No. 24-964

In the Supreme Court of the United States

JOHN O'BANNON, CHAIRMAN OF THE STATE BOARD OF ELECTIONS FOR THE COMMONWEALTH OF VIRGINIA, ET AL., PETITIONERS

v.

TATI ABU KING, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE STATES OF TEXAS, ALABAMA, ALASKA, ARKANSAS, FLORIDA, GEORGIA, IDAHO, INDIANA, IOWA, LOUISIANA, MISSISSIPPI, MISSOURI, MONTANA, OKLAHOMA, SOUTH CAROLINA, TENNESSEE, AND UTAH AS AMICI CURIAE IN SUPPORT OF PETITIONERS

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INTEREST OF AMICI CURIAE

Amici curiae are the States of Texas, Alabama, Alaska, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Louisiana, Mississippi, Missouri, Montana, Oklahoma, South Carolina, Tennessee, and Utah.[1] Amici States are often called upon to defend against claims that their officials have violated federal statutes. And while the Court has given significant attention to whether Congress has created individual, privately enforceable federal rights, *e.g.*, *Health & Hosp. Corp. of Marion Cnty. v. Talevski*, 599 U.S. 166, 183 (2023), less attention has been given to Congress's role in determining the scope of *Ex parte Young* actions, specifically, whether *Ex parte Young* permits private parties to enforce federal statutes that do not contain individual rights or private causes of action created by Congress. Because "the value to the States of their Eleventh Amendment immunity . . . is for the most part lost as litigation proceeds past motion practice," *P.R. Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 145 (1993), amici States have a considerable interest in the scope of the *Ex parte Young* exception to state sovereign immunity.

Amici States also include eight States covered by Readmission Acts similar to the one the plaintiffs in this case are attempting to enforce. Whether those Acts can be used to effectively invalidate state constitutional provisions regarding voter qualifications and public education is thus of critical importance to those States.

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[1] No counsel for any party authored this brief, in whole or in part. No person or entity other than amici contributed monetarily to its preparation or submission. On March 26, 2025, counsel of record for all parties received notice of amici's intention to file this brief.

SUMMARY OF ARGUMENT

I. Despite *Ex parte Young*, 209 U.S. 123 (1908) having been decided over a century ago, questions still remain regarding its scope. Virginia's petition presents a critical one: whether *Ex parte Young* permits suits to enforce a federal statute when Congress has not created an individual right or cause of action. The Fourth Circuit held that it did. Pet.App.7a-8a. But in other contexts, this Court looks to Congress to determine whether a statute creates an enforceable right and private right of action. *E.g.*, *Gonzaga Univ. v. Doe*, 536 U.S. 273, 283-84 (2002). The Fourth Circuit's conception of *Ex parte Young* renders Congress's intent irrelevant and puts States at a disadvantage—leaving their officials subject to *Ex parte Young* suits when other defendants would be dismissed. The Fourth Circuit's failure to respect state sovereignty warrants the Court's attention.

II. Regardless of how the Court resolves the *Ex parte Young* question, the Readmission Acts are remarkably ill-suited to judicial enforcement. The Acts present, on their face and in their historical context, political questions to be answered only by Congress. And should there be any ambiguity, the constitutional-avoidance canon of construction counsels in favor of that interpretation. Judicial enforcement of the Acts against the States would also violate the anticommandeering doctrine, allow Congress to control voter qualifications, and violate the equal-sovereignty doctrine by treating the ten covered States different from all others. The Court should grant the petition to prevent these intrusions on state sovereignty based on Civil War-era laws.

ARGUMENT

I. The Fourth Circuit's Decision Is Contrary to This Court's Precedent Respecting State Sovereignty.

Before any party may be sued for violating a federal statute, a court must determine whether Congress intended to create both an individually enforceable right and a private right of action. *Gonzaga*, 536 U.S. at 286 (individual right); *Alexander v. Sandoval*, 532 U.S. 275, 286 (2001) (private right of action). As this Court stated just two terms ago, "[t]his paradigm respects Congress's primacy in this arena and thus vindicates the separation of powers." *Talevski*, 599 U.S. at 183. This necessary clarity carries additional weight when a state defendant is sued because when "Congress intends to alter the 'usual constitutional balance between the States and the Federal Government,' it must make its intention to do so 'unmistakably clear in the language of the statute.'" *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 65 (1989) (quoting *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 242 (1985)).

But under the Fourth Circuit's interpretation of the *Ex parte Young* exception to state sovereign immunity, Congress's intentions are irrelevant when the defendant is a state official. Merely pointing to a federal statute allegedly being violated is sufficient to force a state official into court regardless of whether Congress created an enforceable right or cause of action. The Fourth Circuit's ruling thus transforms *Ex parte Young* from a narrow exception to state sovereign immunity into a broad cause of action to enforce any federal law against the States. The Court should not countenance this intrusion on state sovereignty.

A. The Fourth Circuit's decision ignores Congress's role in creating federal rights.

1. A plaintiff suing to remedy the violation of a federal statute must establish that Congress created an individual, enforceable right. After all, "where the text and structure of a statute provide no indication that Congress intends to create new individual rights, there is no basis for a private suit, whether under § 1983 or under an implied right of action." *Gonzaga*, 536 U.S. at 286. Accordingly, before a suit may proceed against any defendant, the relevant statute "must *unambiguously* confer individual federal rights." *Talevski*, 599 U.S. at 180 (citing *Gonzaga*, 536 U.S. at 280).

The role of Congress in creating enforceable rights does not disappear merely because a plaintiff invokes *Ex parte Young*. The Court's decisions "repeatedly have emphasized that the *Young* doctrine rests on the need to promote the vindication of federal rights." *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 105 (1984); *see also Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 96 n.14 (1983) ("[F]ederal courts have jurisdiction over suits to enjoin state officials from interfering with federal rights."). Stated differently, "it has been settled that the Eleventh Amendment provides no shield for a state official confronted by a claim that he had deprived another of a federal right under the color of state law." *Hafer v. Melo*, 502 U.S. 21, 30 (1991). And when determining whether a state agency could invoke *Ex parte Young* in a suit against a state official, the Court held that the agency must first have "a federal right that it possesses against its parent State." *Va. Off. for Prot. & Advoc. v. Stewart*, 563 U.S. 247, 260 (2011).

The importance of Congress's role in delineating the scope of *Ex parte Young* suits is also seen in the Court's

decisions limiting the remedies a plaintiff may seek. As the Court has held, "where Congress has prescribed a detailed remedial scheme for the enforcement against a State of a statutorily created right, a court should hesitate before casting aside those limitations and permitting an action against a state officer based upon *Ex parte Young*." *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 74 (1996). If the Court looks to Congress to determine *how* a statute should be enforced, it should also look to Congress to determine *whether* the statute creates a right to be enforced in the first place.

2. To determine whether a statutory provision creates an enforceable right, the Court "employ[s] traditional tools of statutory construction to assess whether Congress has 'unambiguously conferred' 'individual rights upon a class of beneficiaries' to which the plaintiff belongs." *Talevski*, 599 U.S. at 183 (quoting *Gonzaga*, 536 U.S. at 283, 285-86). If Congress did not unambiguously confer an individual right, the suit must be dismissed. *E.g.*, *Gonzaga*, 536 U.S. at 290.

By any standard, the Readmission Acts flunk the individual-rights test. The district court properly recognized that the Virginia Readmission Act conferred no rights on the plaintiffs that could be enforced through §1983. Pet.App.37a. Far from using "rights-creating" language, *Gonzaga*, 536 U.S. at 287, the Act imposes conditions on whether Virginia's legislators could be readmitted to Congress by, among other things, prohibiting Virginia from amending its constitution to restrict rights of suffrage or public education. Pet.App.37a. The district court thus correctly dismissed the plaintiffs' §1983 claim. Pet.App.37a.

The same was not true for the plaintiffs' *Ex parte Young* claim, however. Citing a dissenting opinion from

this Court, the district court went on to conclude that the principles governing enforceable rights under §1983 had no application in the *Ex parte Young* context. Pet.App.38a (quoting *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 340 (2015) (Sotomayor, J., dissenting)). Rather, all that mattered to the district court was whether the plaintiffs alleged an ongoing violation of federal law. Pet.App.39a (quoting *Verizon Md., Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 645 (2002)). And the Fourth Circuit affirmed, concluding that *Ex parte Young* was not limited to the vindication of individual federal rights. Pet.App.7a.

The Fourth Circuit's decision is difficult, if not impossible, to square with the Court's precedent (i) requiring plaintiffs to demonstrate that Congress created an individual right, *Gonzaga*, 536 U.S. at 286; and (ii) describing *Ex parte Young* as a narrow exception to state sovereign immunity to vindicate federal rights, *Pennhurst*, 465 U.S. at 105. If Congress did not intend to create an individual right, the courts should not take it upon themselves to do so.

B. The Fourth Circuit's decision adds to the circuit split over whether *Ex parte Young* creates a cause of action.

As with individual rights, "private rights of action to enforce federal law must be created by Congress." *Sandoval*, 532 U.S. at 286. Thus, while "[r]aising up causes of action where a statute has not created them may be a proper function for common-law courts," it is not a proper function for "federal tribunals." *Id.* at 287 (quoting *Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson*, 501 U.S. 350, 365 (1991) (Scalia, J., concurring in part and concurring in judgment)). If Congress has not created a cause of action, a court cannot apply its

"independent policy judgment" to recognize one. *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 128 (2014).

As Judge Oldham recently explained, these principles are in tension with courts' treatment of *Ex parte Young* as creating an equitable cause of action. *Green Valley Special Util. Dist. v. City of Schertz*, 969 F.3d 460, 497-98 (5th Cir. 2020) (en banc) (Oldham, J., concurring). Although he believed the Fifth Circuit had properly interpreted this Court's decisions to ground an equitable cause of action in *Ex parte Young*, *id.* at 496-97, he could find no explanation for how the cause of action came to exist, *id.* at 498-99.

The Sixth Circuit, however, has interpreted this Court's precedent to require an existing cause of action before *Ex parte Young* may be invoked. *Mich. Corr. Org. v. Mich. Dep't of Corr.*, 774 F.3d 895, 905 (6th Cir. 2014). It describes *Ex parte Young* as providing "a path around sovereign immunity *if* the plaintiff already has a cause of action from somewhere else." *Id.* The court reasoned that *Ex parte Young* may be used either as a shield against enforcement of a preempted state law via an equitable anti-suit injunction or as a sword when another law supplies the cause of action. *Id.* at 906.

Here, the Fourth Circuit split from the Sixth Circuit and allowed the *Ex parte Young* claim to proceed, despite the lack of a cause of action found anywhere in the Readmission Act. Pet.App.8a. The Court should resolve not only this split but also the underlying questions regarding the origin of any equitable *Ex parte Young* cause of action.

C. The Fourth Circuit's decision leaves States worse off than other litigants.

The end result of the Fourth Circuit's ruling is that state officials can be sued under *Ex parte Young* when all other defendants would be dismissed for lack of an enforceable right or cause of action. This diminishes the sovereignty of the States, contrary to this Court's precedent.

The federal system established by the Constitution preserves the sovereign status of the States. *Alden v. Maine,* 527 U.S. 706, 714 (1999); *see also* U.S. Const. amend. XI. And "[a]n integral component of that residuary and inviolable sovereignty" is the States' "immunity from private suits." *Fed. Mar. Comm'n v. S. Car. Ports Auth.,* 535 U.S. 743, 751-52 (2002) (internal quotation marks & citation omitted). This immunity accords States "the dignity that is consistent with their status as sovereign entities." *Id.* at 760. That dignity is jeopardized any time a State is haled into court against its will. *Idaho v. Coeur d'Alene Tribe of Idaho,* 521 U.S. 261, 268 (1997).

For that reason, although *Ex parte Young* creates a route around state sovereign immunity, this Court has not given that decision an "expansive interpretation" but has instead "narrowly construed" it. *Pennhurst*, 465 U.S. at 102, 114 n.25. The Fourth Circuit's decision, however, expands *Ex parte Young* to permit suits against state officials even when Congress has not allowed them against anyone else.

When Congress declines to create an enforceable right or a cause of action, the case cannot move forward. *See Armstrong*, 575 U.S. at 327; *Brunner v. Ohio Republican Party*, 555 U.S. 5, 6 (2008) (per curiam); *Gonzaga*, 536 U.S. at 276; *Sandoval*, 532 U.S. at 293; *Suter v. Artist M.*, 503 U.S. 347, 364 (1992). But not if the plaintiff

invokes *Ex parte Young*—at least under the Fourth Circuit's interpretation of it. As the Fourth Circuit applied *Ex parte Young*, it is irrelevant whether Congress intended to create a privately enforceable right or cause of action. State officials may still be sued. And that puts States at a disadvantage when compared to other potential defendants.

Such an understanding is also inconsistent with how this Court has treated suits against state officials brought under other statutes, as the Sixth Circuit noted. *Mich. Corr. Org.*, 774 F.3d at 905 (citing *Sandoval* and *Brunner*). Although the plaintiffs in *Sandoval* and *Brunner* sought injunctive relief against a state official, the Court rejected their lawsuits after determining that no cause of action existed. *Id.* at 905-06. The Court did not simply suggest that the plaintiffs bring their claims via *Ex parte Young* instead.

But under the Fourth Circuit's theory in *this* case, those private plaintiffs could have used *Ex parte Young* to seek the same injunctions regardless of what Congress intended in the relevant statutes. If true, the Court's statutory analysis under §1983 would have been relevant only to whether attorneys' fees could be sought under §1988. *E.g.*, *Maine v. Thiboutot*, 448 U.S. 1 (1980).

The Court's precedent does not support the Fourth Circuit's theory that Congress's intent to create an individual right or a cause of action is irrelevant when a plaintiff invokes *Ex parte Young* to avoid state sovereign immunity. Because the Fourth Circuit unnecessarily subjects state officials to suit, contrary to principles of state sovereignty, the Court should grant the petition and reverse.

II. The Fourth Circuit's Decision Is Contrary to This Court's Political-Question Precedent.

Underlying the Fourth Circuit's decision that the Readmission Acts are enforceable through *Ex parte Young* is the conclusion that the Readmission Acts are judicially enforceable in the first place. They are not. Whether Virginia violated the conditions of its Readmission Act is a classic political question that belongs in the halls of Congress, not the courtrooms of Virginia. Indeed, this Court has already twice declined to reconsider the decisions made by Congress that are reflected in the Readmission Acts. *See White v. Hart*, 80 U.S. 646, 649 (1871); *Butler v. Thompson*, 341 U.S. 937 (1951) (per curiam) (affirming *Butler v. Thompson*, 97 F.Supp. 17, 20-21 (E.D. Va. 1951)).[2]

That the Readmission Acts present only political questions is apparent. Congress enacted the Readmission Acts pursuant to the Guarantee Clause, which this Court routinely concludes raises only political questions. *See New York v. United States*, 505 U.S. 144, 184 (1992). And whether Congress has appropriately admitted Virginia's representatives and senators passes nearly every test this Court uses to identify nonjusticiable political questions. *See Baker v. Carr*, 369 U.S. 186, 217 (1962).

Should there be any ambiguity regarding whether the courts should take it upon themselves to enforce the conditions of the Readmission Acts, constitutional avoidance counsels against such an interpretation. *See Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018). Judicial enforcement of the Acts would permit Congress to commandeer state governments, set voter qualifications, and violate principles of equality among the States—all of

[2] *Butler* was subsequently overruled on other grounds in *Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966).

which are constitutionally forbidden infringements on state sovereignty.

A. Alleged violations of the Readmission Acts present nonjusticiable political questions.

Federal courts have "leeway to choose among threshold grounds for denying audience to a case on the merits." *Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 431 (2007) (internal quotation marks omitted). Thus, although Virginia's appeal raises issues of sovereign immunity, the Court can and should determine whether the plaintiffs have raised a nonjusticiable political question. *See Calderon v. Ashmus*, 523 U.S. 740, 745 (1998) (granting certiorari on sovereign-immunity issue but deciding it "must first address whether this action for a declaratory judgment is the sort of 'Article III' 'case or controversy' to which federal courts are limited"). Had the Fourth Circuit undertaken its independent obligation to examine its own jurisdiction, *see FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 231 (1990), only one conclusion would have emerged: Purported violations of the Readmission Acts present nonjusticiable political questions.

1. As detailed in Virginia's certiorari petition (at 4-6), the Readmission Acts were the product of an unprecedented time in this Nation's post-Civil War history. This Court determined that the southern States' attempt to secede was "absolutely null." *Texas v. White*, 74 U.S. 700, 725 (1868), *overruled on other grounds*, *Morgan v. United States*, 113 U.S. 476 (1885). Describing Texas's experience, the Court explained that "[w]hen the war closed there was no government in the State except that which had been organized for the purpose of waging war against the United States" and "[t]hat government immediately disappeared." *Id.* at 728. Thus, after

suppressing the rebellion, the next step was to "re-establish[] the broken relations of the State[s] with the Union." *Id.* at 727.

Congress's authority to do so came from the Guarantee Clause and its promise of a republican form of government in each State. *Id.* (referring to U.S. Const. art. IV, §4). Pursuant to a series of Reconstruction Acts, any State that had rebelled had to frame and ratify a new state constitution which was then submitted to Congress for approval. *United States v. States of La., Tex., Miss., Ala. & Fla.*, 363 U.S. 1, 124 (1960). Upon that approval and the State's ratification of the Fourteenth Amendment, Congress readmitted the State's senators and representatives through the Readmission Acts. *Id.*; *e.g.*, 15 Stat. 73 (1868); 16 Stat. 80 (1870). The Readmission Acts were, thus, a significant and formal step in the process of putting the Union back together.

2. The Readmission Acts did more than simply readmit legislators to Congress—they imposed conditions on readmission. As relevant here, one condition required that each State never amend its state constitution to deprive a citizen or class of citizens of the right to vote secured in the approved constitution "except as a punishment for such crimes as are now felonies at common law." 16 Stat. 62, 63 (1870); *see also* 15 Stat. at 73; 16 Stat. at 81. Under the plaintiffs' theory, every covered State would be subject to a claim of having violated this condition. *See, e.g.*, Ga. Const. art. II, §1, ¶II ("felony involving moral turpitude"); S.C. Const. art. II, §7 ("conviction of serious crime"); Tex. Const. art. VI, §1(b) ("bribery, perjury, forgery, or other high crimes"). And yet, the Acts have never been enforced in court, despite a few attempts.

One year after Georgia's representatives were formally readmitted to Congress, 16 Stat. 363 (1870), this Court considered an argument that the constitution submitted by Georgia and approved by Congress was not validly adopted. *Hart*, 80 U.S. at 649. The Court noted, however, that the Georgia Constitution was "received" and "recognized" by Congress, as indicated by that body's subsequent actions. *Id.* It then concluded that "[t]he action of Congress upon the subject cannot be inquired into," and "[t]he case is clearly one in which the judicial is bound to follow the action of the political department of the government, and is concluded by it." *Id.*

For this proposition, the Court cited, among other cases, *Luther v. Borden*, in which the Court was asked to decide whether Rhode Island's government was "republican" as required by the Guarantee Clause. 48 U.S. 1, 42 (1849); U.S. Const. art. IV, §4. The Court declined to do so, holding that the question was one for Congress. *Luther*, 48 U.S. at 42. As it explained, "when the senators and representatives of a State are admitted into the councils of the Union," that decision "is binding on every other department of the government, and could not be questioned in a judicial tribunal." *Id.* Since *Luther*, the Court has rarely concluded that any claim based on the Guarantee Clause is justiciable. *See New York*, 505 U.S. at 184. It is, therefore, unlikely that the Readmission Acts (enacted pursuant to the Guarantee Clause) would be justiciable.

Virginia's Readmission Act was also raised in a challenge to Virginia's poll tax. Although this Court ultimately recognized such taxes are unconstitutional under the Equal Protection Clause, *Harper*, 383 U.S. at 666, it previously granted a motion to affirm the judgment of a three-judge district court that found it "extremely

doubtful" that a challenge to the tax under Virginia's Readmission Act was justiciable, *Butler*, 341 U.S. 937; *Butler*, 97 F.Supp. at 20. Because the voting provisions of the Act were only a condition on Virginia's representation in Congress, the district court concluded that the question was "a matter peculiarly within the domain of the Congress alone." *Butler*, 97 F.Supp. at 20.

The Arkansas Supreme Court cited *Butler* when reaching the same conclusion concerning an Arkansas constitutional amendment providing for felon disenfranchisement—namely, that enforcement of the Readmission Act "is in the exclusive domain of Congress." *Merritt v. Jones*, 533 S.W.2d 497, 502 (Ark. 1976). Thus, in the 150 years since the Readmission Acts were enacted, no court appears to have judicially enforced their provisions.

3. Concluding that Virginia violated a condition of its Readmission Act would call into question Congress's decision to admit Virginia's senators and representatives, triggering nearly every political-question test this Court has laid out.

Under *Luther*, Congress's decision to admit a State's legislators is bound up in its authority to recognize state governments under the Guarantee Clause. 48 U.S. at 42. This satisfies the first political-question test identified in *Baker*—whether there is a "textually demonstrable constitutional commitment of the issue to a coordinate political department." 369 U.S. at 217. Determining whether Virginia failed to meet the conditions of readmission to Congress is also impossible to resolve "without expressing lack of the respect due coordinate branches of government." *See id.* Further, given the passage of time, there is "an unusual need for unquestioning adherence" to Congress's decision to continue to admit Virginia's

legislators, and a contrary decision would result in "embarrassment from multifarious pronouncements by various departments on one question." *Id.*

The principle of *Luther* controls: Once Congress has decided that a State's government is republican and seats its congressional delegation, the courts cannot question it. The plaintiffs' complaint casts doubt on Congress's decision to seat Virginia's legislators and therefore presents a nonjusticiable political question.

B. Judicial enforcement of the Readmission Acts raises a host of constitutional problems

Because they were enacted under the Guarantee Clause and as a condition of representation in Congress, the Readmission Acts are enforceable only by Congress. But if any ambiguity remains, constitutional avoidance counsels against allowing any court to enforce them, as the Acts represent significant intrusions into state sovereignty. *See Jennings*, 583 U.S. at 286.

Anticommandeering. The Readmission Acts explicitly prohibit the covered States from amending their constitutions with respect to certain voter qualifications and, for some States, public education. *See, e.g.*, 15 Stat. 72, 72 (1868); 15 Stat. at 73; 16 Stat. at 81. Enforcing those provisions through private litigation would result in an obvious anticommandeering violation.

As this Court has explained, "the Framers explicitly chose a Constitution that confers upon Congress the power to regulate individuals, not States." *New York*, 505 U.S. at 166. The anticommandeering doctrine is therefore "a fundamental structural decision incorporated into the Constitution," representing "the decision to withhold from Congress the power to issue orders directly to the States." *Murphy v. NCAA*, 584 U.S. 453, 470 (2018). There is no reason to believe that the Guarantee

Clause permits Congress to legislate outside of this "fundamental structural" design.

But allowing private parties to sue to enforce the Readmission Acts' various prohibitions on amending state constitutions would unquestionably commandeer state governments by forbidding them from changing their constitutions. As the Court put it in *Murphy*, it would be "as if federal officers were installed in state legislative chambers and were armed with the authority to stop legislators from voting on any offending proposals." *Id.* at 474. Or, depending on how each State amends its constitution, federal officers would be installed at voting booths to prevent the people of each State from voting to amend their constitution. "A more direct affront to state sovereignty is not easy to imagine." *Id.*

In *Talevski*, two Justices raised concerns that allowing individuals to enforce conditional Spending Clause legislation through §1983 suits against state officials presented anticommandeering problems. 599 U.S. at 192-93 (Gorsuch, J., concurring); *id.* at 196-97 (Thomas, J., dissenting). The Readmission Acts are also conditional, but the affront to state sovereignty is even greater: They flatly prohibit States from amending their constitutions in certain respects. Under *Murphy*, they cannot be judicially enforced.

Voter qualifications. Allowing private parties to enforce the Readmission Acts through litigation would also permit Congress to effectively control at least some voter qualifications in the ten affected States—only certain felons could be disqualified from voting under the plaintiffs' legal theory. But "[p]rescribing voting qualifications, . . . 'forms no part of the power to be conferred upon the national government" by the Elections Clause, which is 'expressly restricted to the regulation of the

times, the *places,* and the *manner* of elections.'" *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 17 (2013) (quoting The Federalist No. 60, at 371 (A. Hamilton) (C. Rossiter ed. 1961)). Thus, although the Elections Clause and the Seventeenth Amendment give Congress some control over federal elections, "nothing in these provisions lends itself to the view that voting qualifications in federal elections are to be set by Congress." *Id.* at 16 (quoting *Oregon v. Mitchell,* 400 U.S. 112, 210 (1970) (Harlan, J., concurring in part and dissenting in part)).

The Court has never suggested that Congress could invoke the Guarantee Clause to adopt and enforce voter qualifications in the States under the guise of ensuring a republican form of government. Instead, the Court's analysis rejects congressional control over voter qualifications as a matter of fundamental constitutional structure. *See id.* at 8-9. If the federal government wants to control voter qualifications, it must do so via constitutional amendment. *See* U.S. Const. amends. XV, XIX, XXVI. Yet, by allowing private individuals to enforce the Readmission Acts, the courts would be allowing Congress to control voter qualifications in ten States through 150-year-old legislation.

Equal-footing/equal-sovereignty. To the extent the Readmission Acts are judicially enforceable by any party, their constitutionality is also called into question by the equal-footing and equal-sovereignty doctrines. "'This Union' was and is a union of States, equal in power, dignity, and authority." *Coyle v. Smith*, 221 U.S. 559, 567 (1911). As James Madison explained at the Virginia ratifying convention, the Constitution created "a government of a federal nature, consisting of many coequal sovereignties." 3 The Debates in the Several State

Conventions on the Adoption of the Federal Constitution 381 (Jonathan Elliot ed., J.B. Lippincott & Co. 2d ed. 1891).

When States are admitted to the Union, it is "on an equal footing with the original states, . . . succeed[ing] to all the rights of sovereignty, jurisdiction, and eminent domain which [the original states] possessed." *Pollard v. Hagan*, 44 U.S. (3 How.) 212, 223 (1845). Thus, every new State may "exercise all the powers of government, which belong to and may be exercised by the original states of the union." *Id.* at 224. The ten States covered by the Readmission Acts were originally admitted on equal footing with all other States, and nothing in the Readmission Acts can change that.

Equal-sovereignty principles prohibit Congress from respecting the sovereignty of some States while depriving others. As this Court recently affirmed, "the constitutional equality of the States is essential to the harmonious operation of the scheme upon which the Republic was organized." *Shelby County v. Holder*, 570 U.S. 529, 544 (2013) (quoting *Coyle*, 221 U.S. at 580). And this "fundamental principle of equal sovereignty" is implicated when the States are treated differently. *Id.*

While "exceptional conditions" may temporarily permit differential treatment, *see id.* at 535, that treatment cannot continue in perpetuity absent proof of a current need, *id.* at 536. Thus, regardless of whether exceptional conditions permitted the Readmission Acts at the time of their enactment, there can be no argument that the differential treatment of the States is necessary now—especially given that nearly every state disenfranchises felons to some extent. *See Jones v. Governor of Florida*, 975 F.3d 1016, 1029 (11th Cir. 2020) (en banc). Equal sovereignty cannot countenance Congress preventing ten

States from regulating their elections and determining the conditions under which the right of suffrage may be exercised while the other forty States remain unimpaired. *See Bolln v. Nebraska*, 176 U.S. 83, 89 (1900) (holding that it is "repugnant to the theory of their equality under the Constitution" to prevent a State from amending its laws while allowing others to do so).

C. Judicial enforcement of the Readmission Acts will have significant consequences for States.

Felon disenfranchisement laws are common, *Jones*, 975 F.3d at 1029, and this Court has upheld them against constitutional attack, *Richardson v. Ramirez*, 418 U.S. 24, 56 (1974). Yet the constitutionality of felon disenfranchisement has been the topic of recent—and unsuccessful—litigation efforts. *Hopkins v. Watson*, 108 F.4th 371, 375 (5th Cir. 2024) (en banc) (Eighth Amendment), *cert. denied*, No. 24-560, 2025 WL 299516 (U.S. Jan. 27, 2025); *Thompson v. Sec'y of State for the State of Ala.*, 65 F.4th 1288, 1291 (11th Cir. 2023) (Equal Protection and *Ex Post Facto* Clauses).

If allowed to stand, the Fourth Circuit's ruling provides a path for such lawsuits—but only in some States. Were it to be adopted by other Circuits, ten States may have to allow certain felons to vote. Those States thus face the loss of the ability to decide for themselves which criminal convictions warrant stripping an individual of his or her ability to vote.

Limiting felon disenfranchisement is not the only restriction on States' ability to amend their constitutions found in the Readmission Acts. Three States—Texas, Mississippi, and Virginia—are prohibited from amending their constitutions in a way that would "deprive any citizen or class of citizens of the United States of the school rights and privileges secured by the constitution

of said State." 16 Stat. at 63 (Virginia); 16 Stat. 67, 68 (1870) (Mississippi); 16 Stat. at 81 (Texas).

Mississippi is currently facing litigation regarding a constitutional provision that requires its Legislature to "provide for the establishment, maintenance and support of free public schools upon such conditions and limitations as the Legislature may prescribe." Miss. Const. art. VIII, §201. The plaintiffs argue that Mississippi's 1868 constitution referred to "establishing a *uniform* system of free public schools" and that the deletion of the word "uniform" violates Mississippi's Readmission Act. *Williams On Behalf of J.E. v. Reeves*, 954 F.3d 729, 732-33 (5th Cir. 2020) (emphasis added). A panel of the Fifth Circuit permitted the suit to proceed under an *Ex parte Young* theory. *Id.* at 739. Dissenting from the denial of rehearing en banc, Judge Jones argued that "[n]o claim can be brought under *Ex parte Young* unless the Readmission Act can be enforced by private parties" but that it was "untenable" that "any such implied cause of action exists." *Williams on behalf of J.E. v. Reeves*, 981 F.3d 437, 444 (5th Cir. 2020) (Jones, J., dissenting from denial of rehearing en banc). The case nevertheless remains pending on remand.

School litigation is complicated enough under state law—it does not need a federal overlay. *See, e.g.*, *Morath v. The Tex. Taxpayer & Student Fairness Coal.*, 490 S.W.3d 826, 833 (Tex. 2016). (describing a lawsuit brought by "more than half of the State's 1,000-plus school districts . . . a court reporter's record exceeding 200,000 pages and a trial court judgment accompanied by 1,508 findings of fact and 118 conclusions of law"). But litigants could see the Fourth Circuit's decision, as well as the Fifth Circuit's, as an opportunity to combine the Readmission Acts with *Ex parte Young* to "pave the way

for federal court orders to effect a major restructuring of state school funding." *Williams*, 981 F.3d at 439 (Jones, J., dissenting from denial of rehearing en banc). The Court should reject such efforts.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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