No. 24-796

In the Supreme Court of the United States

MISSOURI, et al.,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

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

BRIEF FOR THE STATE OF MONTANA, 14 OTHER STATES, AND THE ARIZONA LEGISLATURE AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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QUESTIONS PRESENTED

Under Missouri law, state officials cannot use state resources to enforce certain federal laws. In response to a suit filed by the Federal Government challenging this law, the Eighth Circuit agreed Missouri has core Tenth Amendment authority to pass such a law. The court nonetheless struck down Missouri's law on the ground that Missouri's legislature enacted it for a forbidden "reason"—the legislature's belief that certain federal laws are unconstitutional.

The questions presented are:

1. Can federal courts second-guess a State's "reason" for exercising Tenth Amendment authority (as the Eighth Circuit held) or not (as other circuits hold)?

2. Does the Constitution prohibit States from exercising Tenth Amendment authority when motivated by a concern that a federal statute is unconstitutional?

3. Is a state official a proper defendant under *Ex parte Young* simply because the official is regulated by a statute (as the Eighth Circuit held), or does the official also need to possess authority to enforce the law (as other circuits hold)?

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INTRODUCTION AND INTERESTS OF *AMICI CURIAE*[1]

Wolfgang Pauli famously said a physics paper was "not even wrong." The expression has come to mean an idea dressed in the garb of science, but proceeding from false principles. Pseudoscience. The opinions below are similarly dressed in the garb of law, but they disregard or fail to grapple with this Court's controlling legal principles. Indeed, almost every aspect of the Eighth Circuit's opinion is foreclosed by this Court's cases, with the upshot of creating multiple circuit splits and infringing Missouri's sovereignty. Yet unlike the physics paper Professor Pauli could simply set aside and ignore, our system of vertical and panel precedent means the Eighth Circuit's opinion imposes real damage on the powers of seven states within its jurisdiction.

Amici are Missouri's sister states, both within and without the Eighth Circuit, and they all have a vital interest in ensuring that no state can be compelled to support federal activity in the absence of an express constitutional provision requiring them to do so.

BACKGROUND

As astute observers of politics and human behavior, the Founders contemplated Congress passing unconstitutional laws, as well as state legislatures resisting those encroachments. Alexander Hamilton wrote, for

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[1] Under Supreme Court Rule 37.2(a), counsel for *amici* timely notified counsel of record of their intent to file this brief. No counsel for a party authored this brief in whole or in part, and no person other than *amici* or their counsel contributed money intended to fund the preparation or submission of this brief.

example, that state legislatures would "constantly have their attention awake to the conduct of the national rulers, and will be ready enough, if any thing improper appears, to sound the alarm to the people." THE FEDERALIST NO. 26. Likewise, James Madison, who argued that state legislatures would "be ever ready to mark the [unconstitutional] innovation, to sound the alarm to the people." THE FEDERALIST NO. 44. Madison further contemplated states opposing such unconstitutional acts via "refusal to co-operate with the officers of the Union," "the frowns of the executive magistracy of the State," and "embarrassments created by legislative devices." THE FEDERALIST NO. 46.

Hamilton and Madison were prescient. Congress has a long history of passing acts that are likely unconstitutional. And the states have an equally-long history of opposing those acts.

Take the Sedition Act, a law passed in 1798 that restricted speech and was used to target out-of-power Democratic Republicans. Kentucky and Viriginia sought to marshal opposition through a series of resolutions urging that the Sedition Act was unconstitutional. The resolutions were controversial. *See generally* W. D. Moore, *Reconceiving Interpretive Autonomy: Insights from the Virginia and Kentucky Resolutions*, 11 CONST. COMMENT. 315 (1994). Defending the Virginia resolutions, Madison explained that "a declaration that proceedings of the Federal Government are not warranted by the constitution, is a novelty neither among the citizens nor among the legislatures of the states." J. Madison, Report of 1800 (Jan. 7, 1800) in 17 PAPERS OF JAMES MADISON 303 (D. Mattern, J.

Stagg, J. Cross, & S. Perdue eds. 1991). "The declarations in such cases, are expressions of opinion, unaccompanied with any other effect, than what they may produce on opinion, by exciting reflection." *Id.* "The expositions of the judiciary, on the other hand, are carried into immediate effect by force." *Id.* Although the Kentucky and Virigina resolutions ultimately did not alter the enforcement of the Sedition Act, they put down a historical marker for the constitutional interpretive authority of state legislatures.

The Sedition Act's speech restrictions were never tested in this Court, but Kentucky and Virginia "carried the day in the court of history." *N.Y. Times Co.* v. *Sullivan*, 376 U.S. 254, 276 (1964). Fines levied under the Act "were repaid by Act of Congress on the ground that it was unconstitutional." *Id.* And Thomas Jefferson "pardoned those who had been convicted and sentenced under the Act and remitted their fines, stating: 'I discharged every person under punishment or prosecution under the sedition law, because I considered, and now consider, that law to be a nullity, as absolute and as palpable as if Congress had ordered us to fall down and worship a golden image.'" *Id.* (quoting Letter to Mrs. Adams (July 22, 1804) *in* 4 Jefferson's Works, at 555, 556 (Washington ed.)).

* * *

This case arises from the United States suing Missouri for daring to exercise its own interpretive authority, just as the Founders contemplated.

In June 2021, the Missouri Governor signed the Second Amendment Preservation Act, ("SAPA"). As relevant here, SAPA declared that certain categories of "acts, laws, executive orders, administrative orders,

rules, and regulations shall be considered infringements on the people's right to keep and bear arms, as guaranteed by" the Second Amendment and the Missouri Constitution. Mo. Rev. Stat. §1.420. The statute further declares those acts "shall be invalid to this state, shall not be recognized by this state, shall be specifically rejected by this state, and shall not be enforced by this state," and declares that no "public officer or employee of [Missouri] or any political subdivision of [Missouri], shall have the authority to enforce or attempt to enforce" those acts. *Id.* §§1.430, 1.450. SAPA then provides a civil penalty and cause of action against "any political subdivision or law enforcement agency" in connection with violations of SAPA. *Id.* §§1.460, 1.470. Finally, the statute concludes with a severability clause. *Id.* §1.485.

Nearly six months later, the United States filed a complaint for declaratory and injunctive relief against the State of Missouri, its governor, and its attorney general. Count I asserted a cause of action under the Supremacy Clause, Count II for preemption, and Count III for intergovernmental immunity. Viewing SAPA as "an impermissible nullification attempt," the district court held that SAPA violates the Supremacy Clause, is preempted as in direct conflict with the National Firearms Act and Gun Control Act, and violates the doctrine of intergovernmental immunity. *United States* v. *Missouri*, 660 F. Supp. 3d 791 (W.D. Mo. 2023).

The district court held that SAPA "is invalidated as unconstitutional in its entirety as violative of the Supremacy Clause" and "is invalid, null, void, and of no effect." *Id.* at 809. It then declared that "State and local law enforcement officials in Missouri may lawfully

participate in joint federal task forces, assist in the investigation and enforcement of federal firearm crimes, and fully share information with the Federal Government without fear of H.B. 85's penalties." *Id.* The Eighth Circuit affirmed. *United States* v. *Missouri*, 114 F. 4th 980 (8th Cir. 2024). Missouri now petitions for a writ of certiorari.

SUMMARY OF ARGUMENT

I. Under the Supremacy Clause, state courts with jurisdiction generally have both the power and the duty to address federal questions, and they are bound by this Court's judgments in doing so. But a different rule applies to state legislatures and state executives: they may, "if they choose," exercise authority granted them by Congress, "unless prohibited by State legislation." *Prigg* v. *Pennsylvania*, 41 U.S. 539, 622 (1842). Indeed, it was because of that rule that States could decline to help enforce the odious Fugitive Slave Act. More recent cases adhere to and reflect a broad "anti-commandeering" principle. *See Printz* v. *United States*, 521 U.S. 898 (1997); *New York* v. *United States*, 505 U.S. 144 (1992).

The Missouri legislature concluded certain federal laws were unconstitutional under the Second Amendment, so it prohibited Missouri officials from enforcing those statutes. The United States brought a facial challenge asserting that Missouri prohibition was itself facially unconstitutional. But neither the district court nor the Eighth Circuit identified or applied the applicable legal standard for facial challenges, as stated in *Anderson* v. *Edwards*, 514 U.S. 143, 155 n.6 (1995). That alone warrants vacatur. The many defects in the Eighth Circuit's textual analysis of SAPA

does so too, as does the panel's improperly relying on the Missouri legislature's reason for adopting SAPA.

The Eighth Circuit's analysis is infused with the view that (i) every firearms regulation enacted under the Commerce Clause is, in fact, constitutional, even as applied to a state *qua* a state and despite the lack of controlling authority from this Court; and (ii) the Missouri legislature could not analyze that question for itself and instruct Missouri officials to simply avoid enforcing statutes the legislature believes are unconstitutional. Both are wrong.

II. Apart from the merits, the district court's order is deeply troubling. It goes so far as to cross the line into federal judicial usurpation of Missouri's retained sovereign power. That's because "[f]ederal courts enjoy the power to enjoin individuals tasked with enforcing laws, not the laws themselves." *Whole Woman's Health* v. *Jackson*, 141 S. Ct. 2494, 2495 (2021). The district court nevertheless purported to directly void SAPA and immunize Missouri officials from suit by private parties not before the court. This Court should use this case to clarify the limited scope of the federal injunctive power.

REASONS FOR GRANTING THE PETITION

I. The Eighth Circuit usurped Missouri's retained powers, and it did so by ignoring this Court's controlling authority.

A. State legislatures and executives cannot be commandeered, and they have the right and duty to make informed judgments on the meaning and force of the Constitution.

This Court has long made clear that state courts with jurisdiction generally have both the power and the duty to address federal questions unless Congress has given federal courts exclusive jurisdiction over the particular subject matter. *See*, *e.g.*, *Claflin* v. *Houseman*, 93 U.S. 130, 136 (1876); *Teal* v. *Felton*, 53 U.S. 284, 292 (1852). State courts are bound by this Court's pronouncements in doing so. *Martin* v. *Hunter's Lessee*, 14 U.S. 304, 355, 362 (1816). A state court's judgments on federal law are simply subject to review in this Court.

Consistent with Hamilton and Madison's views, *supra*, this Court made clear that a different rule applies to acts by other arms of state government. In *Prigg*, this Court concluded that state magistrates may, "if they choose," exercise authority granted them by Congress, "unless prohibited by State legislation." 41 U.S. at 622. That meant that states could, "if they choose," prohibit state officials from helping to enforce the odious Fugitive Slave Act.

Subsequent cases accordingly distinguish the Supremacy Clause's obligation on state courts from obligations Congress purported to impose on other

branches of state government. "[E]arly laws establish, at most, that the Constitution was originally understood to permit imposition of an obligation on state *judges* to enforce federal prescriptions, insofar as those prescriptions related to matters appropriate for the judicial power." *Printz*, 521 U.S. at 907. The Constitution was not, however, understood to permit Congress to "commandeer the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program." *New York*, 505 U.S. at 161 (citation omitted). And "Congress cannot circumvent that prohibition by conscripting the State's officers directly." *Printz*, 521 U.S. at 935.

Like Congress, a state legislature has "not just the right but the duty to make its own informed judgment on the meaning and force of the Constitution." *City of Boerne* v. *Flores*, 521 U.S. 507, 535 (1997). We know that because "[s]tate statutes, like federal ones, are entitled to the presumption of constitutionality until their invalidity is judicially declared." *Davies Warehouse Co.* v. *Bowles*, 321 U.S. 144, 153 (1944). And this Court has tied that presumption to the legislature having both the right and the duty to adjudge constitutionality. *City of Boerne*, 521 U.S. at 535.

B. In its rush to facially invalidate all of SAPA, the Eighth Circuit failed to identify or apply the proper analysis, then invalidated the entire statute based on an atextual caricature.

1. The Missouri legislature concluded certain federal statutes infringe the rights of Missouri citizens. It accordingly exercised its right—recognized as inherent by Madison in Federalist 46, confirmed by this

Court in *Prigg*, and reinforced by this Court in *New York*, and *Printz*—to instruct Missouri officials not to enforce those statutes. Missouri correctly concluded it had no duty to assist in the enforcement of federal law, at least in the absence of a specific constitutional provision commanding it to do so.[2]

2. The United States nevertheless brought a pre-enforcement facial challenge to the Missouri legislature's command. That should have given the courts below pause. "For a host of good reasons, courts usually handle constitutional claims case by case, not en masse" via a facial challenge. *Moody* v. *NetChoice, LLC*, 603 U.S. 707, 723 (2024) (citing *Washington State Grange* v. *Wash. State Republican Party*, 552 U.S. 442, 450-51 (2008)). "Claims of facial invalidity often rest on speculation" about the law's coverage and its future enforcement." *Id.* (citation omitted). "And facial challenges threaten to short circuit the democratic process by preventing duly enacted laws from being implemented in constitutional ways." *Id.* (citation omitted).

The decision to bring a facial challenge thus came at a cost. In the context of a facial challenge based on the Supremacy Clause and preemption, this Court requires the plaintiff—here, the United States—to "establish that no set of circumstances exists under which the [challenged statute] would be valid." *Anderson*, 514 U.S. at 155 n.6 (quoting *United States* v. *Salerno*, 481 U.S. 739, 745 (1987)). "The fact that [the statute] might operate unconstitutionally under some

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[2] The existence of one such affirmative command—the Extradition Clause, U.S. Const. art. IV, §2—is the exception that proves the rule.

conceivable set of circumstances is insufficient to render it wholly invalid, since [this Court has] not recognized an 'overbreadth' doctrine outside the limited context of the First Amendment." *Salerno*, 481 U.S. at 745. Further, "[i]n evaluating a facial challenge to a state law, a federal court must … consider any limiting construction that a state court or enforcement agency has proffered." *Ward* v. *Rock Against Racism*, 491 U.S. 781, 795-96 (1989) (quoting *Vill. of Hoffman Ests.* v. *The Flipside, Hoffman Ests., Inc.*, 455 U.S. 489, 494 n.5 (1982)).

Neither the district court nor the Eighth Circuit identified the standard for a facial challenge, and they both failed to perform that analysis this Court requires. That failure alone is sufficient reason to vacate the judgment below. *See NetChoice*, 703 U.S. at 726 (vacating and remanding where lower court failed to perform the required analysis for a facial challenge).

3. Instead, the Eighth Circuit focused on a provision in SAPA stating that certain laws are "invalid to this state." *Missouri*, 114 F. 4th at 986 (discussing Mo. Rev. Stat. §1.430). But that provision is simply declaratory. The operative provisions prohibit "any public officer or employee of this state or any political subdivision of this state" from enforcing federal laws identified by a *different* section of SAPA. *See* Mo. Rev. Stat. §1.450 (cross referencing Mo. Rev. Stat. §1.420).

The section of SAPA cross-referenced by the operative provisions identifies certain federal laws as "infringements" on the Second Amendment and the analogous provision of the Missouri Constitution. In its rush to invalidate SAPA the Eighth Circuit ignored that distinction. That, too, was error. *See Nelson* v.

Crane, 187 S.W.3d 868, 870 (Mo. 2006) ("When different statutory terms are used in different subsections of a statute, appellate courts presume that the legislature intended the terms to have different meaning and effect.").[3]

Setting aside those flaws, Missouri argued that sections §§1.410, 1.420, 1.430, and 1.440 of SAPA were merely "legislative findings and declarations," as described by the Missouri Supreme Court. *Missouri*, 114 F. 4th at 985 (quoting *City of St. Louis* v. *State*, 643 S.W.3d 295, 297 (Mo. 2022)). Rather than recognize that limiting construction as dispositive, *see Rock Against Racism*, 491 U.S. at 795-96, the Eighth Circuit went out of its way to smear the declaration of invalidity in §1.430 as applying to all of SAPA, then declared that the operative provisions "enforce" that declaration even without a textual link and despite the use of different terms. Yet another error.

4. The Eighth Circuit then confessed its underlying reasoning: "That Missouri may lawfully withhold its assistance from federal law enforcement, however, does not mean that the State may do so by purporting to invalidate federal law." *Missouri*, 114 F. 4th at 986. But the operative provisions of SAPA do no such thing. A straight-forward textual analysis makes clear that the "invalidity" declaration isn't cross-referenced by the operative provisions, *supra*. The Eighth Circuit

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[3] In *Roberts* v. *U.S. Jaycees*, this Court held that "[i]nfringements on [the right to association] may be justified by regulations adopted to serve compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms." 468 U.S. 609, 623 (1984). The inference is that—at least outside the context of the Second Amendment—not all infringements are unconstitutional.

then "conclude[d] that the law is not severable because the entire Act is founded on the invalidity of federal law." *Id.* at 987. Unmentioned in that analysis-by-caricature, however, was the "familiar principle of constitutional law that [courts] will not strike down an otherwise constitutional statute the basis of an alleged illicit legislative motive." *United States* v. *O'Brien*, 391 U.S. 367, 383 (1968).

5. Infused in the Eighth Circuit's analysis is the view that every firearms regulation enacted under the Commerce Clause is, in fact, constitutional, even as applied to a state. Yet the court cited no case reaching that conclusion; it certainly didn't cite a case in which this Court so held. The constitutionality of firearms regulations is hotly and widely contested. *See, e.g.*, *Reese* v. *BATFE*, 127 F.4th 583 (5th Cir. 2025) (holding part of the Gun Control Act unconstitutional). And it's far from clear the Gun Control Act and National Firearms Act are constitutional to the extent that they regulate states *qua* states.[4] Blithely assuming the contrary is the Eighth Circuit's most fundamental error.

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[4] The Constitution contemplates the maintenance of an armed force by the states. U.S. Const. art. I, §8, cl.16 ("To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia…."); *id.* art. II, §2 ("The President shall be Commander in Chief of … the Militia of the several States, when called into the actual Service of the United States."). It's dubious to suggest the Commerce Clause could be used to disarm that force. *See Hodel* v. *Va. Surface Mining & Reclam. Ass'n*, 452 U.S. 264, 286-87 (1981) ("[T]he States as States stand on a quite different footing from an individual or corporation when challenging the exercise of Congress' power to regulate commerce," and "when Congress

Absent controlling authority from this Court, the Missouri legislature was entitled to declare its own view and instruct Missouri officials to simply avoid engaging in acts contrary to the legislature's view. No less an authority than Publius thought it so. The Eighth Circuit's contrary view is not simply error; it was a federal judicial usurpation of Missouri's retained sovereignty.

II. The district court's order is flawed, such that this case is an excellent vehicle to clarify the scope of the federal court's injunctive power.

Setting aside the merits, the judgment below suffers from fundamental errors in the scope of its injunction. The district court's order declared:

> SAPA is invalidated as unconstitutional in its entirety as violative of the Supremacy Clause. H.B. 85 is invalid, null, void, and of no effect. State and local law enforcement *officials in Missouri may lawfully participate in joint federal task forces, assist in the investigation and enforcement of federal firearm crimes, and fully share information with the Federal Government without fear of H.B. 85's penalties*. The States of Missouri and its officers, agents, and employees

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attempts to directly regulate the States as States the Tenth Amendment requires recognition that there are attributes of sovereignty attaching to every state government which may not be impaired by Congress[.]" (citations omitted)). Congress apparently recognized as much and exempted states from almost the entire Gun Control Act, *see* 18 U.S.C. §925(a)(1), and from portions of the National Firearms Act. It's difficult to see how a state can be seriously accused of trying to nullify statutory provisions that facially don't apply to it.

> and any others in active concert with such individuals are prohibited from any and all implementation and enforcement of H.B. 85.

Missouri, 660 F. Supp. 3d at 809 (emphasis added).

1. As Justice Gorsuch and Justice Alito noted in their statement respecting denial of the stay, "an injunction purporting to bind private parties not before the district court or the challenged provisions themselves … would be inconsistent with the 'equitable powers of federal courts.'" *Missouri* v. *United States*, 144 S. Ct. 7, 7 (2023) (quoting *Whole Woman's Health* v. *Jackson*, 595 U.S. 30, 44 (2021)). Yet that is precisely what the district court's order facially purports to do.

2. Viewed through a slightly different lens, the order purports to legalize the conduct of Missouri officials acting contrary to SAPA. But "federal courts enjoy the power to enjoin individuals tasked with enforcing laws, not the laws themselves." *Whole Woman's Health*, 141 S. Ct. at 2495 (citing *California* v. *Texas*, 593 U.S. 659, 672 (2021)). This Court long-ago explained that the power "to review and annul acts" is "little more than the negative power to disregard an unconstitutional enactment" and that "the court enjoins … not the execution of the statute, but the acts of the official." *Massachusetts* v. *Mellon*, 262 U.S. 447, 488 (1923). "All that a court can do is announce its opinion that the statute violates the Constitution, decline to enforce the statute in cases before the court, and instruct executive officers not to initiate enforcement proceedings." Jonathan F. Mitchell, *The Writ-of-Erasure Fallacy*, 104 VA. L. REV. 933, 941 (2018).

On those points, this Court's opinion in *Edgar* v. *MITE Corp.*, 457 U.S. 624 (1982), is illuminating. The Court found a live controversy where the State of Illinois threatened to enforce a criminal statute if a lower court injunction were reversed. *Id.* at 630. The Court thus implicitly rejected a dissenting argument that the preliminary injunction in that case "would have barred the [State] from seeking either civil or criminal penalties for violations" that occurred while the injunction was in effect. *Id.* at 655-64 (Marshall, J., dissenting); *see also id.* at 647-55 (Stevens, J., concurring in part).[5] Yet that is precisely what the district court's order purports to do here.

Only the Governor and Attorney General of Missouri are parties, but those officials are not tasked with enforcing SAPA. It matters not that the State of Missouri is itself a defendant. As *Ex parte Young* put it, "an injunction against a state court" or its "machinery" "would be a violation of the whole scheme of our Government." *Whole Woman's Health*, 595 U.S. at 39 (quoting *Ex parte Young*, 209 U.S. 123, 163 (1908)). The remedy against unconstitutional acts by a State court is an appeal, not an injunction.

This Court should clarify that the district court's claim to immunize Missouri officials from suit by private individuals not before the court was beyond the federal judicial power.

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[5] *Accord Doran* v. *Salem Inn, Inc.*, 422 U.S. 922, 931 (1975) ("[N]either declaratory nor injunctive relief can directly interfere with enforcement of contested statutes or ordinances except with respect to the particular federal plaintiffs, and the State is free to prosecute others who may violate the statute.").

CONCLUSION

The Court should grant the Petition.

February 26, 2025

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