No. 22O159, Original

In the
Supreme Court of the United States

STATE OF MISSOURI,

Plaintiff,

v.

STATE OF NEW YORK,

Defendant.

REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE BILL OF COMPLAINT AND IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION OR STAY

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I. Missouri Has Standing.

A. Depriving voters of election-related information creates Article III injury.

Federal Election Commission v. *Akins* is fatal to New York's standing argument. Under *Akins*, an "informational injury … directly related to voting" satisfies Article III. 524 U.S. 11, 24–25 (1998). New York all but ignores *Akins*, attempting to distinguish it in a footnote on the ground that *Akins* involved a "statutory entitlement" to information.

So what? *Akins* recognized an injury in being deprived of "information [that] would help [plaintiffs] (and others to whom they would communicate it) to evaluate candidates for public office," and the statute simply was why plaintiffs in fact had been deprived. *Id.*, at 21–22. Here, there is no dispute that the gag order and impending sentence suppress election-related information. As in *Akins*, so too here: Missouri citizens and electors are being deprived of information "directly related to voting." *Id.*, at 24–25. That is injury.

No stronger is New York's assertion that the interest in campaign speech is a "generalized grievance." *Akins* held the opposite. In the context of voting, an "informational injury" (just like a "mass tort") is "sufficiently concrete" even though "large numbers of voters suffer interference." *Ibid.*

Next, New York contends that the dispute between the States is abstract because the sentence is still forthcoming. This ignores that the gag order is

already in effect. New York notes (at 14) that the gag order permits Trump to criticize the judge and lead prosecutor, but does not dispute that the gag order chills or outright prohibits speech criticizing *other* Manhattan prosecutors (such as the former high-ranking Department of Justice attorney) or the judge for not recusing in light of the financial stake his daughter reportedly has in the trial's outcome.

New York tries to evade this problem by asserting that Missouri's citizens and electors are uninterested in these topics. Not so. Just the opposite. *E.g.*, A-17 ("I am especially interested in hearing Mr. Trump's perspective on what happened at his trial, how he was treated by the system, and why Missourians should vote for him. I am concerned that the current gag order will prevent me, and my fellow Missourians, from fully hearing his side of the story."); A-1 ("Hearing Mr. Trump's perspective on what happened at his trial, how he was treated by the system, and why I should still vote for him is very important to me. … I am afraid that the current gag order will prevent him from telling me his side of the story."). The gag order imposes clear injury.

As to the sentence, New York wrongly asserts that the dispute between the States is speculative. Sentencing will occur in about a month. Just as "an actual arrest, prosecution, or other enforcement action is not a prerequisite" to challenge a law's validity, Missouri can sue now because "there is a substantial risk that the harm will occur" soon. *Susan B. Anthony List* v. *Driehaus*, 573 U.S. 149, 158 (2014) (internal quotation marks omitted). When a person challenges a statute before enforcement, they speculate that they will face arrest and charges, but

they are allowed to sue anyway. Here, there is far less "speculation"; there has already been a conviction. Had Missouri waited until after sentencing, New York undoubtedly would complain that Missouri waited too long.

Finally, New York provides no support for its suggestion that a State suing as *parens patriae* must submit hundreds of declarations. Missouri submitted nine declarations from citizens and electors and a tenth explaining that the Attorney General's Office regularly receives complaints from citizens who are concerned that New York's activities will deprive them of campaign speech. No doctrine prohibits Missouri from relying on a representative sample of declarations. Indeed, New York's suggestion here that this suit involves the interests of only a few Missourians is hard to take seriously in light of New York's admission elsewhere (at 12–13) that the harms are "shared by 'a large number of citizens.'"

B. The actions are attributable to New York.

In a strange turn, New York asserts that the two States have no real dispute because the Manhattan DA is locally elected. That fails for many reasons.

First, the Manhattan DA plainly exercises state power, as evidenced by the caption of the case he brought, "The People of the State of New York v. Donald J. Trump."

Second, New York asserts (at 19) that precedent requires an action to be "endorsed by the State" as a whole "through, for example, a state statute." But every action taken by the Manhattan DA is taken "through … a state statute" or constitutional provision

empowering him. While New York (at 19) cites authority that a rogue official engaged in "maladministration of the laws" does not commit the State in its entirety to a "distinct collision with a sister state," here New York courts and statewide officials have publicly approved or endorsed the Manhattan DA's actions.

Third, New York ignores the purpose of original jurisdiction, which is to "resolve controversies between States that, if arising among independent nations, 'would be settled by treaty or by force.'" *South Carolina* v. *North Carolina*, 558 U.S. 256, 267 (2010). The question is not the nature of the elected official's constituency, but whether the dispute would be settled by diplomacy or force were Missouri and New York independent nations. This dispute plainly is. If a French official prosecuted the anticipated incoming head of state of England, France could not assuage international friction by noting that the prosecutor was elected locally.

Fourth, New York's argument proves too much. New York asserts (at 17) that there is a dispute between two States only if a decision is made by a statewide elected official, but then immediately notes that no official in New York possesses all executive authority. That authority is split between the "Attorney General, the Governor, and the Comptroller." Both the Manhattan DA and the Attorney General possess only a portion of executive power.

Indeed, New York's argument would gut original jurisdiction even in water rights cases. If a State can avoid original jurisdiction merely by acting through a locally elected official, then it could evade this Court's

review simply by delegating to a local official the decision of how much water to take from a shared river. *Contra Mississippi* v. *Tennessee*, 595 U.S. 15, 22 (2021) ("We granted Mississippi leave to file" in suit challenging water-withdrawal actions by "City of Memphis").

Finally, New York (at 21) faults Missouri for failing to identify existing precedent in a context like this one. But no State has ever criminally tried a former President, much less in the few months before the election in which that person is favored to win. Any lack of precedent is a mark against, not in favor of, New York.

II. No Other Forum Is Adequate.

New York does not deny that this Court has exclusive jurisdiction. It will not commit to the idea that Missouri could sue the Manhattan DA. Br.18, n.9. And other decisions make clear that Missouri would face extraordinary obstacles by trying to sue in federal district court. *E.g.*, *Safe Streets All.* v. *Hickenlooper*, 859 F.3d 865, 909–13 (CA10 2017); *Connecticut* v. *Cahill*, 217 F.3d 93, 105–12 (CA2 2000) (Sotomayor, J., dissenting). So New York instead asserts Missouri can obtain relief *indirectly* if Trump prevails in state court.

That argument ignores that Trump can assert only his own interests and that Missouri is certain to face irreparable harm before appellate review concludes. New York's reliance on *Arizona* v. *New Mexico*, 425 U.S. 794 (1976), is misplaced. New York says this Court declined leave to file a complaint because of a pending state-court case raising the same issue—but fails to mention that a party in the state-court case

was "a political subdivision of Arizona," *id.*, at 794, so "Arizona's interests were thus actually being represented by one of the named parties," *Maryland* v. *Louisiana*, 451 U.S. 725, 743 (1981). Not so here.[1]

The argument also fails to understand the *sui generis* nature of original jurisdiction, which is "a substitute for the diplomatic settlement of controversies between sovereigns and a possible resort to force." *Kansas* v. *Nebraska*, 574 U.S. 445, 454 (2015) (citation omitted). England would still have a dispute with France over a prosecution of England's incoming head of state even if prevailing in French courts would be possible. *Cf. Fed. Republic of Germany* v. *Philipp*, 592 U.S. 169, 184–85 (2021) (recognizing the "international discord" created by a court in one nation exercising jurisdiction over a person in another).

III. Missouri Is Likely to Succeed on the Merits.

A. *Younger* abstention does not apply.

This Court's obligation to exercise jurisdiction is "virtually unflagging," *Sprint Commun., Inc.* v. *Jacobs*, 571 U.S. 69, 77 (2013), yet New York insists this Court should abstain under *Younger* v. *Harris*,

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[1] Similarly, the part of *Massachusetts* v. *Missouri* cited by New York involved "claims against citizens of other States," 308 U.S. 1, 19–20 (1939), so the Court's jurisdiction was nonexclusive. *Mississippi* v. *Louisiana* simply relied on *Arizona*. 506 U.S. 73, 77 (1992). And *Illinois* v. *City of Milwaukee* said the alternate forum must have "jurisdiction over the named parties," 406 U.S. 91, 93 (1972), which New York courts lack here. None of New York's citations moves the needle.

401 U.S. 37 (1971). That is wrong for several reasons.

First, *Younger* applies only to a closed universe of "three" case categories. *Sprint*, 571 U.S., at 79. New York does not discuss these categories, let alone explain why any applies. And this Court has never extended *Younger* to original-jurisdiction cases. Indeed, *Maryland* v. *Louisiana* (while not expressly citing *Younger*) rejected Louisiana's argument that the Court should abstain because of pending state-court actions. 451 U.S., at 744. Despite those pending actions, Maryland raised "serious and important concerns of federalism fully in accord with the purposes and reach of our original jurisdiction." *Ibid.*

Second, *Younger* abstention applies only if "the moving party has an adequate remedy at law" in another forum, 401 U.S., at 43, which Missouri does not have given this Court's exclusive jurisdiction.

Third, *Younger* does not apply because Missouri is not a party to the underlying litigation in New York. New York tries to get around this problem by insisting that Missouri is asserting "third-party standing" on behalf of Trump. Br.25–26 (citing *Kowalski* v. *Tesmer*, 543 U.S. 125 (2004)). This again ignores the irreparable informational and associational injuries of Missouri voters and electors already discussed.

Finally, even if *Younger* were otherwise triggered, it does not apply when there are both "extraordinary circumstances" and "irreparable harm." *Younger*, 401 U.S., at 53. If ever a circumstance were "extraordinary," this is it. In 250 years, no State has attempted to press a nakedly political case against the

leading candidate for President to interfere with that candidate's campaign. This case raises significant constitutional questions that go to the heart of democracy at a time when American political considerations are at their zenith: the election is fewer than 100 days away.

B. The Anti-Injunction Act poses no bar.

No better is New York's passing attempt to invoke the Anti-Injunction Act, which fails for several reasons.

First, the Act applies only to federal-court injunctions that would be "otherwise proper under *general* equitable principles." *Atl. Coast Line R. Co.* v. *Bhd. of Locomotive Eng'rs*, 398 U.S. 281, 287 (1970) (emphasis added). Original actions do not rest on "general" equity. Rather, in original actions, "equitable powers assume an even broader and more flexible character than when only a private controversy is at stake." *See Kansas* v. *Nebraska*, 574 U.S., at 456 (citations omitted).

Second, this Court has declined to apply the Act to governmental parties absent a clear statement from Congress. For example, this Court squarely held that the "general language" of the Act is insufficient to bar an injunction when the United States is the plaintiff, because there is a critical difference between "a private party … seeking the stay" and a governmental party "seeking similar relief." *Leiter Minerals, Inc.* v. *United States*, 352 U.S. 220, 225 (1957).

So too here. Original jurisdiction is very different from a private suit. It is the remedy the Constitution promised to States in exchange for giving up their

right to engage in diplomacy and force. *Kansas* v. *Nebraska*, 574 U.S., at 454. Congress has no power at all to strip this Court of the remedy constitutionally promised to the States. Constitutional avoidance at least demands that Congress include exceedingly clear language.

Third, the Act does not apply where relief is "expressly authorized by [an] Act of Congress." 28 U.S.C. § 2283. Congress's grant of exclusive original jurisdiction satisfies this exception.

To satisfy that exception, "an Act of Congress must have created a specific and uniquely federal right or remedy, enforceable in a federal court of equity, that could be frustrated if the federal court were not empowered to enjoin a state court proceeding." *Mitchum* v. *Foster*, 407 U.S. 225, 237 (1972). Section 1983 satisfies this exception. *Id.*, at 242. Likewise, the federal-jurisdiction removal statute has "always been regarded as an exception." Wright & Miller, 17A Fed. Prac. & Proc. § 4224 (3d ed.). Original actions fit the same mold. They are a "unique[ ]" remedy promised to the States in exchange for their joining the Union, and they are enshrined by Congress in statute.

Fourth, the Act does not apply "where irreparable injury is 'both great and immediate,' … or where there is a showing of 'bad faith, harassment, or … other unusual circumstances that would call for equitable relief.'" *Mitchum*, 407 U.S., at 230 (collecting cases) (internal citations omitted). Here, New York's nakedly partisan attempt to criminally try the leading candidate for President is "extraordinary." And continued delay inflicts irreparable harm each day on

Missouri. *Cf. id.*, at 227 (relief where "inconclusive proceedings" in state court caused delay).

C. Missouri has stated a claim.

On the merits, New York does not deny that it violates the Constitution when a State interferes with the Presidential campaign of a major-party candidate by gagging and sentencing him. New York does not deny that *Clinton* v. *Jones* requires courts to consider how "the timing" of judicial action will affect the "office of the Chief Executive." 520 U.S. 681, 707 (1997). And New York does not deny that the same concerns extend beyond the office of the Presidency to the "context of a Presidential election" because, there, "state-imposed restrictions implicate a uniquely important national interest." *Trump* v. *Anderson*, 601 U.S. 100, 115–16 (2024) (citation omitted). Indeed, State interference with campaigns is in one respect worse because it creates a "patchwork" that could "dramatically change the behavior of voters, parties, and States across the country" and potentially "nullify the votes of millions and change the election result." *Id.*, at 116–17.

Instead, in a single paragraph (at 27), New York simply relies on its previous briefing to say that Missouri has not alleged interference with the ability of citizens or electors to vote. Because that argument fails for the reasons already stated, the Court should reject New York's single argument on Count I.

On Count II, New York fares no better. New York makes no attempt to dispute that its actions create significant voter confusion, that it has little hope of proving it timely brought its charges, and that it has little hope in prevailing on appeal. *Merrill* v.

Milligan, 142 S. Ct. 879, 888 (2022) (Kavanaugh, J., concurring) (stating these showings are needed to overcome the *Purcell* bar).

Instead, New York argues that Missouri has no election statute at issue, so *Purcell* is categorically irrelevant. But *Purcell* is not so limited. It applies to "[c]ourt orders affecting elections" because those orders "can themselves result in voter confusion and consequent incentive to remain away from the polls." *Purcell* v. *Gonzalez*, 549 U.S. 1, 4–5 (2006) (per curiam). New York's prosecution affects the election and creates voter confusion much more than a low-profile local challenge to an election statute. As explained in the opening brief (at 21), national publications are now writing about whether Trump can even run for President or how he could govern under restriction of a state-court sentence. If this Court has never extended *Purcell* to a context like this, it is because no State has ever prosecuted a major-party candidate in the months before a Presidential election.[2]

On Count III, New York again repeats its flawed argument that Missourians have no interest in hearing Trump speak on matters barred by the gag order. As already explained, New York's argument is refuted by the sworn declarations included in this suit.

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[2] While New York argues on standing that Missouri sued too early, on the merits New York asserts that Missouri sued too late. Neither is correct. New York cannot deny that Missouri sued in advance of sentencing and just one week after the trial court imposed the current gag order.

Even stranger is New York's assertion that the gag order defeats Missourians' interest in hearing this speech because New York courts "balanced" Trump's speech interest with an alleged interest in protecting the criminal proceeding. As already explained, there is no interest under *Clinton* and *Purcell* in a criminal proceeding before the election, and even if there were, that would not eliminate the interest Missourians have in hearing Trump's speech unencumbered.

IV. The Equities Favors Missouri.

After repeating its previous flawed arguments, New York finally argues (at 32) that Missourians have no interest in hearing Trump speak on concrete issues because Missourians can "readily access" the views of others. That stands the First Amendment on its head and fails to grapple with the sworn affidavits, which all express an interest in hearing directly from Trump himself. It is not for New York to decide what information is relevant to voters and electors.

Finally, New York's assertion that this complaint risks a "flood" of lawsuits betrays a lack of self-awareness. If there is any risk of a "flood" of litigation, it comes from New York's unprecedented decision to bring flimsy charges—widely recognized as nakedly partisan—against a former President for the first time in history. It is New York that has broken the dam, shifting the Overton window in a way that will encourage "every district attorney with a reckless mania for self-promotion" to do in the future what Alvin Bragg has done here. *Trump* v. *Vance*, 140 S. Ct. 2412, 2445 (2020) (Alito, J., dissenting). The only way to stop the "flood" is to put a stop to the obvious,

brazen attempt by New York to interfere in the Presidential election.

CONCLUSION

New York's unprecedented, unconstitutional prosecution should be thrown out. The Court should grant Missouri's motions.

July 31, 2024

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