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Justices Take the 11th

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Obscure amendment becomes federalism fodder for Supreme Court

BY RICHARD C. REUBEN

Until not long ago, the 11th Amendment with its barrier to some citizen suits in federal courts was a largely ignored provision of the U.S. Constitution. Those days may be coming to an end, however, as the Supreme Court has resurrected the dusty old amendment in its steady, if not always consistent, march toward a new federalism—or what some scholars are calling the "anti-federalist revival."

The justices have agreed to hear two 11th Amendment cases this term. One of them, Idaho v. Coeur d'Alene Tribe, No. 94-1474, could have a significant practical impact on civil rights claims brought under 42 U.S.C. § 1983, which broadly establishes the actions.

"While the 11th Amendment's jurisprudence has bumbled along, the Court has the opportunity here for a fairly significant development," says Larry Kramer, a former U.S. Supreme Court law clerk now teaching at New York University School of Law.

The 11th Amendment is a fine thread in the larger tapestry of American federalism but certainly a part of the deal the framers struck in creating the union. The amendment bars the federal courts from hearing lawsuits by citizens of one state seeking monetary damages from another state.

Nearly a century ago, however, the Supreme Court recognized, in Ex Parte Young, 209 U.S. 123 (1908), a significant exception, permitting plaintiffs to breach the 11th Amendment wall when seeking "prospective" injunctive relief from a continuing violation of their federal rights.

Since then, the Court's 11th Amendment jurisprudence has been sporadic. But the Rehnquist Court made it clear last term that it was taking the oft-overlooked amend-