacted under the Constitution in conformity to what those documents state.

Here:

- The Justices of the Supreme Court hypothesized, out of thin air, that the states did not understand the Constitutional Amendment they were then ratifying it;

- Next, the then-Justices of the Supreme Court took on the role of political pollsters – and predicted that, had the states understood the 11th Amendment, they would never have ratified it.

It is difficult to find words to properly characterize the level of arrogance implicit in Hans.

The apparent reality that the majority of the Hans court believed that the adoption of the 11th Amendment, in the form it was adopted, was a mistake cannot be allowed to empower or justify the Supreme Court telling the Congress and the States that is will "clean up" their mistake by ignoring the clear wording of the 11th Amendment. When courts do that, as occurred here, they trample the notion of separation of powers – and the hypothesis that we are a nation governed by laws rather than men (even if

those men have seats on the United States Supreme Court).

I am the *Respondent* in a case decided by the United States Supreme Court in 1989; ***Granfianciera, S.A. -v- Nordberg;*** 493 U.S. 33 (1989). That decision dealt with the interaction between the 7th Amendment to the United States Constitution's guarantee of a right to a jury trial in civil litigation in federal court and Congress' action in placing a certain cause of action - a fraudulent conveyance – in a statue allowing for a bench trial.

After a lengthy discussion of reasons why the Congress passed a statute stating that *fraudulent conveyance* litigation – when related to a federal bankruptcy proceeding – would be litigated in bench trials, the Supreme Court stated succinctly why such

actions would be litigated via jury trials if a party so demanded:

> *"...these considerations are insufficient to overcome the clear command of the Seventh Amendment."(See* Granfinanciera S.A. -v- Nordberg; 493 U.S. 33, 63)

The words of the 11th Amendment to the United States Constitution– which ban **only** law suits by **non-residents** of a given State against that state pursuant to a federal statute – are equally clear with the language of the 7th Amendment to the United States Constitution – which provides litigants a right to a jury trial in civil lawsuits in the federal courts.

The clear words of the 11th Amendment should be followed, just as the words of the 7th Amendment are.

Even as a non-lawyer I am well-aware of the doctrine of *stare decisis.* Only very rarely should the Supreme Court completely overturn and reject a decision by the-then Justices of the Supreme Court at an earlier date.

But from Dred Scott v. Sanford 60 U.S. 19 , through Plessy v. Ferguaon; 163 U.S. 537 (1986) , and a few others, this Court has periodically reversed a small number of prior Supreme Court precedents for the straightforward reason that the earlier case was wrongly decided.

The snowball of mistakes relating to the 11th Amendment grew in 2000. That year a 5-4 majority of the United States Supreme Court ruled that Congress' action in 1974 was somehow insufficient when is enacted an amendment to the statute under which I sue, the Age Discrimination Act of 1967, to

abrogate the *sovereign immunity* of the individual states (*See* Kimmel v. Florida Board of Regents; 528 U.S. 62 (2000). In so deciding the Supreme Court nullified the actions of the Congress, based on an irrational reading of the 11th Amendment.

SOVEREIGN IMMUNITY

The notion of *sovereign immunity* is a judicial creation, born centuries ago. The hypotheses on which the concept of *sovereign immunity* was created, in the British legal system, were:

- The *Sovereign* [the King or Queen] occupies the throne because God intentionally created the circumstances which resulted in the *Sovereign* sitting on the throne; and

- Even when the *Sovereign's* conduct appears irrational, malicious, or otherwise defective, it

would be an insult to God to challenge such conduct.

In this nation we long ago abandoned the hypotheses which, if believed, might rationally support the notion of *sovereign immunity.*

Today *sovereign immunity* accomplishes exactly what a rational mind would expect it to accomplish: It insulates government agencies and their high-level officials from independent judicial review of the question of whether their conduct conforms with the provisions of the Constitution and laws enacted under the Constitution. All the rest of us find our conduct subject to appropriate judicial review.

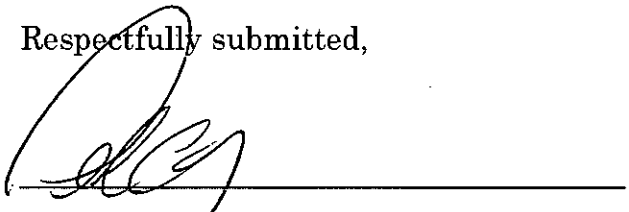
Rather than help the effort towards sound, rational and honest government *sovereign immunity* quietly and pervasively undermines that effort. It is

human nature that we are more likely to fail to do the right thing, or to do the wrong thing, if we know there will be no personal consequences – in this instance in the legal system as a result of the doctrine of *sovereign immunity* – from our deficient conduct.

CONCLUSION

I request that the United States Supreme Court take the first step to returning common sense, and common sense reading of the words of the United States Constitution and its amendments by issuing its Writ of Certiorari to the United States Court of Appeals for the 1st Circuit in this lawsuit for the purpose of reviewing the propriety of the current judicial interpretation of the 11th Amendment to the United States Constitution.

Respectfully submitted,



Paul C. Nordberg Petitioner/***Pro Se***

3 Overhill Drive

Auburn, MA 01501-2406

Tel: (508) 832-6443

Email: Pauldeblee@aol.com

Friday; February 25, 2022