No. 24-6921

IN THE

Supreme Court of the United States

BENJAMIN KOHN,

Petitioner,

v.

STATE BAR OF CALIFORNIA, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court of Appeals For The Ninth Circuit

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BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether a district court may resolve a factual challenge to its jurisdiction based on state sovereign immunity under Federal Rule of Civil Procedure 12(b)(1).

2. Whether a court of appeals is required to consider sua sponte whether a dismissal should have been with or without prejudice.

3. Whether *Hans v. Louisiana*, 134 U.S. 1 (1890), should be overruled.

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BRIEF IN OPPOSITION

Respondents State Bar of California and California Committee of Bar Examiners respectfully submit that the petition for a writ of certiorari should be denied.

OPINIONS BELOW

The court of appeals' opinion (Pet. App. 4a-8a) is not reported in the Federal Reporter but is available at 2024 WL 4533446. The district court's opinion (Pet. App. 9a-36a) is reported at 497 F. Supp. 3d 526.

STATEMENT

Petitioner portrays (Pet. 4 n.5) this case as "a clean vehicle for resolving a well-defined procedural question." But his first question presented embeds multiple overlapping yet distinct issues, none of which warrants this Court's review. Petitioner principally asks this Court to hold that state sovereign immunity cannot be raised under Federal Rule of Civil Procedure 12(b)(1) as a jurisdictional bar at all. Every circuit rejects this position, and the petition asserts otherwise only by misreading the cases it cites and ignoring published decisions from the supposedly supporting circuits. Elsewhere, petitioner urges the Court to conclude that defendants cannot make a factual challenge to jurisdiction (with supporting evidence) based on sovereign immunity in a Rule 12(b)(1) motion. But in support petitioner cites only decisions that, in accord with the Ninth Circuit's unpublished decision in this case, *allowed* such factual challenges. Petitioner next seeks this Court's review of whether the district court should have dismissed his claim *without* prejudice—an issue he never raised in the Ninth Circuit. And the petition ends by inviting a constitutional showdown over

century-old precedents settling bedrock principles of state sovereign immunity. The petition should be denied.

The petition's promised series of multiple circuit splits is illusory. In his first pass at showing a split, petitioner contends (Pet. 1-2) that the Ninth Circuit and ten other circuits have broken from the Third and Seventh Circuits in holding that "sovereign immunity is jurisdictional" and reviewable under Rule 12(b)(1). But the Third and Seventh Circuits likewise characterize state sovereign immunity as "a jurisdictional bar" that deprives the district court of "subject matter jurisdiction." *Blanciak v. Allegheny Ludlum Corp.*, 77 F.3d 690, 693 n.2 (3d Cir. 1996); *accord Crosetto v. State Bar of Wisconsin*, 12 F.3d 1396, 1403 (7th Cir. 1993). The unanimity on this issue is unsurprising because *this* Court has held, time and again, that state sovereign immunity is a "jurisdictional bar." *Edelman v. Jordan*, 415 U.S. 651, 678 (1974). No court of appeals has adopted petitioner's contrary view that a defendant may seek dismissal based on state sovereign immunity only under Rule 12(b)(*6*), and no decision of this Court supports that position.

Petitioner's second conflict also vanishes under scrutiny. He contends (Pet. 4) that the courts of appeals disagree about whether, if sovereign immunity can be raised under Rule 12(b)(1), a defendant can bring a "factual" challenge to the court's jurisdiction or only a "facial" challenge limited to the complaint's own allegations. But neither case he cites as conflicting with the decision below placed factual challenges out of bounds for state sovereign immunity—indeed, one held the opposite. *National Association of the Deaf v. Florida*, 980 F.3d 763, 774-775 (11th Cir. 2020).

And once again the lack of lower-court precedent embracing petitioner's position is unsurprising given this Court's precedent. The Court has repeatedly held that a district court ascertaining its own jurisdiction is not confined to the complaint's four corners in determining jurisdictionally relevant facts, including facts central to sovereign immunity. For good reason: There is no sensible reason to let plaintiffs force a defendant clothed with sovereign immunity to engage in protracted litigation based on self-serving allegations of waiver that the defendant stands ready to disprove.

Petitioner next pivots to a putative circuit split concerning the still more picayune question whether the district court in this case should have dismissed without prejudice rather than with prejudice. But petitioner made no such argument below, so the Ninth Circuit's nonprecedential disposition did not address that issue, let alone cement any circuit conflict. This splitless issue neither pressed nor passed upon below does not warrant this Court's plenary review.

This petition is a poor vehicle many times over to resolve any of the issues petitioner now presses. The case is in an interlocutory posture, and proceedings on remand respecting petitioner's other claims could eclipse the questions presented. Petitioner's complaint also would be subject to dismissal even under the plausibility standard of Rule 12(b)(6) he advocates. His complaint offered only a threadbare, conclusory recital that the State Bar benefited from federal funding but alleged no facts concerning what federal financial assistance the State Bar supposedly received to support that conclusion.

As a last resort, petitioner urges this Court to overrule *Hans v. Louisiana*, 134 U.S. 1 (1890), and thereby wipe out more than a century of settled precedent and practice built upon it. Overruling any precedent is momentous, but petitioner's proposal to eliminate an entire "doctrine" of structural immunity (Pet. 33) would amount to an earthquake. Petitioner offers no plausible justification to upend such a long line of decisions.

1. Respondent State Bar of California is the "administrative arm" of the California Supreme Court "for the purpose of assisting in matters of admission and discipline of attorneys." *In re Rose*, 22 Cal. 4th 430, 438 (2000) (quoting *In re Attorney Discipline System*, 19 Cal. 4th 582, 599-600 (1998)); *see* Cal. R. Ct. 9.3(a). "Every person admitted and licensed to practice law in" California must be "a member of the State Bar except while holding office as a judge of a court of record." Cal. Const. Art. VI, § 9. Given the critical role of the State Bar under the California Constitution, California's three branches of government exert close control over the State Bar's functions in administering attorney admissions. The California Supreme Court, Legislature, and Governor appoint the Board of Trustees that governs the State Bar. Cal. Bus. & Prof. Code §§ 6010, 6013.1, 6013.3, 6013.5. The California Supreme Court has approved the rules proposed by the State Bar as to attorney admissions, including rules addressing the granting of testing accommodations during the bar exam for applicants with disabilities. Cal. R. Ct. 9.5; *see* Cal. Bar R. 4.80-4.92.

Respondent Committee of Bar Examiners is a body within the State Bar that oversees the California bar exam and bar admissions. Cal. Bus. & Prof. Code §§ 6046,

6046.5, 6060(g). The Committee "is responsible for determining the bar examination's format, scope, topics, content, questions, and grading process, subject to review and approval by the Supreme Court." Cal. R. Ct. 9.6(a). A person who is aggrieved by an admissions decision may petition the California Supreme Court for review. Cal. R. Ct. 9.3, 9.13(d); *see Konigsberg v. State Bar of California*, 353 U.S. 252, 254 (1957) (observing that "the California Supreme Court exercises original jurisdiction" in reviewing "actions of the Committee of Bar Examiners").*

2. In 2018, petitioner began seeking to become licensed to practice law in California. Petitioner suffers from multiple medical conditions, including autism, vision disorders, and digestive difficulties. Pet. 6. This litigation stems from accommodations he requested in taking the bar exam.

a. The State Bar granted petitioner a number of accommodations for bar exams starting in July 2018. Those accommodations included double the amount of time to take the bar exam; the ability to use a computer to type his answers instead of handwriting them; permission to bring certain specialized ergonomic equipment; and a semi-private room to take the test. C.A. Doc. 66, at 6 (Sept. 12, 2022). With those accommodations, petitioner took and failed the July 2018, February 2019, and February 2020 bar exams. Pet. App. 11a.

* As a "public corporation," the State Bar "may sue and be sued." Cal. Bus. & Prof. Code § 6001(a)-(b). But no state law grants the Committee of Bar Examiners the capacity to sue or be sued. See Fed. R. Civ. P. 17(b). The Committee is simply part of the State Bar. Cal. Bus. & Prof. Code § 6046. This brief refers to respondents collectively as the State Bar.

b. In advance of the October 2020 bar exam, petitioner filed this action against respondents State Bar of California and the Committee of Bar Examiners. D. Ct. Doc. 1, at 2 (July 18, 2020). Petitioner invoked the Americans with Disabilities Act (ADA), 42 U.S.C. § 12131 *et seq.*, Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, and the Unruh Act, Cal. Civ. Code § 51. D. Ct. Doc. 1, at 17-21.

Petitioner immediately moved for a preliminary injunction to compel the State Bar to grant him additional accommodations for the October 2020 exam, including 150% extra time on the written sections of the bar exam; the ability to spread that additional time over extra exam days; special ergonomic equipment supplied at the State Bar's expense; assignment of "[s]pecialized disability proctors"; and "30 minutes of break time per 90 minutes of testing" on top of the additional exam time. C.A. S.E.R. 83 (Doc. 67). The district court denied the motion as unripe because the Committee of Bar Examiners had not yet acted on petitioner's accommodation requests for the October 2020 exam. *Id.* at 78-81.

The Committee subsequently granted in part petitioner's requests for October 2020, giving him 150% extra time, the ability to take the exam over six days, and a semi-private room as a precaution during the COVID-19 pandemic. C.A. E.R. 315-316 (Doc. 35). Petitioner moved again for a preliminary injunction requiring the State Bar to provide additional accommodations. Among other things, he sought to compel the State Bar "to provide [a] complete ergonomic workstation (including $1,500 chair, motorized adjustable sit-to-stand workstation, adjustable laptop stand, external

keyboard, [and] neck and torso braces)," and to pay for his expected "seven-night hotel stay." C.A. S.E.R. 40-41 (citation omitted); *see id.* at 70-73.

The district court denied petitioner's renewed preliminary-injunction motion on the merits. C.A. S.E.R. 31-38. The court agreed with the State Bar that petitioner's "remaining requested accommodations are so expansive and inconsistent that they raise questions concerning whether they are reasonable or whether they fundamentally alter the administration of the Bar Exam." *Id.* at 36. The court was unwilling to say that "the multiple accommodations already granted by the [Committee] are insufficient to meet the ADA's reasonable accommodation standard." *Id.* at 37. Petitioner took and passed the October 2020 bar exam with the accommodations that the Committee had approved. Pet. 10.

c. Meanwhile, petitioner filed an amended complaint, again invoking the ADA, Rehabilitation Act, and Unruh Act. C.A. E.R. 302-304. The amended complaint included an unelaborated allegation that the State Bar "benefit[s] from federal funding" and is "therefore bound by the ADA to provide reasonable testing accommodations to disabled people." *Id.* at 287.

The State Bar moved to dismiss the complaint under both Rule 12(b)(1) and 12(b)(6). C.A. E.R. 60-93. The State Bar asserted state sovereign immunity as an arm of California. *Id.* at 79-80. Although the receipt of federal financial assistance can waive sovereign immunity under the Rehabilitation Act, the State Bar argued that dismissal was warranted because petitioner had "plead[ed] no facts" to support his conclusory allegation "that the State Bar 'benefit[s] from federal funding.'" *Id.* at 89

(quoting *id.* at 287). The State Bar further submitted a declaration from its chief financial officer, who stated that, "[t]o the best of [his] knowledge, the State Bar of California does not receive any funding from the United States federal government" and attached the State Bar's 2020 budget. *Id.* at 96; *see id.* at 99-245. As the State Bar explained, the district court could "review evidence beyond the complaint" in resolving its "factual" challenge to subject-matter jurisdiction. *Id.* at 89 n.7.

Petitioner did not dispute that his amended complaint pleaded no facts as to how the State Bar benefited from federal funds. C.A. S.E.R. 24-25. And he neither contested the accuracy of the assertion in the State Bar's declaration that the State Bar did not itself receive any federal financial assistance nor sought leave to develop or to submit evidence of his own. *Id.* at 25. Instead, petitioner argued only that the district court could take judicial notice that "the State of California as a whole receives and benefits from federal funding." *Ibid.*

d. The district court dismissed petitioner's amended complaint with prejudice, including as to the Rehabilitation Act. Pet. App. 9a-38a. The court determined that the State Bar was an arm of California and therefore shared in the State's sovereign immunity, and that it was not a "program or activity receiving Federal financial assistance" that had thereby waived its immunity. *Id.* at 34a (quoting 29 U.S.C. § 794(a)); *see id.* at 20a. The court observed that petitioner had "not produced any evidence that might rebut [the State Bar's] declaration" that it had not received federal financial assistance. *Id.* at 34a. The court noted that petitioner instead fell back on the argument "that because the State Bar is an instrumentality of the State of

California and the State receives federal funds, the State Bar must also receive federal funds." *Ibid.* The court rejected that argument as "incorrect" under a "plain reading" of the Rehabilitation Act, which required petitioner to show that the State Bar itself "receives federal funds." *Id.* at 34a-35a.

3. Petitioner appealed from the order dismissing his complaint. Following oral argument before a three-judge panel, the Ninth Circuit voted sua sponte to hear petitioner's appeal en banc. 75 F.4th 985 (9th Cir. 2023). The en banc court affirmed the district court's determination that the State Bar is an arm of California entitled to state sovereign immunity under this Court's precedent. 87 F.4th 1021, 1030-1038 (9th Cir. 2023) (en banc). The en banc court then remanded the appeal to the original three-judge panel for consideration of the remaining issues that petitioner had raised. *Id.* at 1038. Petitioner sought review in this Court of the Ninth Circuit's arm-of-the-state decision, which the Court denied. 144 S. Ct. 1465 (2024) (No. 23-6922).

4. Following the en banc decision and this Court's denial of review, a three-judge panel remanded for further proceedings on petitioner's ADA and Unruh Act claims while affirming the dismissal of his Rehabilitation Act claim.

a. In a published opinion, the Ninth Circuit remanded for the district court to decide in the first instance whether Title II of the ADA could constitutionally abrogate the State Bar's sovereign immunity under this Court's decision in *United States v. Georgia*, 546 U.S. 151 (2006). 119 F.4th 693, 699-700 (9th Cir. 2024).

b. In a concurrently filed unpublished memorandum, the Ninth Circuit unanimously affirmed the dismissal of petitioner's Rehabilitation Act claim and

vacated the dismissal of the Unruh Act claim. Pet. App. 4a-8a. The court explained that the State Bar would have waived its sovereign immunity under the Rehabilitation Act only if it received funds for the specific "program" at issue in this case. *Id.* at 5a. It further explained that, because the State Bar had presented evidence "that it does not receive federal funding," petitioner had to provide evidence "'to satisfy [his] burden of establishing subject matter jurisdiction'" over the State Bar. *Ibid.* (quoting *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004)). Petitioner, however, had "offer[ed] no factual basis to support his assertion that the State Bar is a 'program or activity' receiving federal financial assistance, directly or indirectly." *Ibid.* The court of appeals further held that the district court could not have abused its discretion in "failing to afford [petitioner] an opportunity for jurisdictional discovery" because petitioner had "never requested such discovery." *Ibid.*

5. The Ninth Circuit denied rehearing en banc without a request for a poll. Pet. App. 2a.

REASONS FOR DENYING THE PETITION

The petition meets none of this Court's criteria for granting certiorari. Petitioner does not seek review of any substantive issue of sovereign immunity, a question on which he unsuccessfully sought review before but now abandons. Pet. 1 n.1; *see* p. 9, *supra*. Instead, petitioner purports to have uncovered three circuit conflicts—on one terse page of an unpublished decision—concerning procedural issues of how immunity is litigated. Pet. App. 5a. But the Ninth Circuit's conclusion that the district court properly considered a factual state-sovereign-immunity challenge to jurisdiction

under Rule 12(b)(1) does not conflict with any decision of any other court of appeals. And the Ninth Circuit had no occasion to consider the separate, case-specific procedural question petitioner now asks this Court to decide—whether the dismissal of his complaint should have been without prejudice—because petitioner never raised that distinct issue on appeal. The Ninth Circuit's nonprecedential disposition is in line with decisions of this Court and other courts of appeals. And even if those questions otherwise warranted review, this case would be a poor vehicle to address them.

Petitioner's fallback bid for review to revisit *Hans v. Louisiana*, 134 U.S. 1 (1890)—a request this Court has repeatedly received and rejected—has even less to commend it. *Hans* has been firmly entrenched in this Court's precedent for more than a century and continually fortified by later decisions. Petitioner does not come close to making the extraordinary showing required even to entertain overturning it. Although the Court's *opinion* in *Hans* has met with criticism over the years, its core *conclusion* has become an uncontroversial cornerstone of this Court's case law that confirms States' immunity grounded in the Constitution's fundamental structure. Destabilizing that foundation would unfairly upset enormous and reasonable reliance interests that *Hans* has engendered. The petition should be denied.

I. THE DECISION BELOW AFFIRMING THE DISMISSAL OF PETITIONER'S CLAIM WITH PREJUDICE UNDER RULE 12(B)(1) DOES NOT WARRANT REVIEW

Petitioner seeks review of various procedural facets of the decision dismissing his claim based on the State Bar's sovereign immunity and rejecting his unsupported and disproven allegation that immunity was waived. He claims to have uncovered three circuit conflicts implicated by the Ninth Circuit's unpublished decision. But the

petition manufactures those splits by mischaracterizing or ignoring relevant cases. Every circuit has either considered state sovereign immunity under Rule 12(b)(1) or affirmed sovereign-immunity-based dismissals for lack of subject-matter jurisdiction. That includes the Third and Seventh Circuits, whose key decisions petitioner overlooks. Likewise, no circuit has held that factual challenges to jurisdiction are off limits for state sovereign immunity—including the Fourth and Eleventh Circuits, whose decisions petitioner misdescribes. And the Ninth Circuit did not even address the subject of petitioner's third supposed split because he never raised it: whether the dismissal below should have been without (not with) prejudice.

The consensus on the issues the Ninth Circuit's unpublished decision addressed makes perfect sense because it follows from this Court's precedent. The Court has repeatedly described state sovereign immunity as a jurisdictional (though waivable) bar, allowed factual Rule 12 challenges to jurisdiction, and encouraged resolution of sovereign immunity at the earliest opportunity. The decision below and other circuits' decisions faithfully implement those principles.

This petition is a poor vehicle in any event for addressing the questions petitioner raises. The case is at an interlocutory stage, and proceedings on remand could render those issues academic. Petitioner's argument that factual challenges based on sovereign immunity are impermissible at the pleading stage also would not change the outcome here. Even under a facial standard, the complaint is subject to dismissal because, among other reasons, the conclusory allegation that the State Bar benefits from federal funds is unsupported by any asserted facts.

A. Petitioner's Three Asserted Splits Are All Illusory

Petitioner purports to have stumbled upon three "nested splits" implicated by the dismissal of his claim on sovereign-immunity grounds under Rule 12(b)(1). Pet. ii (emphasis omitted). But he does not establish any disagreement as to (1) the proper procedural vehicle for raising state sovereign immunity; (2) the availability of factual challenges under Rule 12; or (3) the labeling of such dismissals as with or without prejudice. There is no genuine conflict on any issue, and petitioner misreads multiple cases in trying to show otherwise.

1. The Ninth Circuit allows defendants to raise state sovereign immunity under Rule 12(b)(1). *E.g.*, *Savage v. Glendale Union High School District*, 343 F.3d 1036, 1039 n.2 (9th Cir. 2003). Petitioner concedes (Pet. 3-4 & n.4) that nine other circuits also hold that state sovereign immunity may be raised under Rule 12(b)(1). *See Valentin v. Hospital Bella Vista*, 254 F.3d 358, 363 (1st Cir. 2001); *T.W. v. New York Board of Law Examiners*, 996 F.3d 87, 91-92 (2d Cir. 2021); *Kadel v. North Carolina State Health Plan for Teachers & State Employees*, 12 F.4th 422, 428 (4th Cir. 2021); *Block v. Texas Board of Law Examiners*, 952 F.3d 613, 616-617 (5th Cir. 2020); *Skatemore, Inc. v. Whitmer*, 40 F.4th 727, 731-732 (6th Cir. 2022); *Montin v. Moore*, 846 F.3d 289, 292-293 (8th Cir. 2017); *Hennessey v. University of Kansas Hospital Authority*, 53 F.4th 516, 527 (10th Cir. 2022); *National Association of the Deaf v. Florida*, 980 F.3d 763, 774-775 (11th Cir. 2020); *Tegic Communications Corp. v. University of Texas System*, 458 F.3d 1335, 1338-1339 (Fed. Cir. 2006). The D.C. Circuit also

agrees. *Schindler Elevator Corp. v. Washington Metropolitan Area Transit Authority*, 16 F.4th 294, 302-303 (D.C. Cir. 2021).

Petitioner contends (Pet. 17) that the Third and Seventh Circuits have strayed from the pack in holding that district courts may dismiss based on state sovereign immunity only under Rule 12(b)(6). But he is wrong about both: The Third and Seventh Circuit agree that state sovereign immunity limits subject-matter jurisdiction.

Petitioner first points (Pet. 3 n.3) to *Nails v. Pennsylvania Department of Transportation*, 414 F. App'x 452 (3d Cir. 2011) (per curiam). There, the Third Circuit noted that the state-agency defendant had moved to dismiss a pro se complaint under Rule 12(b)(6), and the court affirmed the dismissal as plainly barred by state sovereign immunity. *Id.* at 454-455. But the Third Circuit there did not address whether Rule 12(b)(1) or Rule 12(b)(6) is the proper vehicle to raise state sovereign immunity—an issue neither party raised and that made no difference to the disposition of the appeal. *See id.* at 453-455. *Nails*, moreover, was an unpublished decision lacking precedential force, and the Third Circuit's *published* decisions (before and since *Nails*) hold that "the Eleventh Amendment is a jurisdictional bar which deprives federal courts of subject matter jurisdiction" and should be raised by "a motion to dismiss the complaint for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1)." *Blanciak v. Allegheny Ludlum Corp.*, 77 F.3d 690, 693 n.2 (3d Cir. 1996); *see, e.g.*, *In re Avena*, 92 F.4th 473, 478 (3d Cir. 2024) (applying Rule 12(b)(1) to federal sovereign immunity, which also restricts "subject-matter jurisdiction"). Petitioner is wrong to

assert that "sovereign immunity is reviewed under Rule 12(b)(6)" in the Third Circuit. Pet. 17.

Petitioner also invokes (Pet. 3 n.3) *Meyers v. Oneida Tribe of Indians of Wisconsin*, 836 F.3d 818 (7th Cir. 2016), but it likewise establishes no conflict. In *Meyers*, the Seventh Circuit noted in a passing dictum that "the question of sovereign immunity is not a jurisdictional one" before holding that consideration of sovereign immunity could be sequenced before Article III standing under *Sinochem International Co. v. Malaysia International Shipping Corp.*, 549 U.S. 422 (2007). 836 F.3d at 822-823. But *Meyers* did not address petitioner's questions presented concerning Rule 12—whether sovereign-immunity-based dismissals can be raised under Rule 12(b)(1) and whether "factual challenges" to sovereign-immunity waivers are permissible. Pet. ii. And it dealt not with state sovereign immunity, which is grounded in the Constitution, but *tribal* sovereign immunity, a "common-law immunity from suit." 836 F.3d at 823 (quoting *Michigan v. Bay Mills Indian Community*, 572 U.S. 782, 788 (2014)). The Seventh Circuit treats *state* sovereign immunity as "one of the Constitution's unavoidable *jurisdictional* hurdles." *Driftless Area Land Conservancy v. Valcq*, 16 F.4th 508, 520 (7th Cir. 2021) (emphasis added; brackets omitted) (quoting *Crosetto v. State Bar of Wisconsin*, 12 F.3d 1396, 1400 (7th Cir. 1993)).

Crosetto in fact is a carbon copy of this case: The Seventh Circuit held there that the district court should dismiss claims "against the Wisconsin State Bar for lack of subject matter jurisdiction" if it is an arm of state, 12 F.3d at 1403—as the Ninth Circuit held the State Bar of California is in an earlier decision in this litigation,

which this Court previously declined to review, see p. 9, *supra*. Petitioner does not seek to revisit that issue now; to the contrary, he intentionally relinquishes the arm-of-the-state issue in this Court. Pet. 1 n.1. The Ninth Circuit's decision here thus fully aligns with Seventh Circuit precedent. For the same reason, there is no basis or need to hold the petition pending this Court's decision next Term in *Galette v. New Jersey Transit Corp.*, No. 24-1021 (cert. granted July 3, 2025). The petition presents only procedural questions that take as given that the State Bar is an arm of California.

2. Petitioner's second asserted split fares no better. He argues (Pet. 4) that, in conflict with the Ninth Circuit's nonprecedential decision here, the Fourth and Eleventh Circuits have held that defendants can raise "only facial challenges under Rule 12(b)(1)" and cannot submit evidence to challenge factual allegations concerning state sovereign immunity. But neither case he cites (Pet. 25) for this proposition, *Balfour Beatty Infrastructure, Inc. v. Mayor & City Council of Baltimore*, 855 F.3d 247 (4th Cir. 2017), and *National Association of the Deaf*, 980 F.3d 763, creates any conflict with the decision below or Ninth Circuit precedent.

Balfour involved "exhaustion of administrative remedies," not sovereign immunity. 855 F.3d at 251. There, the Fourth Circuit allowed the defendant to go outside the complaint's allegations, and it affirmed the dismissal for failure to exhaust based on "undisputed record facts." *Ibid.* It is unclear why petitioner finds *Balfour* to be helpful to his position: A decision holding that district courts can consider record evidence for Rule 12(b)(1) motions raising exhaustion does not conflict with decisions holding that district courts also can consider record evidence for

Rule 12(b)(1) motions raising sovereign immunity. That is why the Fourth Circuit elsewhere has considered factual challenges under Rule 12(b)(1) concerning sovereign immunity. *E.g.*, *Kadel*, 12 F.4th at 428.

The Eleventh Circuit's decision in *National Association of the Deaf* likewise does not conflict with the decision below. That case did not forbid factual challenges based on sovereign immunity in Rule 12 motions. Indeed, petitioner concedes (Pet. 25) that other Eleventh Circuit precedent *permits* "sovereign immunity invocations as factual challenges under Rule 12(b)(1)." The Eleventh Circuit in *National Association of the Deaf* simply upheld the denial of such a challenge to allow the plaintiff the opportunity for discovery: The district court, the court of appeals concluded, did not "abus[e] its discretion" in allowing the plaintiffs "jurisdictional discovery" before it would credit the defendant's affidavit stating that it did not receive federal funding. 980 F.3d at 775-776. That ruling presupposes that factual challenges based on sovereign immunity *are* permissible. And in this case, petitioner did not take discovery because he did not ask. As the Ninth Circuit noted, petitioner "never requested such discovery," so the district court necessarily did not "abuse its discretion" in crediting the State Bar's uncontested affidavit. Pet. App. 5a. Petitioner now seeks (Pet. 2 n.2) to fault his own former counsel for that strategic decision not to request discovery. But that highly factbound contention flouts the foundational principle of "our system of representative litigation" that "each party is deemed bound by the acts of his lawyer-agent." *Link v. Wabash Railroad Co.*, 370 U.S. 626, 634 (1962). And that case-specific grievance is neither tethered to the question presented nor certworthy.

Petitioner, in short, has identified no conflict on whether a district court can consider factual challenges premised on sovereign immunity—as it can in considering other jurisdictional defects—under Rule 12. Whether sovereign immunity is akin to subject-matter jurisdiction for all *other* purposes (Pet. 19-22) is immaterial.

3. Petitioner does not and cannot show that the Ninth Circuit's decision creates a conflict on whether dismissal under Rule 12(b)(1) based on sovereign immunity should be without prejudice. Although he cites (Pet. 26) two decisions stating that such dismissals should be without prejudice, *Dupree v. Owens*, 92 F.4th 999, 1007-1008 (11th Cir. 2024); *Mitchell v. Bailey*, 982 F.3d 937, 944 (5th Cir. 2020), the Ninth Circuit here did not hold otherwise. Its unpublished memorandum said nothing about whether the dismissal should have been with or without prejudice because petitioner did not raise that issue below. Pet. App. 4a-8a; *see* C.A. Doc. 36, at 33-37 (Apr. 8, 2022); C.A. Doc. 81, at 21-25 (Nov. 24, 2022). He argued only that the district court abused its discretion by not granting leave to amend—an issue separate from whether a dismissal is with prejudice, *see* pp. 28-29, *infra*—because he supposedly could plead a viable theory that the State Bar received federal financial assistance. C.A. Doc. 81, at 28-29. This Court should not grant review to resolve a nonexistent conflict on an issue petitioner deemed insufficiently important to raise below.

B. The Decision Below Is Correct

Petitioner also fails to identify any error in the unpublished decision below. The Ninth Circuit would have defied this Court's decisions if it had treated sovereign immunity as a mere merits defense. The court of appeals complied with this Court's

decisions allowing factual challenges to jurisdiction under Rule 12. And the Ninth Circuit had no obligation to raise spontaneously whether the dismissal of his claim should have been without rather than with prejudice.

1. The Ninth Circuit's consideration of state sovereign immunity under Rule 12(b)(1) accords with this Court's repeated recognition that sovereign immunity operates as a "withdrawal of jurisdiction," not as "merely a defense to liability." *Puerto Rico Aqueduct & Sewer Authority v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 144-145 (1993). Chief Justice Marshall explained for the Court two centuries ago that the principle that "a sovereign independent State is not suable, except by its own consent," is an "[un]controverted" limitation on the Article III judicial power. *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 380 (1821). The possibility that federal courts would take "cognizance" of actions against unconsenting States simply "was not contemplated by the constitution when establishing the judicial power of the United States." *Hans v. Louisiana*, 134 U.S. 1, 15 (1890). And "cognizance" and "jurisdiction" in this context are synonyms. *John R. Sand & Gravel Co. v. United States*, 552 U.S. 130, 136 (2008). Put succinctly, the sovereign-immunity "question is one of jurisdiction," as the Court has long held for suits against the United States. *Haycraft v. United States*, 89 U.S. (22 Wall.) 81, 92 (1875).

In more recent cases, this Court has consistently described state sovereign immunity as a "jurisdictional bar." *Edelman v. Jordan*, 415 U.S. 651, 678 (1974). That bar principally sounds in subject-matter jurisdiction because it restricts federal courts' "power to decide certain claims against States that otherwise would be within

the scope of Art. III's grant of jurisdiction." *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 119-120 (1984); *see, e.g.*, *Principality of Monaco v. Mississippi*, 292 U.S. 313, 330 (1934). This Court has also confirmed that the "background principle of state sovereign immunity," in addition to the Eleventh Amendment itself, "restricts the judicial power under Article III" over the subject matter of "suits by private parties against unconsenting States." *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 72-73 (1996).

That States can waive sovereign immunity does not alter the Rule 12 analysis. Although a defendant's consent ordinarily does not create subject-matter jurisdiction, sovereign immunity is different. State sovereign immunity is hardly alone on this score. Under principles of federal sovereign immunity, "the United States may not be sued without its consent," and "the existence of consent is a prerequisite for jurisdiction." *FDIC v. Meyer*, 510 U.S. 471, 475 (1994) (citation omitted). And the Foreign Sovereign Immunities Act "pegs both subject-matter and personal jurisdiction" over foreign sovereigns to "exceptions" from the default rule of immunity, *CC/Devas (Mauritius) Ltd. v. Antrix Corp.*, 145 S. Ct. 1572, 1578 (2025)—including when "the foreign state has waived its immunity either explicitly or by implication," 28 U.S.C. § 1605(a)(1).

It could be (and has been) argued that state sovereign immunity is partially a function of personal rather than subject-matter jurisdiction. In *Wisconsin Department of Corrections v. Schacht*, 524 U.S. 381 (1998), the Court noted that it had not decided whether state sovereign immunity "is a matter of subject-matter jurisdiction"

for a specific purpose: the applicability of the mandatory-remand rule when a district court lacks jurisdiction over a removed case. *Id.* at 391. In a concurrence, Justice Kennedy posited that state sovereign immunity, like foreign sovereign immunity, has a "hybrid nature": It "can be waived" like personal jurisdiction, but in other ways it functions as a "limit on the federal courts' subject-matter jurisdiction." *Id.* at 394. Others have distinguished the Eleventh Amendment's textual prohibition on extending the judicial power to suits brought against "one of the United States by Citizens of another State," U.S. Const. Amend. XI, from States' broader immunity under the "Constitution's structure," *Alden v. Maine*, 527 U.S. 706, 713 (1999). On that view, "[s]tructural immunity sounds in personal jurisdiction," while the Eleventh Amendment imposes an additional, nonwaivable limit on subject-matter jurisdiction. *Penn-East Pipeline Co. v. New Jersey*, 594 U.S. 482, 510 (2021) (Gorsuch, J., dissenting); *see, e.g.*, William Baude & Stephen E. Sachs, *The Misunderstood Eleventh Amendment*, 169 U. Pa. L. Rev. 609, 625 (2021) (Baude & Sachs); Caleb Nelson, *Sovereign Immunity as a Doctrine of Personal Jurisdiction*, 115 Harv. L. Rev. 1559, 1617 (2002) (Nelson).

But that theoretical debate has no bearing on *this* case. Whether state sovereign immunity is more akin to subject-matter jurisdiction under Rule 12(b)(1) or personal jurisdiction under Rule 12(b)(2) is immaterial to petitioner's meritless contention (Pet. 19) that sovereign immunity is a garden-variety "affirmative defense" on the merits that can be addressed only under Rule 12(b)(6). This Court's decisions make clear that sovereign immunity operates as a "withdrawal of jurisdiction," not as "merely a defense to liability." *Puerto Rico Aqueduct*, 506 U.S. at 144-145; *cf.*

Mowrer v. Department of Transportation, 14 F.4th 723, 742 n.8 (D.C. Cir. 2021) (Katsas, J., concurring) ("to the degree that sovereign immunity is unlike personal jurisdiction, it is instead like subject-matter jurisdiction"). But whether sovereign-immunity limits on jurisdiction are best addressed under Rule 12(b)(1) or instead under Rule 12(b)(2), the answer is not Rule 12(b)(6).

2. The Ninth Circuit also did not err in affirming dismissal based on the State Bar's factual sovereign-immunity challenge to jurisdiction under Rule 12(b)(1). This Court has long held that, when "jurisdictional facts are challenged," the plaintiff "must support them by competent proof." *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936). Shortly after Rule 12(b)'s promulgation, the Court reiterated that, "when a question of the District Court's jurisdiction is raised," then "the court may inquire by affidavits or otherwise, into the facts as they exist." *Land v. Dollar*, 330 U.S. 731, 735 n.4 (1947). The Court thus has considered factual challenges to both subject-matter jurisdiction under Rule 12(b)(1), *e.g.*, *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 537-538 (1995), and personal jurisdiction under Rule 12(b)(2), *e.g.*, *Daimler AG v. Bauman*, 571 U.S. 117, 123-124 (2014). *See also* 5B Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* §§ 1350-1351 (4th ed. 2025 update) (Wright & Miller).

Petitioner contends (Pet. 23-24) that factual challenges to jurisdiction under Rule 12(b)(1) are "generally impermissible" under *Bell v. Hood*, 327 U.S. 678 (1946), unless the jurisdictional allegations are "'clearly frivolous.'" But *Bell* did not involve a factual challenge to jurisdiction. Instead, *Bell* reaffirmed the general rule that a

meritless claim should be dismissed on the merits. 327 U.S. at 682. *Bell* simply recognized a narrow exception that a federal-court suit "may sometimes be dismissed for want of jurisdiction" when its federal-law claims are "wholly insubstantial and frivolous." *Id*. at 682-683. As petitioner admits (Pet. 24), *Bell* did not remotely address sovereign immunity and does not establish that the Ninth Circuit erred in any respect.

Petitioner cites no decision of this Court holding that sovereign immunity is an exception to the general rule that district courts may consider factual challenges to jurisdiction under Rule 12. The Court's decisions show the opposite. For example, in *Bolivarian Republic of Venezuela v. Helmerich & Payne International Drilling Co.*, 581 U.S. 170 (2017), a party invoked *Bell* for the proposition that jurisdiction exists under the Foreign Sovereign Immunities Act so long as "a plaintiff can make a nonfrivolous argument that a federal law provides the relief he seeks—even if, in fact, it does not." *Id.* at 183-184. This Court rejected the *Bell* analogy because allowing "nonfrivolous argument[s]" to defeat foreign sovereign immunity would deprive sovereigns of "protection from the inconvenience of suit." *Ibid.* (citation omitted). This Court also held that, to the extent a "matter requires resolution of factual disputes, the court will have to resolve those disputes," and the court "should do so as near to the outset of the case as is reasonably possible" to protect foreign sovereigns. *Id.* at 187. Those same considerations favor early resolution of any factual disputes concerning state sovereign immunity, which exists "to prevent the indignity of subjecting

a State to the coercive process of judicial tribunals at the instance of private parties." *Puerto Rico Aqueduct*, 506 U.S. at 146 (citation omitted).

Petitioner gestures (Pet. 26) at the rule that a district court should not decide a contested "question of jurisdiction" that "is dependent on decision of the merits." *Land*, 330 U.S. at 735. But that rule is inapplicable here. First, petitioner did not contest the State Bar's evidence that it had not received federal financial assistance, leaving no "contested facts" for a jury. *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006); *see* Pet. App. 5a. Second, there is no reason to forestall deciding a statute's jurisdictional element (here, receipt of federal funds) that does not define the substantive prohibition on discrimination. *E.g.*, *Gulf Oil Corp. v. Copp Paving Co.*, 419 U.S. 186, 202-203 (1974). The federal Constitution preserves the State Bar's immunity. It would be perverse if Congress's recognition of constitutional limits on its own spending power could force the State Bar to litigate this case even if it did not actually receive federal funds.

This Court's decisions also do not impose on petitioner (or his amici) "the extraordinary burden of producing evidence before discovery to overcome a constitutional defense." Pet. 18; *accord* Disability Rights Br. 4-5. Although petitioner could have contested the State Bar's evidence or requested jurisdictional discovery, he chose not to do either. Pet. App. 5a. He instead stood on his allegations and the incorrect legal theory that the State Bar lacked immunity as long as California accepted federal funds for other purposes. *Id.* at 34a-35a. Petitioner may regret that

case-specific tactic now, but the Ninth Circuit did not overstep any limitation set by this Court as to the scope of a factual challenge concerning state sovereign immunity.

3. The Ninth Circuit also had no obligation to raise sua sponte a nonjurisdictional issue petitioner did not raise: whether the district court's dismissal with prejudice should have been without prejudice. *See BLOM Bank SAL v. Honickman*, 145 S. Ct. 1612, 1618 n.* (2025) (noting that party had not "appeal[ed] the 'with prejudice' aspect of the District Court's dismissal"). Petitioner does not contend that whether the dismissal was with or without prejudice bears on federal jurisdiction. Nor does he deny that the issue was neither pressed before nor passed upon by the Ninth Circuit. That issue is not properly before this Court.

Petitioner, moreover, misunderstands the with-prejudice label. That the district court dismissed his Rehabilitation Act claim with prejudice does not mean that it adjudicated the merits of that claim despite disclaiming jurisdiction to do so. The Federal Rules expressly say that a dismissal "for lack of jurisdiction" does not "operat[e] as an adjudication on the merits." Fed. R. Civ. P. 41(b). As the Ninth Circuit has recognized, the with-prejudice label "does not equate to an adjudication on the merits when the dismissal is for lack of jurisdiction." *Ruiz v. Snohomish County Public Utility District No. 1*, 824 F.3d 1161, 1168 (9th Cir. 2016). Instead, as this Court has explained, a dismissal with prejudice simply means that a plaintiff cannot "retur[n] later, to the same court, with the same underlying claim." *Semtek International Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 505 (2001). Because the district court did not decide the merits and had no occasion to decide the viability of any

future suit, the Ninth Circuit had no obligation to address (unprompted) the technicality of whether the district court should have dismissed without prejudice.

C. This Petition Is A Poor Vehicle

Even if any of the issues petitioner raises warranted review, there are multiple reasons why this case is not the right one to take to address them.

First, although petitioner touts (Pet. 33) the further proceedings the Ninth Circuit directed on remand for his ADA and Unruh Act claims as a reason to grant his petition, those proceedings are a further reason to *deny* review. The interlocutory nature of an appeal can "itself alone furnis[h] sufficient ground for the denial" of a petition. *Hamilton-Brown Shoe Co. v. Wolf Brothers & Co.*, 240 U.S. 251, 258 (1916); *see, e.g.*, *Harrel v. Raoul*, 144 S. Ct. 2491, 2492 (2024) (Thomas, J., respecting denial of certiorari). And in this case the risk that the question presented could be overtaken by forthcoming events is particularly acute. For example, the district court could hold (again) that, aside from sovereign immunity, petitioner has not stated a viable theory of discrimination under the ADA on the merits, which would be an independent basis to dismiss his derivative Rehabilitation Act claim. C.A. S.E.R. 36-37; *see also Gordon v. State Bar of California*, 2020 WL 5816580, at *6-7 (N.D. Cal. Sept. 30, 2020) (rejecting claim that in-person protocol for applicants taking exam with accommodations constituted disability discrimination).

Second, the basic question petitioner raises of whether state sovereign immunity bears on subject-matter jurisdiction has little practical import in this case. As discussed, if state sovereign immunity does not bear on subject-matter jurisdiction

under Rule 12(b)(1), it at least bears on personal jurisdiction under Rule 12(b)(2). *See* pp. 20-21, *supra*; *see also, e.g.*, *WCI, Inc. v. Ohio Department of Public Safety*, 18 F.4th 509, 514 n.3 (6th Cir. 2021). And defendants can go beyond the complaint's allegations in challenging personal jurisdiction through a Rule 12(b)(2) motion. Wright & Miller § 1351 nn.37-40; *see, e.g.*, *Daimler*, 571 U.S. at 123-124. The jurisdictional characterization of state sovereign immunity thus does not matter to whether factual challenges are allowed.

Third, whether the State Bar's sovereign immunity should be litigated under Rule 12(b)(1) or 12(b)(6) is ultimately irrelevant here. *Cf. Morrison v. National Australia Bank Ltd.*, 561 U.S. 247, 254 (2010) (remand "unnecessary" when result would be "a new Rule 12(b)(6) label for the same Rule 12(b)(1) conclusion"). The complaint is devoid of a single factual allegation that the State Bar "receiv[ed] Federal financial assistance." 29 U.S.C. § 794(a). Petitioner alleged only (without elaboration) that the State Bar "benefit[s] from federal funding." C.A. E.R. 287. But "speculation" is "not enough," "even on a motion to dismiss." *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 145 S. Ct. 1556, 1568 (2025). Absent supporting factual allegations, a proper Rule 12(b)(6) analysis would disregard petitioner's "formulaic recitation of the elements of a cause of action." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). And petitioner did not even recite the correct formula: This Court has held that the Rehabilitation Act applies only when a defendant has "actually 'receive[d]' federal financial assistance"—not when a defendant "merely benefit[ed] from the aid." *Department of Transportation v. Paralyzed Veterans of America*, 477 U.S.

597, 605, 607 (1986). The complaint therefore would be subject to dismissal on its face under Rule 12(b)(6).

Petitioner now represents that, if granted leave to amend, he would allege facts to support *five new* potential theories of federal financial assistance. Pet. 11-12. He does not cite any authority to support the doubtful notion that those attenuated and loosely defined benefits—such as the use of federal courtrooms to host "attorney oath ceremonies" for newly admitted attorneys, or interest paid on attorney trust accounts invested in "federal securities" (*e.g.*, Treasury bonds), *ibid.*—qualify as "receiving Federal financial assistance." 29 U.S.C. § 794(a); *see Cummings v. Premier Rehab Keller*, 596 U.S. 212, 219 (2022) (holding that Congress can wield spending power over States only when "recipient voluntarily and knowingly accepts the terms of that 'contract'" (brackets and citation omitted)). More fundamentally, however, this Court should not grant review to decide the factbound, splitless question whether the denial of leave to amend fell outside the wide range of the district court's "sound discretion." *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 401 U.S. 321, 331 (1971). The district court in any event could not have abused its discretion because petitioner "never *asked* the [d]istrict [c]ourt" for leave to file an amended complaint with any of those allegations, *Rivers v. Guerrero*, 145 S. Ct. 1634, 1647 (2025), none of which surfaced until his reply brief on appeal, C.A. Doc. 81, at 28-29.

Fourth, this case is likewise a poor vehicle to explore whether the district court's dismissal of the Rehabilitation Act claim should have been without prejudice. Contrary to petitioner's suggestion (Pet. 26), the with-prejudice label attached to his

existing dismissal does not control any downstream question of preclusion. *Semtek*, 531 U.S. at 506.

Having identified no practical consequence from the with-prejudice label, petitioner seeks (Pet. 26-27) only leave to amend—which is a "separate concep[t]" per his own authority, *Brereton v. Bountiful City Corp.*, 434 F.3d 1213, 1219 (10th Cir. 2006). But the district court had no obligation to allow petitioner to amend jurisdictional allegations again; there must be an "end of litigation" even for subject-matter jurisdiction. *Durfee v. Duke*, 375 U.S. 106, 111 (1963) (citation omitted). In any event, that case-specific issue would not warrant this Court's review.

II. THE COURT SHOULD NOT GRANT REVIEW TO REVISIT *HANS V. LOUISIANA*

Petitioner tacks on a request, almost as an afterthought, that this Court overrule the "sovereign immunity doctrine established in *Hans*." Pet. 28. He seems to argue (Pet. ii, 31) that this Court should limit state sovereign immunity to classes of cases described in the Eleventh Amendment. The Court should not grant review of that question, which the Court has declined to revisit. Petitioner reprises stale critiques of *Hans* and does not face up to the enormous consequences of reconsidering such a significant precedent.

This Court has often and recently denied petitions seeking the overruling of *Hans*. *E.g.*, Pet. at 35, *Smith v. Kentucky*, 143 S. Ct. 213 (2022) (No. 22-91); Pet. at 6-12, *Nordberg v. Massachusetts Teachers' Retirement System*, 142 S. Ct. 2713 (2022) (No. 21-1232); Pet. at 31-35, *Rymer v. Lemaster*, 140 S. Ct. 234 (2019) (No. 19-96).

Petitioner does not identify any recent development that would warrant a different course here. Pet. 28-34. That alone should spell the end of petitioner's request.

In any event, granting review to consider overruling *Hans* is unwarranted. *Hans* is a "landmark case" that has guided a long line of decisions recognizing that the Constitution generally did not displace States' preexisting immunity from suit. *College Savings Bank v. Florida Prepaid Postsecondary Education Expense Board*, 527 U.S. 666, 669-670 (1999). This general rule of structural immunity has become uncontroversial at the Court, which has repeatedly and recently relied on *Hans* for the "structural understanding that States entered the Union with their sovereign immunity intact, unlimited by Article III's jurisdictional grant." *Virginia Office for Protection and Advocacy v. Stewart*, 563 U.S. 247, 253 (2011); *see, e.g.*, *PennEast*, 594 U.S. at 499; *Franchise Tax Board of California v. Hyatt*, 587 U.S. 230, 243 (2019). And any misgivings about the Court's *opinion* have been overtaken by widespread acceptance of its *result*. *Hans* did not rewrite the Eleventh Amendment, which sometimes serves as "convenient shorthand" "for the sovereign immunity of the States [that] neither derives from, nor is limited by, the terms of the Eleventh Amendment." *Alden*, 527 U.S. at 713. Even critics of the *Hans* opinion have defended its result as an original matter. *See, e.g.*, Baude & Sachs 619; Nelson 1612-1613.

Petitioner also hardly engages (Pet. 34) with the pertinent stare decisis factors that would guide this Court's decision whether to overrule *Hans* if that decision were wrongly decided. *See Janus v. State, County, and Municipal Employees*, 585 U.S. 878, 917 (2018). Later developments have only strengthened *Hans*'s conclusion that

Congress generally cannot abrogate state sovereign immunity. *E.g.*, *Federal Maritime Commission v. South Carolina Ports Authority*, 535 U.S. 743, 755-756 (2002); *Seminole Tribe*, 517 U.S. at 68-70. Over time, too, the principle of structural sovereign immunity *Hans* reflects has proven a predictable, workable principle. *See, e.g.*, *Allen v. Cooper*, 589 U.S. 248, 257-258 (2020). And States have weighty reliance interests—both dignitary and fiscal—in the continued vitality of that principle for themselves and their arms like the State Bar. *See Alden*, 527 U.S. at 715, 750; *Puerto Rico Aqueduct*, 506 U.S. at 146. Overruling *Hans* would uproot more than a century's worth of decisions. Petitioner has not come close to justifying that request.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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