No. 21-1232

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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 REHEARING PURSUANT TO RULE 44

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Petitioner, ***Pro-se***

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JURISDICTION

This Petition seeking rehearing is filed within twenty-five (25) days of the Court's decision DENYING my initial petition. It is, therefore, timely filed under Rule 44, and the Court has jurisdiction to consider it on its merits.

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. 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?

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4. Should the United States Supreme Court use this appeal as a vehicle through which to begin the process of doing away with the archaic, irrational and contra-Constitutional doctrine of *sovereign immunity?*

SOVEREIGN IMMUNITY

Sovereign Immunity arose via the actions taken by British King Edward the First (1272-1307). It is premised on the hypothesis of the existence of a phenomenon referred to as the *divine right of kings.* Under this hypothesis, the King/Queen is God's representative in the nation(s) over which the King/Queen rules – and thus – it would be an insult to God to question the Monarch's actions and/or inactions.

The American Revolutionary War, and the Constitution written after the conclusion of that war, did away with anything suggesting any divine right(s) or infallibility of political leaders and high government officials in the United States.

The doctrine of sovereign immunity is inconsistent with a number of the key elements in the United States Constitution:

1. Nowhere in the United States Constitution is the term *sovereign immunity,* or any concept or notion close to the concept of *sovereign immunity* mentioned.
2. As Chief Justice Marshall stated in the case of Marbury v Madison, 5 U.S. 137:

> *"The very essence of civil liberty certainly consists of the right of* ***every individual to claim the protection of the laws whenever he receives injury."*** [emphasis added]

There is no qualification in this seminal decision, telling us that we have this right, but only so long as the party which has caused us injury is not the government.

3. Article III of the Unite States Constitution states:

> *"The judicial power shall extent 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..."* [emphasis added]

If the authors of the United States Constitution intended that the individual states would benefit from *sovereign immunity,* Article III would have been an obvious place to so indicate – by stating a limitation on the rights of the federal judiciary to consider cases in which individual state(s) were defendant(s).

4. Article VI of the United States' Constitution is also inconsistent with any notion that *sovereign immunity* can exist under the Constitution. It states, in relevant part:

> *"The Constitution and the Laws of the United States which shall be made in Pursuance thereof; and a;; 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 of every state shall be bound thereby; anything to the contrary in the Constitution or Laws of any state to the contrary notwithstanding"*

If the authors of the United State Constitution were intending to organize a national government which would recognize *sovereign immunity* rights, to be held by the individual states pursuant to the Constitution, they surely would have created text, with a stated exception for states' *sovereign immunity* in Article VI. The failure to take such action – coupled with the actual language of Article VI - read as simple English, tells any reader that *sovereign immunity* in not supported, either implicitly or explicitly, by the words of the United States Constitution.

Any recognition by the Supreme Court, or any other Court, of any state's asserted right of *sovereign immunity* completely undermines the foundational principal of the United States Constitution, that the United States Constitution and the laws made under that Constitution are the supreme law of the land. There is no logical basis to read the Constitution as being the supreme law of the land – except for being trumped by the *sovereign immunity* of the individual states – when no such intention is found anywhere in the Constitution.

5. As Justice Souter explained in his dissent in Alden v Maine; 527 U.S. 706 (1999):

> *"The American Colonies did not enjoy sovereign immunity, that being a privilege understood in English law to be reserved for the Crown alone; 'antcedent to the Declaration of Independence, none of the colonies were, or pretended*

> *to be sovereign states Several colonial charters, including those of Massachusetts, Connecticut, Rhode Island and Georgia, expressly specified that the corporate body established thereunder could sue and be sued"*

The hypothesis that, in the founding document of a new nation, the United States Constitution, the states joining together – many of which had operated previously under legal systems which specifically declared *sovereign immunity* to be illegal – would organize a new nation in which the states would have the benefit of *sovereign immunity*, but not mention that fact in the Constitution is beyond the pale.

6. The notion of state *sovereign immunity* is inconsistent with the *Due Process* rights of

every American under the 5th and 14th Amendments.

The *Due Process* rights establish that any American deprived of live, liberty or property at the hands of the government, is entitled to redress. The idea, in my case, that the Commonwealth of Massachusetts can discriminate against me, by diluting one of my property rights (my pension entitlement) based on age – and that *sovereign immunity* allows the State to so act with impunity, runs 180 degrees from the content of the 5th and 14th Amendments.

7. The notion that we are governed under system of laws is lowered from being a reality to being an aspiration by the existence of *sovereign immunity*. We cannot

be a nation truly governed under a system of laws if the government, whether the national government in Washington D.C., and/or the various state governments have *sovereign immunity* – and hence can do things which are otherwise against the law, or fail to do things which the law mandates, with no possibility of any legal consequences.

SOVEREIGN IMMUNITY IS INHERENTLY UNFAIR

The fundamental economic effect of the doctrine of *sovereign immunity* is easily summarized. It is a system which inflicts on individuals, or small groups or people, costs/injuries which are more fairly funded by the entire society.

In my case, for example, approximately 5,000 educators in Massachusetts, who did work beyond or who are still working past their 65th birthdays, are being penalized in amounts running from $1,000 to perhaps $25,000 annually in their current, or perspective pension benefits. If these people were treated without discrimination because of age, it might cost the average taxpayer in Massachusetts; of whom there are millions; $3.00-$4.00 a year in increased state taxes.

Sovereign Immunity, in this instance, places the entire cost/injury resulting from the Commonwealth of Massachusetts engaging in flagrant age discrimination of the backs of this relatively small numbers. It would clearly be more equitable if the Commonwealth were compelled, by law, to end the discrimination and pass the aggregate

another individual or private entity had caused the injury/loss.

3. Any fair reading of the United States Constitution tells the reader that *sovereign immunity* is inconsistent with the values, rules and norms found in that document.

WHEREFORE, I RESPECTFULLY REQUEST that this Court:

FIRST: Invite the respondent to express its views on this matter; and

THEREAFTER: Grant the Petition seeking the issuance of the Writ of Certiorari which is requested in my original petition.

costs along to and spread among the millions of taxpayers in Massachusetts.

CONCLUSION

Sovereign Immunity is a legal doctrine whose time, if it ever had a time when it was worthwhile, is long gone:

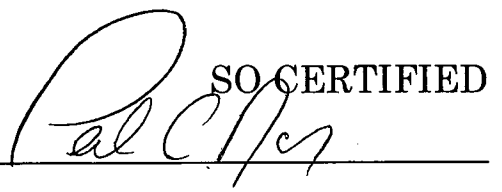
1. It implicitly encourages misfeasance and/or malfeasance in state governments – by the simple measure of making certain that there is no legal or financial consequence for such actions.
2. It forces small numbers of people in the general population, who have the misfortune to suffer injuries at the hands of the government for which they would be fairly compensated if

CERTIFICATE

I, Paul C. Nordberg, the Petitioner seeking rehearing in this matter, hereby certify:

1. I have filed this Petition Seeking Rehearing in good faith;
2. In filing this Petition Seeking Rehearing, I am not motivated by any goal of delaying this proceeding's proper conclusion on its merits.

SO CERTIFIED

By: 

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Thursday; June 2, 2022

Respectfully submitted,

By: _____

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Thursday; June 2, 2022