No. 19-60069

United States Court of Appeals
for the
Fifth Circuit

INDIGO WILLIAMS, on behalf of her minor child J.E.; DOROTHY HAYMER, on behalf of her minor child, D.S.; PRECIOUS HUGHES, on behalf of her minor child, A.H.; SARDE GRAHAM, on behalf of her minor child, S.T.,

Plaintiffs-Appellants,

v.

PHIL BRYANT, in his official capacity as Governor of Mississippi; PHILIP GUNN, in his official capacity as Speaker of the Mississippi House of Representatives; TATE REEVES, in his official capacity as Lieutenant Governor of Mississippi;

(For Continuation of Caption See Reverse Side of Cover)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI (JACKSON)
NO. 3:17-CV-404

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Defendants-Appellees.

CERTIFICATE OF INTERESTED PERSONS

Undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

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STATEMENT REGARDING ORAL ARGUMENT

Appellants respectfully request oral argument. This appeal raises an important question of federal law concerning the requirements for, and applicability of, the exception to state sovereign immunity set forth in *Ex parte Young*, 209 U.S. 123 (1908). The Court's decision in this case will likely have significant consequences for the states within this circuit as well as litigants seeking to enforce federal law under *Ex parte Young*. Appellants submit that the Court's resolution of the question presented will be aided by oral argument.

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INTRODUCTION

This is a suit against officers of the State of Mississippi, in their official capacities, seeking to prevent them from enforcing a State law that is inconsistent with federal law and to require them to comply with their federal statutory obligations. In other words, it is a straightforward application of *Ex parte Young*, 209 U.S. 123 (1908), which holds that a state's sovereign immunity does not bar a suit against a state official when the suit seeks to invalidate a state law that conflicts with federal law. Yet the district court held that this routine procedural method of enforcing federal law was barred by the Eleventh Amendment. That decision does not withstand scrutiny and should be reversed.

Appellants brought this suit to enforce *An Act to admit the State of Mississippi to Representation in the Congress of the United States*, 16 Stat. 67 (1870), also known as the Mississippi Readmission Act (the "Readmission Act"). Passed in the aftermath of the Civil War, the Readmission Act restored Mississippi's representation in Congress, which the State voluntarily forfeited when it attempted to secede from the Union. As part of Congress's effort to secure lasting peace between the states and promote a republican form of government in this former confederate State, Congress provided in the Readmission Act "[t]hat the constitution of Mississippi shall never be so amended or changed as to deprive any citizen or class of citizens of the United States of the school rights and

privileges secured by the constitution of said State." *Id*. At the time, Mississippi had a robust education guarantee, which it adopted following the Civil War to ensure the uniform provision of public education to all the State's citizens, including newly freed African Americans. Specifically, Mississippi's Constitution required its legislature to "establish[] a uniform system of free public schools." Miss. Const. of 1868, art. VIII § 1.

Mississippi has since amended its Constitution to remove the uniformity requirement and has established a shockingly disuniform public school system that greatly disadvantages African-American students. *See* Miss. Const., art. VIII, § 201. Appellants, the parents of four African-American children in the Mississippi public school system ("Parents"), thus allege that Mississipi is violating the Readmission Act to their children's detriment. They seek a declaration that § 201 of the current Mississippi Constitution is invalid and that State officials remain bound by the 1868 Constitution's uniformity guarantee.

The district court, however, never reached the merits of this suit, but instead dismissed it on sovereign-immunity grounds as an impermissible case against the State. That decision is irreconcilable with *Ex parte Young* and its progeny. A suit under *Ex parte Young* must satisfy (as relevant here) three basic conditions: (i) the suit must be brought against state officials acting in their official capacities, not the state itself; (ii) the suit must seek equitable relief, not damages; and (iii) the

requested relief must be prospective in nature. Parents easily satisfied each requirement. They brought suit against Mississippi officials named in their official capacities. They seek declaratory relief. And that relief is prospective in nature. Mississippi law currently conflicts with federal law, so Parents seek a declaration that the State law is invalid and that State officials remain bound by federal law—a routine application of *Ex parte Young*.

The district court based its contrary conclusion principally on its erroneous belief that the relief sought by Parents was retrospective. But a declaration that current state law is invalid is, by definition, prospective in nature. The court also believed that a declaration would operate directly on the State by requiring "changes . . . to be made to the Mississippi Constitution," ROA.360, but that too is wrong. Federal court orders invalidating state laws do not mandate changes in state law itself—they simply render state law unenforceable to the extent it conflicts with federal law. Indeed, if the district court were right, a plaintiff could never bring suit to invalidate a state statute or constitutional provision. More than one hundred years of case law holds otherwise.

For these reasons and the reasons that follow, the district court's order dismissing Parents' Complaint should be reversed.

STATEMENT OF JURISDICTION

The district court had jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3) and (4). This Court has jurisdiction over Parents' appeal of the district court's final judgment pursuant to 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

Whether the district court erred in holding that Parents' suit—which seeks a declaration that Mississippi law conflicts with federal law—does not satisfy the *Ex parte Young* exception to sovereign immunity.

STATEMENT OF THE CASE

It is a bedrock principle of our legal system that when state law conflicts with federal law, state law must yield. The *Ex parte Young* doctrine gives life to this principle by authorizing equitable suits against state officials when those suits seek to invalidate state laws that conflict with federal authority. Through this suit, Parents seek to invalidate a state law that conflicts with a federal statute. The facts relevant to this appeal are as follows:

A. Statutory And Historical Background

In 1870, Congress passed *An Act to admit the State of Mississippi to Representation in the Congress of the United States*, 16 Stat. 67 (1870), also known as the Mississippi Readmission Act. The Readmission Act was the last in a series of steps required for Mississippi to re-secure its representation in Congress, which the State voluntarily forfeited when it attempted to secede. In the 1867

Military Reconstruction Act, Congress found that "no legal State government[] or adequate protection for life or property" existed in Mississippi. 14 Stat. 428 (1867). To secure a "loyal and republican State government[]," Congress required Mississippi (among other things) to adopt a new constitution and submit it to Congress "for examination and approval." 14 Stat. 428-29. The following year, Mississippi adopted a new constitution containing a robust education guarantee:

> As the stability of a republican form of government depends mainly upon the intelligence and virtue of the people, it shall be the duty of the Legislature to encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement, by establishing a uniform system of free public schools . . . .

Miss. Const. of 1868, art. VIII § 1.

Satisfied with the new constitution and with its education guarantee in particular, *see* 16 Stat. 40, 41 (1869), Congress chose to make that guarantee permanent. The Readmission Act "admitted [Mississippi] to representation in Congress," but it did so on the condition "[t]hat the constitution of Mississippi shall never be so amended or changed as to 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. 67, 68.[1]

[1] Congress included identical requirements in the acts readmitting Virginia and Texas to representation. *See* 16 Stat. 62 (1870) (Virginia); 16 Stat. 80 (1870) (Texas).

This last proviso was integral to Congress's goals of guaranteeing a republican form of government, creating a lasting peace, and breathing life into the Civil War Amendments (i.e., the 13th, 14th, and 15th Amendments). *See* U.S. Const. art IV, § 4; U.S. Const. amends. XIII, XIV, XV; *see also, e.g.*, Cong. Globe, 41st Cong., 2nd Sess. 1253 (Feb. 14, 1870) (Statement of Senator Howard), *id*. at 1255 (Statement of Senator Morton). If the former confederate states had republican governments, Congress reasoned, they would never again secede. Congress deemed uniform access to education to be a necessary foundation of that effort. *See, e.g.*, Derek W. Black, *The Constitutional Compromise to Guarantee Education*, 70 Stan. L. Rev. 735, 777 (2018) ("[C]ongress saw closing the educational gap in the South as indispensable to rebuilding the South and the overall Union."); Eric Biber, *The Price of Admission: Causes, Effects, and Patterns of Conditions Imposed on States Entering the Union*, 46 Am. J. Legal Hist. 119, 146-47 (2004) ("[E]nsuring that blacks would be eligible for public offices, and that public education would be available to blacks, can be seen as efforts to ensure that the political system was open to blacks, and that blacks would have sufficient education and understanding to effectively use their voting power.").

As Senator Sumner explained: "In a republic Education is indispensable. . . . It is not too much to say that had these States been more enlightened they would never have rebelled." Cong. Globe, 40th Cong., 1st Sess. 167 (Mar. 16, 1867).

Congress thus considered itself "bound" to ensure "that equality, that course of education, that course of social progress which shall gradually and slowly, but surely, wipe out and destroy all notions of aristocracy and of caste that have existed there hitherto." Cong. Globe, 41st Cong., 2nd Sess. 1333 (Feb. 16, 1870) (statement of Senator Edmunds); *see also id*. at 1253 (statement of Senator Howard).

In 1954, the United States Supreme Court declared segregation in public education unconstitutional, *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483 (1954), and the following year required the states to integrate their schools "with all deliberate speed," *Brown v. Bd. of Educ. of Topeka*, 349 U.S. 294 (1955). In response, and at the Governor's urging, Mississippi amended its Constitution in 1960 to (i) allow for the abolition of public schools to avoid integration, and (ii) eliminate the uniformity guarantee. As amended, the new education clause read: "The Legislature may, in its discretion, provide for the maintenance and establishment of free public schools for all children between the ages of six and twenty-one years, by taxation or otherwise, and with such grades, as the Legislature may prescribe." Miss. Const., art VIII, § 201 (1960).[2]

[2] The State also amended the education clause in 1890 and 1934, but in both cases nominally left the uniformity guarantee intact. *See* ROA.27-31, ¶¶ 5.10-5.28. The 1890 amendments are notable for the fact that they were specially designed to disenfranchise African Americans. *See* ROA.27-30, ¶¶ 5.10-5.20.

The education clause was amended again in 1987. In its current form, it provides: "The legislature shall, by general law, 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. A side-by-side review of the 1868 constitution and its current counterpart starkly illustrates the difference between the education rights that federal law protected and those that the State Constitution currently protects:

Mississippi Constitution's Education Clause, 1868 and Present

1868	**Present**
As the stability of a republican form of government depends mainly upon the intelligence and virtue of the people, it shall be the duty of the Legislature to encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvements, by establishing a uniform system of free public schools, by taxation, or otherwise, for all children between the ages of five and twenty-one years, and shall, as soon as practicable, establish schools of higher grade.	The Legislature shall, by general law, provide for the establishment, maintenance and support of free public schools upon such conditions and limitations as the Legislature may prescribe.

B. Procedural Background

Appellants are parents of African-American children in Mississippi who attend some of the State's worst public schools in the State's worst public school districts. Indigo Williams is the mother of J.E., a student at Raines Elementary

School in Jackson which, at the time the Complaint was filed, was a "D"-grade school as rated by the Mississippi Department of Education ("MDE"). ROA.18, ¶ 3.1. Precious Hughes is the mother of A.H, who is also a student at Raines. ROA.19, ¶ 3.3. Raines Elementary School is part of the Jackson Public School District, which was rated by MDE as an "F." ROA.18, ¶ 3.1. Dorothy Haymer is the mother of D.S., a student at Webster Street Elementary School which, at the time the Complaint was filed, was also rated a "D." ROA.19, ¶ 3.2. Sarde Graham is the mother of S.T., who is also a student at Webster. *Id*. ¶ 3.4. Webster Street Elementary School is part of Yazoo City Municipal School District, which was also rated an "F." *Id*. ¶ 3.2. Appellees are various state officials responsible for administering the State's public school system. ROA.19-24, ¶¶ 3.5-3.19.

Parents allege that Mississippi is in violation of the Readmission Act because the Mississippi Constitution contains no uniformity guarantee and Mississippi does not provide a uniform public education. Far from it. As "[t]he Mississippi Department of Education's most recent statistics show," "in schools whose student bodies are at least 70 percent African American, the average" school rating is "D." ROA.36, ¶ 5.45. "In contrast, schools with student bodies that are at least 70 percent white have an average . . . rating of B." *Id*.; *see also* ROA.37-47, ¶¶ 5.48-5.76. In other words, the quality of public education provided in Mississippi depends primarily on whether a school is predominantly black or

predominantly white. Parents thus allege that the State has injured them and their children by "maintaining a system of public schools that is not uniform." ROA.48, ¶ 6.8(a); *see* ROA.46, ¶ 5.76, ROA.49-50, ¶ 6.9.

To remedy these injuries, Parents seek a declaratory judgment "that Section 201 of the Mississippi Constitution violates the Readmission Act." ROA.51, ¶ 7.1(a). Parents also seek declarations "that the requirements of Article VIII, Section 1 of the Constitution of 1868"—which required State officials to maintain a uniform system of free public schools—"remain legally binding on the Defendants, their employees, their agents, and their successors," and that prior amendments to the Mississippi Constitution's education clause "were void *ab initio*." *Id*. Parents do not seek damages.

Appellees moved to dismiss Parents' Complaint, asserting various theories. One of those theories was that Parents' suit was barred by sovereign immunity, because Parents impermissibly seek "relief directed at the State's past conduct in adopting a new constitution, as far back as 1890" and a "determination that the current Constitution is in conflict with the 'school rights and privileges' secured by the 1868 Constitution." DE24 at 24.

The district court dismissed Parents' Complaint on sovereign immunity grounds. The court held that Parents' claims were barred because the relief they seek—which the district court characterized as "a declaration that certain

amendments to the Mississippi Constitution are void *ab initio*, and that Section 1 of Article VIII of the Mississippi Constitution of 1868 is once more the law of this land"—"would result in the issuing of an order that would, and could, operate only against the State of Mississippi." ROA.280.

The district court also held that *Ex parte Young*—which authorizes federal courts to issue prospective equitable relief in official-capacity suits, state sovereign immunity notwithstanding—was inapplicable for two reasons. First, the court noted that Parents had not "requested any injunctive relief." ROA.280. Second, the court believed that "the relief requested by Plaintiffs does not seek to dictate future conduct on the part of any of the named Mississippi officials but, instead, only seeks to rectify prior violations of the Mississippi Readmission Act by the State of Mississippi itself." *Id.* The court then dismissed Parents' claims with prejudice. *See* ROA.282.

Parents promptly moved to alter or amend. *See* ROA.285-287, DE35.[3] Parents asserted that the district court plainly erred in its application of *Ex parte Young*. In the alternative, Parents contended that the court's jurisdictional dismissal should have been without prejudice and requested that the court grant leave to file an amended complaint. In support of that latter request, Parents

[3] "DE" refers to district court docket entries that are not part of Parents' Record Excerpts.

attached a Proposed Amended Complaint which, among other things, removed the request for a declaration that certain inoperative amendments to the Mississippi Constitution were void, and reiterated that Parents seek a prospective declaratory judgment that current § 201 of the Mississippi Constitution violates the Readmission Act and that Appellees remain obligated to provide a uniform system of public schools. *See* ROA.325, ¶ 7.1.

The district court granted in part and denied in part Parents' motion. As relevant to this appeal, the court restated its conclusion that Parents' claims were barred by sovereign immunity because the relief they seek would require the court to "declare that the education provision contained in the Mississippi Constitution when it was ratified in 1868 was still the law of this land to which the Mississippi governor (and each of his successors) and other elected officials (and each of their successors) were still bound." ROA.360. In a footnote, the court rejected Parents' argument that they properly seek to require Mississippi officials to abide by the 1868 Constitution's uniformity guarantee, as the Readmission Act requires. *Id*. According to the court, "[m]erely requiring the named defendants to abide by the 1868 version of the education clause . . . would not end the alleged violation of the Readmission Act . . . because the amendments to the constitution would still remain in place, and would control the actions of, and the decisions made by, any elected or public official who is not named as a defendant in this case." *Id*.

The court did agree with Parents, however, that it had erred in dismissing their Complaint with prejudice. ROA.361. But it then denied Parents leave to amend on the ground that their Proposed Amended Complaint would also be barred by sovereign immunity. *Id*. On January 4, 2019, the Court issued its final judgment, dismissing the case without prejudice. ROA.363.

This appeal followed.

SUMMARY OF THE ARGUMENT

This case calls for nothing more than a straightforward application of settled sovereign immunity principles.

State sovereign immunity, as reflected in the Eleventh Amendment, is the privilege of the states not to be sued without their consent. This immunity is important, but it is also not unlimited. *Ex parte Young* sets forth an exception to sovereign immunity for suits seeking to invalidate state laws that conflict with federal authority. This doctrine is critical because it ensures the supremacy of federal law.

To determine whether a suit satisfies *Ex parte Young*, a "court need only conduct a straightforward inquiry," *Verizon Md. Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 645 (2002) (quotations omitted), to see whether the plaintiff's complaint satisfies three basic conditions. First, the plaintiff must sue state officials in their official capacities, not the state itself. There is no dispute that

Parents have done so. Second, the plaintiff must seek equitable relief—i.e., a declaration or an injunction. And third, that relief must be prospective in nature.

Parents' Complaint easily satisfies these conditions. Parents seek a declaration that § 201 of the current Mississippi Constitution violates the Readmission Act and is therefore invalid and, conversely, that State officials remain bound by the 1868 Constitution's uniformity guarantee. If that declaration were issued, State officials could not enforce § 201 to the extent it violates the Readmission Act and would be required to abide by the uniformity guarantee in the 1868 Constitution. Thus, Parents seek appropriate equitable relief that is prospective in nature. *Ex parte Young* is clearly satisfied.

The district court's contrary conclusion conflicts with settled law.

The district court first reasoned that *Ex parte Young* was inapplicable because "Plaintiffs have not requested any injunctive relief, i.e., any order requiring that the named defendants take, or cease taking, some type of action." ROA.280. But *Ex parte Young* requires the plaintiff to seek *equitable* relief, which is not limited to injunctive relief. Myriad cases from this Court and the Supreme Court demonstrate that Parents' request for a declaration was a request for equitable relief. *See Verizon*, 535 U.S. at 646; *Lipscomb v. Columbus Mun. Separate Sch. Dist.*, 269 F.3d 494, 501 (5th Cir. 2001) (holding suit seeking only declaratory relief satisfied *Ex parte Young*).

The district court next stated that *Ex parte Young* was inapplicable because Parents seek only retrospective relief. ROA.280. That is incorrect. A declaration that § 201 of the Mississippi Constitution violates the Readmission Act is prospective because if that declaration was issued, State officials could no longer enforce § 201 to the extent it conflicts with federal law. A declaration that Appellees are bound by the uniformity guarantee is equally prospective because State officials would, going forward, have to comply with the uniformity guarantee.

Finally, the district court held that *Ex parte Young* did not apply because a declaratory judgment would operate directly on the State by requiring "changes . . . to be made to the Mississippi Constitution." ROA.360. That also is not correct. When a state law is declared invalid, no changes are made to state law. The federal court does not strike the law from the statute books nor does it require state officials to repeal or amend the law. Instead, the offending state law simply becomes unenforceable to the extent it conflicts with federal law. That is the basis for a wide swath of litigation, including cases under the First Amendment, which (like the Readmission Act) prevents states from enacting certain laws. The district court's contrary view cannot be reconciled with these cases—or with the principles underlying federal constitutional or preemption litigation more generally. Its judgment should be reversed.

ARGUMENT

This Court reviews *de novo* the district court's order dismissing Parents' Complaint on sovereign immunity grounds, *Meyers ex rel. Benzing v. Texas*, 410 F.3d 236, 240 (5th Cir. 2005), using the same standards applicable to dismissal orders under Rule 12(b)(6), *Benton v. United States*, 960 F.2d 19, 21 (5th Cir. 1992). The Court must accept all well-pleaded factual allegations as true and indulge all reasonable inferences in Parents' favor. *Meador v. Apple, Inc.*, 911 F.3d 260, 264 (5th Cir. 2018). Under these standards, the judgment below should be reversed. Parents easily satisfied the *Ex parte Young* exception to sovereign immunity. The district court's conclusion to the contrary stems from multiple legal errors.

I. PARENTS SATISFY THE ELEMENTS OF *EX PARTE YOUNG*

Parents seek a declaration that § 201 of the Mississippi Constitution violates the Readmission Act and that the Readmission Act obligates State officials to comply with the 1868 Constitution's uniformity guarantee. These requests satisfy *Ex parte Young*.

A. *Ex parte Young* Ensures the Supremacy of Federal Law

Sovereign immunity, as reflected in the Eleventh Amendment, "is the privilege of the sovereign not to be sued without its consent." *Va. Office for Prot. & Advocacy v. Stewart* (*VOPA*), 563 U.S. 247, 253 (2011). This principle undoubtedly plays a critical role in our federal system. The doctrine is respectful

of state sovereignty and promotes harmony between the states and the federal government by limiting federal intervention. *See id.* at 258-59; *cf. Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106 (1984). It also protects the public fisc by precluding suits seeking retroactive relief that "must be paid from public funds." *Edelman v. Jordan*, 415 U.S. 651, 663 (1974).

But the doctrine does not grant states unlimited immunity. More than a century ago, the Supreme Court "established an important limit on the sovereign-immunity principle." *VOPA*, 563 U.S. at 254. In "[t]he landmark case of *Ex parte Young*," the Court held "that a suit challenging the constitutionality of a state official's action in enforcing state law is not one against the state" and thus sovereign immunity does not apply. *Green v. Mansour*, 474 U.S. 64, 68 (1985). State officials, the Supreme Court reasoned, have no authority "to enforce a legislative enactment which is void because [it is] unconstitutional." *Ex parte Young*, 209 U.S. at 159. In that circumstance—where a state law is void because it conflicts with federal law—"[t]he state has no power to impart to [a state official] any immunity from responsibility to the supreme authority of the United States." *Id*. at 159-60; *see, e.g.*, *Aguilar v. Tex. Dep't of Crim. Justice*, 160 F.3d 1052, 1054 (5th Cir. 1998) ("[E]nforcement of an unconstitutional law is not an official act because a state [cannot] confer authority on its officers to violate the Constitution or federal law."). For the same reasons, sovereign immunity is equally

inapplicable when state law conflicts with a federal statute, *see, e.g.*, *Nelson v. Univ. of Tex. at Dallas*, 535 F.3d 318, 324 (5th Cir. 2008), as explained in greater detail below, *infra* at 20.

As the Supreme Court has emphasized, the *Ex parte Young* doctrine is "necessary to permit the federal courts to vindicate federal rights." *VOPA*, 563 U.S. at 255 (quotations omitted); *see Pennhurst*, 465 U.S. at 105 ("Our decisions repeatedly have emphasized that the *Young* doctrine rests on the need to promote the vindication of federal rights."). If the law were otherwise, states could employ their sovereign immunity "as a means of avoiding compliance with federal law," *P.R. Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 146 (1993), and could pass unconstitutional laws and laws that conflict with binding federal statutes knowing that plaintiffs would have no recourse to challenge those laws in federal court. *Ex parte Young* "gives life to the Supremacy Clause" by permitting federal courts "to vindicate federal rights and hold state officials responsible to the supreme authority of the United States." *Idaho v. Coeur d'Alene Tribe*, 521 U.S. 261, 293 (1997).

Ex parte Young, in short, plays a vital role in our system: It ensures that federal law remains supreme. *See Pennhurst*, 465 U.S. at 105 ("*Ex parte Young* was the culmination of efforts by this Court to harmonize the principles of the

Eleventh Amendment with the effective supremacy of rights and powers secured elsewhere in the Constitution." (quotations omitted)).

B. To Satisfy *Ex parte Young*, A Plaintiff Must Only Seek Prospective Equitable Relief from State Officials

Ex parte Young's requirements are simple. The first, and most basic, requirement of *Ex parte Young* is that the suit must be brought against state officials acting in their official capacities, not the state itself. *See, e.g.*, *NiGen Biotech, L.L.C. v. Paxton*, 804 F.3d 389, 394 (5th Cir. 2015); *Saltz v. Tenn. Dep't of Emp't Sec.*, 976 F.2d 966, 968 (5th Cir. 1992). There is no dispute that this requirement is satisfied here. Appellees are all state officials responsible for administering Mississippi's public schools, and they are all named in their official capacities. Appellees have never argued otherwise.

Beyond that, the "court need only conduct a straightforward inquiry into whether the complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective." *Verizon*, 535 U.S. at 645 (quotations omitted). Relief is prospective where it seeks to have state officials conform their conduct to the law. *See, e.g.*, *Papasan v. Allain*, 478 U.S. 265, 282 (1986); *Milliken v. Bradley*, 433 U.S. 267, 289 (1977). In other words, "a complaint must allege that the defendant *is violating* federal law, not simply that the defendant has done so" in the past. *NiGen*, 804 F.3d at 394. In contrast, relief is retrospective

when it seeks only to remedy a past wrong that would have no future effects. *See, e.g.*, *Papasan*, 478 U.S. at 278; *Green*, 474 U.S. at 428.

In undertaking this straightforward inquiry, courts apply only a "threshold analysis," focusing "on whether the complaint makes the requisite claims against proper parties." *Air Evac EMS, Inc. v. Tex., Dep't of Ins., Div. of Workers' Comp.*, 851 F.3d 507, 516-17 (5th Cir. 2017). *Ex parte Young* does not call for "a merits inquiry." *Delaughter v. Woodall*, 909 F.3d 130, 137 (5th Cir. 2018).

Nor does *Ex parte Young* distinguish between suits seeking to enforce constitutional guarantees and those seeking to enforce federal statutes. "The Supreme Court has never restricted the application of *Ex parte Young* to cases involving constitutional law." *See Nelson*, 535 F.3d at 324 (citing *Verizon*, 535 U.S. at 645-48, which "allow[ed] suit under *Ex parte Young* for alleged violation of Telecommunications Act"); 17A Charles A. Wright et al., *Fed. Prac. & Proc.* § 4232 (3d ed. 2018).

It is equally irrelevant when the alleged violation began, so long as the relief requested seeks to correct the violation in the future. *See Papasan*, 478 U.S. at 274, 281-82. And it does not matter whether the complaint seeks impermissible relief alongside permissible relief. So long as one of the plaintiff's remedial requests satisfies *Ex parte Young*, the suit must be allowed to proceed. *See id*. at 280-82; *NiGen*, 804 F.3d at 394-95.

C. Parents Satisfy *Ex parte Young*

Parents plainly satisfy the requirements of *Ex parte Young*. The Readmission Act prohibits Mississippi from amending its Constitution so as to diminish the school rights and privileges protected in the State's 1868 Constitution, including the right to a uniform system of public education. But the Mississippi Constitution has been amended and no longer contains a uniformity guarantee. As a direct consequence, State officials are currently providing a disuniform system of public schools. *See* ROA.36-47, ¶¶ 5.46-5.76. To remedy this ongoing violation, Parents seek a declaration that "Section 201 of the Mississippi Constitution violates the Readmission Act," and, conversely, that State officials remain bound by the uniformity guaranty in "Article VIII, Section 1 of the Constitution of 1868." ROA.51, ¶ 7.1(a).[4] There is no question that this relief is equitable and prospective. It does not seek a remedy for any past wrongs. Instead, it seeks to prevent State officials from enforcing § 201 moving forward to the extent it is inconsistent with the Readmission Act, and to make clear that those officials are obligated to comply with the uniformity guarantee. *Ex parte Young* requires nothing more.

[4] Parents also requested a declaration that the "1960, 1934, and 1890 versions of Section 201 were void *ab initio*," ROA.51, ¶ 7.1, which is discussed in greater detail below, *infra* at 31 n.6.

The Supreme Court's decision in *Papasan* is instructive. There, the plaintiffs alleged that, beginning in the 1850s, Mississippi imprudently sold and invested the proceeds from the sale of public lands designated for the support of public schools, which resulted in disparate funding for schools in the State's northern 23 counties. 478 U.S. at 271-75. Plaintiffs thus alleged that Mississippi officials breached their trust obligations and violated the Equal Protection Clause in their use of these funds. The Supreme Court affirmed the dismissal of the plaintiffs' breach-of-trust claim, which was retrospective relief for accrued monetary liability. *Id*. at 280-81.

But the Supreme Court allowed plaintiffs' equal protection claim to go forward. The Court held that the "alleged ongoing constitutional violation—the unequal distribution by the State of the benefits of the State's school lands—is precisely the type of continuing violation for which a remedy may permissibly be fashioned under *Young*." *Id*. at 282. It did not matter "that the current disparity" resulted from "actions in the past," because the "essence" of the claim was "the present disparity in the distribution of the benefits of state-held assets." *Id.* Accordingly, "[a] remedy to eliminate this current disparity, even a remedy that might require the expenditure of state funds, would ensure compliance *in the future*" with the dictates of federal law. *Id*. (quotations omitted).

Papasan is relevant in three critical respects.

First, *Papasan* confirms that *Ex parte Young* applies even when the harm resulted from "actions in the past," so long as the complaint seeks to remedy an ongoing violation. *Id*. Appellees' argument that Parents seek relief "directed at the State's past conduct . . . as far back as 1890," DE24 at 24, is therefore irrelevant, so long as Parents seek prospective relief.

Second, *Papasan* confirms that Parents are indeed seeking proper prospective relief. Parents seek a declaration that *current* § 201 of the Mississippi Constitution violates the Readmission Act and that State officials remain obligated to provide a uniform system of public schools. As in *Papasan*, this is a prospective "remedy to eliminate th[e] current disparity" in the State's public school system. 478 U.S at 282.

Finally, Appellees' erroneous claim that Parents also seek impermissible relief, *see infra* at 31 n.6, is irrelevant. Just as the Supreme Court in *Papasan* allowed the equal protection claim to proceed while affirming dismissal of the breach-of-trust claim, this Court also must allow Parents' prospective claims to move forward.

In short, there is no dispute that Parents satisfied the straightforward inquiry that *Ex parte Young* requires. Parents' Complaint seeks a textbook example of relief permissible under *Ex parte Young*, and their suit should be allowed to proceed.

II. THE DISTRICT COURT ERRED IN HOLDING THAT *EX PARTE YOUNG* DOES NOT APPLY

Despite clear law to the contrary, the district court held that *Ex parte Young* was inapplicable and thus dismissed Parents' suit on sovereign immunity grounds. The court offered three justifications for its interpretation of *Ex parte Young*. None is correct.

First, the district court held that *Ex parte Young* was inapplicable because "Plaintiffs have not requested any injunctive relief, i.e., any order requiring that the named defendants take, or cease taking, some type of action. Instead, Plaintiffs only request a declaration from this Court that the amendments to the Mississippi Constitution are void." ROA.280.

It is unclear what the district court meant.

If the district court meant to suggest that *Ex parte Young* did not apply because Parents requested declaratory relief only, it was incorrect. "To meet the *Ex parte Young* exception, . . . the relief sought must be declaratory *or* injunctive in nature and prospective in effect." *Aguilar*, 160 F.3d at 1054 (emphasis added). Thus, this Court has repeatedly held that a "claim for prospective declaratory relief" can satisfy *Ex parte Young*. *Davis v. Tarrant Cty.*, 565 F.3d 214, 228 (5th Cir. 2009); *see Lipscomb*, 269 F.3d at 501. That legal rule is well beyond dispute. *See, e.g.*, *Verizon*, 535 U.S. at 646 ("prayer for declaratory relief" satisfied *Ex parte Young*); *Nat'l Audubon Soc'y, Inc. v. Davis*, 307 F.3d 835, 847 (9th Cir.

2002) ("The fact that only declaratory, rather than injunctive, relief may be available does not alter [the] conclusion" that "[u]nder the principle of *Ex Parte Young*, private individuals may sue state officials for prospective relief against ongoing violations of federal law.") (collecting cases); *Ameritech Corp. v. McCann*, 297 F.3d 582, 587 (7th Cir. 2002).[5]

Alternatively, if the Court's holding rested on its belief that Parents "*only* request a declaration from this Court that the amendments to the Mississippi Constitution are void," ROA.280 (emphasis added), it was equally incorrect. Parents *also* sought a declaration that, under the Readmission Act, State officials remain bound by the 1868 Constitution's uniformity guarantee. *See* ROA.51, ¶ 7.1(a). Moreover, as explained immediately below, even the district court's incorrect observation is irrelevant, because a declaration that § 201 of the current Mississippi Constitution is invalid is itself a form of prospective declaratory relief that is permissible under *Ex parte Young*.

Second, the district court asserted that *Ex parte Young* was inapplicable because "the relief requested by Plaintiffs does not seek to dictate future conduct

[5] A holding that declaratory relief is not available under *Ex parte Young* would also conflict directly with § 1983, which provides that injunctive relief shall not be granted against judicial officers "unless a declaratory decree was violated or declaratory relief was unavailable." 42 U.S.C. § 1983; *see Davis*, 565 F.3d at 228 ("claim for prospective declaratory relief against the defendant judges in their official capacities is not barred by the Eleventh Amendment").

on the part of any of the named Mississippi officials but, instead, only seeks to rectify prior violations of the Mississippi Readmission Act by the State of Mississippi itself." ROA.280. Again, the district court ignored Parents' request for a declaration that, under the Readmission Act, State officials remain obligated to provide a uniform system of public schools. Such a declaration would unquestionably dictate future conduct on the part of State officials by obligating them to administer a uniform system of public schools. *See* ROA.51, ¶ 7.1(a). That request alone is sufficient to trigger *Ex parte Young*. *See Papasan*, 478 U.S. at 279-82.

More fundamentally, the district court appears to have misunderstood the effect of a declaration that § 201 of the current Mississippi Constitution violates the Readmission Act. A declaration that state law conflicts with federal law *is* prospective in nature. *Cf. People for the Ethical Treatment of Animals v. Rasmussen*, 298 F.3d 1198, 1202 n.2 (10th Cir. 2002) (recognizing that "a declaratory judgment is generally prospective relief" unless it is "intertwined with a claim for monetary damages"). This is true for two reasons. First, although declaratory relief is not coercive, state officials have no authority to enforce an invalid state law, *Ex parte Young*, 209 U.S. at 159-60, and presumably will comply with superior federal law on a prospective basis, *Steffel v. Thompson*, 415 U.S. 452, 469-70 (1974); *United States v. Chem. Found.*, 272 U.S. 1, 14-15 (1926). *See*

Verizon, 535 U.S. at 646 (declaration of future ineffectiveness of state action was prospective). Second, declaratory relief will support an injunction in the event state officials do not comply with their obligations, as this Court recognized in *Lipscomb*. 269 F.3d at 500-01 ("declaration that voiding [certain] leases would violate the Contract Clause" is effectively "indistinguishable from a suit to enjoin the [state official] from declining to abide the challenged lease terms" and is therefore permissible under *Ex parte Young*); *Nat'l Audubon Soc'y*, 307 F.3d at 848.

Indeed, it would make no sense if a declaratory judgment like that requested by Parents was not prospective. After all, the very purpose of the Declaratory Judgment Act was to facilitate suits challenging the constitutionality of state statutes under *Ex parte Young*. *Steffel*, 415 U.S. at 466 ("Congress plainly intended declaratory relief to act as an alternative to the strong medicine of the injunction and to be utilized to test the constitutionality of state criminal statutes."). The Supreme Court approved that use of the declaratory judgment procedure in *Steffel*. The district court's contrary view of declaratory relief is irreconcilable with that decision (and others).

Finally, the district court stated in its reconsideration order that sovereign immunity would bar Parents' suit "because the requested declaratory judgment would . . . result in changes being made to the Mississippi Constitution."

ROA.361; *see* ROA.360 (sovereign immunity applied because of "the changes sought to be made to the Mississippi Constitution"). Here, too, the district court erred.

Nowhere did Parents suggest that they were asking the district court to amend the State Constitution, nor would that be the consequence of any federal decree. Parents instead request a declaration that (i) the current version of § 201 of the Mississippi Constitution violates the Readmission Act and (ii) State officials remain obligated to comply with the 1868 Constitution's uniformity guarantee, which the Readmission Act made binding on State officials.

There is nothing unusual about this request. Federal courts routinely strike down state laws and constitutional provisions that conflict with federal law without issuing orders to amend or abolish state statutory or constitutional provisions. Sovereign immunity is no bar because a federal judgment declaring a state law invalid does not itself change state law—a federal court order "cannot make even an unconstitutional statute disappear." *Steffel*, 415 U.S. at 469 (quotations omitted); *see* Richard H. Fallon, Jr., *As-Applied and Facial Challenged and Third-Party Standing*, 113 Harv. L. Rev. 1321, 1339 (2000) (federal "court has no power to remove a law from the statute books"); 39 U.S. Op. Att'y Gen. 22, 22-23 (1937) ("[t]he decisions are practically in accord in holding that courts have no power to repeal or abolish a statute"). Instead, the offending law simply becomes

unenforceable to the extent it is inconsistent with federal law. Indeed, this is the foundation for a wide swath of civil constitutional and preemption litigation.

Consider cases under the First Amendment. That Amendment provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble, and to petition the government for a redress of grievances." U.S. Const. amend. I. Because the Amendment has been incorporated against the states, *see, e.g.*, *Everson v. Bd. of Educ. of Ewing Twp.*, 330 U.S. 1, 15 (1947) (Establishment Clause), no state may enact such a law either. In a typical case, a plaintiff could sue state officials for a declaration that a state statute unlawfully abridges her right to free speech. Yet no one would suggest that sovereign immunity would bar that suit on the ground that it would require "changes," ROA.360, to state law. The statute would simply be declared invalid and unenforceable. *See, e.g.*, *Minn. Voters All. v. Mansky*, 138 S. Ct. 1876 (2018); *cf. Torasco v. Watkins*, 367 U.S. 488 (1961) (in case arising from state court, invalidating state constitutional provision on First Amendment grounds). The result can be no different under the Readmission Act.

In a footnote, the district court also held that "requiring the named defendants to abide by the 1868 version of the education clause . . . would not end the alleged violation of the Readmission Act . . . because the amendments to the

[Mississippi] constitution would still remain in place, and would control the actions of . . . any elected or public official who is not named as a defendant in this case." ROA.360. It is unclear what exactly the district court meant by that statement, but whatever it meant was incorrect.

An order holding that § 201 of the current Mississippi Constitution violates the Readmission Act and requiring State officials to abide by the 1868 Constitution's uniformity guarantee *would* end the violation because State officials (i) could not enforce a State law (§ 201) that conflicts with the Readmission Act, and, conversely, (ii) would have to comply with the Readmission Act's uniformity guarantee. *See supra* at 26-27; *see also, e.g.*, *Lipscomb*, 269 F.3d at 499-502 (holding permissible under *Ex parte Young* a request for declaratory relief seeking to invalidate state action under state constitutional provision that conflicted with Mississippi officials' obligations under the Contract Clause). In other words, while § 201 might remain on the books in the sense that a federal court cannot delete the text of state law, the *court's own order* would render it inoperative to the extent it conflicts with the Readmission Act. That is what federal orders invalidating state laws *do*.

Nor is it true as a matter of Mississippi law that subsequent "amendments to the constitution would still remain in place." ROA.360. "It is a general rule of application that, where an act purporting to amend and re-enact an existing statute

is void, the original statute remains in force." *Ross v. Goshi*, 351 F. Supp. 949, 954 (D. Haw. 1972). This is unquestionably true in Mississippi. *See, e.g.*, *De Tenorio v. McGowan*, 510 F.2d 92, 101 & n.3 (5th Cir. 1975) (invalidation of amendment to state statute "necessitate[es] a return to the previously existing valid statute") (citing *Lawrence v. Miss. State Tax Comm'n*, 137 So. 503, 505 (Miss. 1931) (pre-amendment law "would remain in force as though the amendment had not been made")); *Johnson v. State*, 111 So. 595, 596 (Miss. 1927).[6] Thus, under *both* federal and state law principles, the uniformity guarantee would remain effective and binding on State officials if declaratory relief were granted.

* * *

Parents recognize that Appellees asserted other grounds for dismissal, many of which present complicated questions on which the district court has not passed. But those arguments "cannot be smuggled in under the Eleventh Amendment by barring a suit in federal court that does not violate the State's sovereign immunity." *VOPA*, 563 U.S. at 260. The district court misapplied settled sovereign immunity law, and the proper course is to reverse the judgment of the district court and

[6] Parents discussed prior amendments to the Mississippi Constitution, not because they sought retrospective relief, but to demonstrate which was "the previously existing *valid*" provision that remains operative *today*. *De Tenorio*, 510 F.2d at 101 (emphasis added). It would suffice for present purposes, however, to hold that § 201 of the Mississippi Constitution violates the Readmission Act to the extent it purports to relieve state officials of their obligation to comply with the uniformity guarantee and that State officials remain bound by the uniformity guarantee.

remand the case so that the State's other arguments may be considered by that court in the first instance.

CONCLUSION

For all the foregoing reasons, the judgment of the district court should be reversed.

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CERTIFICATE OF SERVICE

I hereby certify that, on March 25, 2019, an electronic copy of the foregoing document was filed with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit and served on counsel for Defendants-Appellees using the appellate CM/ECF system.

s/ Jason Zarrow
Jason Zarrow

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 7,364 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f) and Fifth Circuit Rule 32.2.

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Times New Roman font.

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