No. 17-1637

IN THE
# Supreme Court of the United States

JOHN DOE, formerly known as Jane Doe,
*Petitioner*,

v.

ERIC HOLCOMB, in his official capacity as Governor of the State of Indiana, CURTIS T. HILL, JR., in his official capacity as Attorney General for the State of Indiana, MYLA ELDRIDGE, in her official capacity as Marion County Clerk of the Court, and JANE SIEGEL, in her official capacity as Chief Administrative Officer of the Indiana Supreme Court,
*Respondents*.

**On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit**

## BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI


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## QUESTIONS PRESENTED

1. Whether Article III precludes federal court jurisdiction to adjudicate the constitutionality of a state statute in a lawsuit against officials who do not enforce the statute.

2. Whether, in a case against state officials, sovereign immunity precludes federal court jurisdiction to adjudicate the constitutionality of a state statute in a lawsuit against officials who do not enforce the statute.

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## INTRODUCTION

John Doe, a Mexican citizen lawfully residing in Indiana, was born as Jane Doe and wishes to change his legal name to John Doe. Doe could have filed a name-change petition in state court, the institution to which Indiana—and virtually every other State—assigns responsibility for considering name-change applications. But Doe believes that he is prevented from changing his name by an Indiana statute that requires name-change petitioners to provide proof of U.S. citizenship—a requirement he contends is unconstitutional. Rather than file a name-change petition and raise this objection in that proceeding, he filed this lawsuit against several public officials.

Both the district court and the Seventh Circuit concluded that Doe's lawsuit should be dismissed, concluding—albeit under different doctrinal rubrics—that the officials Doe has sued are simply the wrong defendants. Doe now petitions the Court to exercise its certiorari jurisdiction and to reverse these courts.

There is no justification for the Court to do so. The lower courts agree on the test used to determine whether a public official is a proper defendant in a constitutional challenge to a state statute, a fact underscored by the absence of any attempt in Doe's petition to identify a lower-court conflict. The decisions below correctly applied this test and the Court's precedents. Furthermore, Doe concedes this to be an "unusual case." Indeed, not only is his case unusual, but his claim, if it has merit, is ultimately redressable

through a different legal action. And in any event, because Doe is married to a U.S. citizen, First Am. Compl. ¶ 27, he will be eligible for U.S. citizenship three years after he became a lawful permanent resident, 8 U.S.C. § 1430(a), at which point he will have no trouble obtaining a name change.

Accordingly, this case does not present an important question of federal law. The question presented does not have national significance, or even particular significance for Doe himself. The Court should therefore deny Doe's petition.

## STATEMENT OF THE CASE

1. Approximately 33 years ago, Doe was born in Mexico with female genitalia, and Doe's parents chose a traditionally female name for their new baby. Pet. App. 26. In 1990, Doe and family moved from Mexico to Indiana. *Id.* About twenty years later, Doe was diagnosed with gender dysphoria. *Id.* Doe has since undergone surgery and hormone therapy, and he now identifies as male. *Id.*

Doe obtained Deferred Action for Early Childhood Arrivals status in late 2013, received asylum in 2015, and secured lawful permanent residency sometime after he became eligible in September 2016. *Id.* All of Doe's official identification documents, including his Indiana identification card and his federal immigration documents, identify Doe as male. *Id.* at 26–27.

Doe's legal name, however, remains the conventionally female name given at birth, and his official

identification documents use this legal name. *Id.* at 27. Doe wishes to change his name to reflect his male gender identity. *Id.*

2. In Indiana, as in virtually every other State, courts are wholly responsible for processing requests to change individuals' legal names. *See* Ind. Code § 34-28-2-1.[1] The name-change process begins when an individual files a name-change petition "with the circuit court, superior court, or probate court of the county in which the person resides." *Id.* § 34-28-2-2(a)(3). The court will then set a hearing date, and before the hearing the petitioner—unless exempt from the publication requirement—will publish a notice of the name-change petition. *See, e.g., In re A.L.*, 81 N.E.3d 283, 291 (Ind. Ct. App. 2017) (holding that

[1] *See also* Ala. Code §12-13-1; Alaska R. Civ. P. 84; Ariz. Rev. Stat. § 12-601; Ark. Code § 9-2-101; Cal. Civ. Proc. Code § 1275; Colo. Rev. Stat. § 13-15-101; Conn. Gen. Stat. § 52-11; Del. Code Ann. tit. 10, § 5901; Fla. Stat. Ann. § 68.07; Ga. Code § 19-12-1; Idaho Code § 7-801; 735 Ill. Comp. Stat. 5/21-101; Iowa Code § 674.1; Kan. Stat. § 60-1401; Ky. Rev. Stat. § 401.010; La. Rev. Stat. § 13:4751; Me. Rev. Stat. tit. 18-C, § 1-701; MD R SPEC P Rule 15-901; Mass. Gen. Laws ch. 210, § 12; Mich. Comp. Laws § 711.1; Minn. Stat. § 259.10; Miss. Code. § 93-17-1; Mo. Stat. § 527.270; Mont. Code § 27-31-101; Neb. Rev. Stat. § 25-21,271; Nev. Rev. Stat. § 41.270; N.H. Rev. Stat. § 547:3-i; NJ R SUPER TAX SURR CTS CIV R. 4:72-1; N.M. Stat. § 40-8-1; N.Y. Civ. Rights Law § 60; N.C. Gen. Stat. § 101-2; N.D. Cent. Code § 32-28-02; Ohio Rev. Code § 2717.01; Okla. Stat. tit. 12, § 1631; Or. Rev. Stat. § 33.410; 54 Pa. Cons. Stat. § 701; 8 R.I. Gen. Laws § 8-9-9; S.C. Code § 15-49-10; S.D. Codified Laws § 21-37-1; Tenn. Code § 29-8-101; Tex. Fam. Code § 45.101; Utah Code § 42-1-1; Vt. Stat. tit. 15, § 811; Va. Code § 8.01-217; Wash. Rev. Code § 4.24.130; W. Va. Code § 48-25-101; Wis. Stat. § 786.36; Wyo. Stat. § 1-25-101.

transgender name-change petitioners were not required to comply with the ordinary publication requirement). After the hearing, the court will issue a decree it "determines is just and reasonable." Ind. Code § 34-28-2-4(a). If the court grants the name change, it will send a copy of the decree to the state department of health and local county health department. *See* Ind. Code § 34-28-2-5(b).

Indiana law does not prescribe a particular form name-change petitions must take, but it does require that these petitions include the individual's date of birth, current address, list of felony convictions, and "[p]roof that the person is a United States citizen." *Id.* § 34-28-2-2.5(a).

3. In December 2013, Doe went to the Marion County clerk's office to inquire about changing his name. Pet. App. 27–28. After he was informed of the proof-of-citizenship requirement, he decided not to submit a name-change petition. *Id.* at 28. Instead, nearly three years later, Doe filed this lawsuit challenging the requirement's validity under the under the Equal Protection, Due Process, and Free Speech clauses of the United States Constitution. First Am. Compl. ¶¶ 66–97.

Doe named as defendants Indiana's governor and attorney general and the Indiana Supreme Court's chief administrative officer (the "State Defendants"), as well as the clerk of the court for Marion County.

The district court dismissed Doe's complaint under Federal Rule of Civil 12(b)(1), holding that Doe failed

to demonstrate the causation and redressability elements of Article III standing for all defendants. Pet. App. 30–43. The district court observed that none of the defendants is responsible for enforcing the challenged provision and concluded that, therefore, none caused Doe's asserted injuries and none would provide him with redress if the court granted the requested injunction prohibiting enforcement of the name-change law's proof-of-citizenship requirement. *Id.* The district court emphasized that "[t]he general authority to enforce the laws of the state is not sufficient to render a particular government official the proper party to litigation challenging a law." Pet. App. 34 (citing *Hearne v. Bd. of Educ. of City of Chicago*, 185 F.3d 770, 777 (1999); *Okpalobi v. Foster*, 244 F.3d 405, 426 (5th Cir. 2001); *Shell Oil Co. v. Noel*, 608 F.2d 208, 211 (1st Cir. 1979)).

Doe appealed to the Seventh Circuit, which agreed that he sued the wrong defendants. The Seventh Circuit explained that, in addition to Article III standing requirements, when a plaintiff sues state officials the plaintiff can bypass state sovereign immunity *only* if those officials have "some connection with the enforcement" of the allegedly unconstitutional state law. Pet. App. 4 (quoting *Ex parte Young*, 209 U.S. 123, 157 (1908)). The Court observed that the "some connection" requirement of *Young* "overlap[s] significantly with the . . . causation and redressability" requirements of Article III standing. *Id. See also Okpalobi*, 244 F.3d at 426 ("The requirements of [Article III standing case] *Lujan [v. Defenders of Wildlife*, 504 U.S. 555 (1992),] are entirely consistent with the long-

standing rule that a plaintiff may not sue a state official who is without any power to enforce the complained-of statute.").

Applying effectively the same analysis—and relying on some of the same cases—as the district court, the Seventh Circuit held that state sovereign immunity bars Doe's claims against the State Defendants because those officials are not connected with the enforcement of the name-change statute. *See, e.g.,* Pet. App. at 5 (citing *Shell Oil Co.*, 608 F.2d at 211). The Seventh Circuit also held that while state sovereign immunity does not apply to the County Clerk, Article III standing problems foreclose Doe's claims against that defendant as well: Because the County Clerk has no authority in the name-change process, Doe cannot show his alleged injuries are traceable to or redressable by the County Clerk. *Id.* at 11–12.

One member of the Seventh Circuit panel dissented, agreeing that the governor is an improper party but arguing that Doe should have been able to proceed against the other defendants. Pet. App. 14 (Wood, C.J., dissenting). The dissent did not dispute the standard the majority opinion used, but instead contended that under that standard these defendants have a sufficient connection to the enforcement of the name-change provision: The dissent argued that the Indiana Supreme Court's chief administrative officer and the County Clerk have a sufficient connection because they "create forms, issue guidance, and move along petitions, [which] enables them to exert substantial influence on the name-change process," *id.*,

and that the attorney general has a sufficient connection because "if [Doe] presents himself in a manner that accords with his gender identity . . . he is at risk of being prosecuted for" crimes that "lie within the authority of the Attorney General to pursue," *id.* at 16.

Doe did not seek rehearing or rehearing *en banc*.

## REASONS TO DENY THE PETITION

### I. The Petition Presents Only Garden-Variety Article III Standing and Sovereign Immunity Issues and Identifies No Circuit Conflict

The district court and the Seventh Circuit reached the same unremarkable conclusion: Doe sued the wrong defendants. To sue in federal court, of course, a plaintiff must demonstrate a cognizable injury fairly traceable to, and susceptible of redress by, the defendant. In addition—as recognized not only below, but also by each of the eleven regional federal circuits—to sue *state officials*, the Plaintiff must show that the defendants fit within the exception to sovereign immunity recognized in *Ex parte Young*, 209 U.S. 123 (1908).[2] Doe's case fails on both fronts, and there

[2] *See Calzone v. Hawley*, 866 F.3d 866, 869–70 (8th Cir. 2017); *Russell v. Lundergan-Grimes*, 784 F.3d 1037, 1049 (6th Cir. 2015); *Kitchen v. Herbert*, 755 F.3d 1193, 1201–04 (10th Cir. 2014); *Grizzle v. Kemp*, 634 F.3d 1314, 1319 (11th Cir. 2011); *K.P. v. LeBlanc*, 627 F.3d 115, 122–25 (5th Cir. 2010); *McBurney v. Cuccinelli*, 616 F.3d 393, 399–404 (4th Cir. 2010); *In re Dairy Mart Convenience Stores, Inc.*, 411 F.3d 367, 372 (2d Cir. 2005); *Nat'l Audubon Soc., Inc. v. Davis*, 307 F.3d 835, 846–51 (9th Cir. 2002); *Hearne v. Bd. of Educ. of City of Chicago*, 185 F.3d 770,

is no conflict among the lower courts requiring the Court's resolution.

1. With respect to Article III standing, the plaintiff must establish: (1) an injury in fact, (2) causally connected to the challenged conduct of the defendant, and (3) likely to be redressed by a favorable judicial decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992); *see also Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016) (explaining that these three elements constitute the "'irreducible constitutional minimum' of standing").

The causation element requires the plaintiff's injury to "be fairly traceable" to the defendant's action, *Pritkin v. Dep't of Energy*, 254 F.3d 791, 797 (9th Cir. 2001), and the redressability element requires the plaintiff to "demonstrate that a decision in her favor 'will produce tangible, meaningful results in the real world,'" *id.* at 799 (quoting *Common Cause v. Dep't of Energy*, 702 F.2d 245, 254 (D.C. Cir. 1983)). A failure to satisfy these two elements often arises because the "plaintiffs sued the wrong party." *Id.* (citing *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 41 (1976)); *see also Lujan*, 504 U.S. at 560 (holding that Article III standing requires that the plaintiff's injury not be "the result of the independent action of some third party not before the court" (internal brackets, quotation marks, and citation omitted)); *Waldman v.*

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776–77 (7th Cir. 1999); *Finberg v. Sullivan*, 634 F.2d 50, 53–54 (3d Cir.); *Shell Oil Co. v. Noel*, 608 F.2d 208, 211–13 (1st Cir. 1979).

*Conway*, 871 F.3d 1283, 1293 (11th Cir. 2017) (holding that the plaintiff "sued the wrong defendants and therefore lacks standing").

2. With respect to the State Defendants, Doe must also demonstrate that the case fits within the *Young* exception to sovereign immunity. Under *Young*, to be a proper defendant to a suit challenging the constitutionality of a state law, a state official must be "clothed with some duty in regard to the enforcement of the laws of the state, and . . . threaten and [be] about to commence proceedings . . . to enforce . . . an unconstitutional act." *Ex parte Young*, 209 U.S. at 156. At the very least, the defendant must "have some connection with the enforcement of" the challenged statutory provision. *Id.* at 158.

The *Young* "some connection" standard elaborated on the decision in *Fitts v. McGhee*, 172 U.S. 516, 516–20 (1899), where the Court dismissed a lawsuit against various state officials, including the attorney general, to enjoin enforcement of a statute fixing a bridge's tolls at an allegedly unconstitutionally insufficient rate. In *McGhee* the Court rejected the argument that a plaintiff may challenge the constitutionality of a State's laws merely by naming as defendants the "law officers of the state." *Id.* at 530. Such a rule "would be a very convenient way for obtaining a speedy judicial determination of questions of constitutional law," but was foreclosed by "the fundamental principle that [States] cannot, without their assent, be brought into any court at the suit of private persons." *Id.* (quoted in *Ex parte Young*, 209 U.S. at 157). In *Young*, the Court explained that the defendants in

*McGhee* could not be sued because the penalties for violating the toll-fixing statute "were to be collected by the persons paying [the tolls]," such that "no state officer who was made a party bore any close official connection with the act." *Ex parte Young*, 209 U.S. at 156.

In *Young*, the Court reaffirmed *McGhee*, though it permitted the suit before it to proceed because state law expressly vested the defendant attorney general with authority to enforce the challenged law; the Court held this gave him the necessary "connection with the enforcement of the act." *Id.* at 157. Under *Young*, federal courts therefore determine whether a state official is a proper defendant principally by asking whether the official directly enforces the challenged law, or, short of that, whether state law gives the defendant at least "some connection," to the law's enforcement. *See id.*; *Shell Oil Co. v. Noel*, 608 F.2d 208, 212 (1st Cir. 1979).

Lower federal courts have found this a clear-cut question. They agree, for example, that a general duty to enforce the laws, such as that held by the governor of a state, does not provide a sufficient connection. *See Waste Mgmt. Holdings, Inc. v. Gilmore*, 252 F.3d 316, 331 (4th Cir. 2001); *Summit Med. Assocs., P.C. v. Pryor*, 180 F.3d 1326, 1342 (11th Cir. 1999); *Children's Healthcare is a Legal Duty, Inc. v. Deters*, 92 F.3d 1412, 1416 (6th Cir. 1996); *Shell Oil*, 608 F.2d at 211. Similarly, an attorney general's duty to prosecute any action of interest to a state is not sufficient to make her a proper defendant. *See Chamber of Commerce of U.S. v. Edmondson*, 594 F.3d 742, 760 (10th

Cir.) (citing *Shell Oil*, 608 F.2d at 211). The connection *Young* demands requires that the defendant state official be specifically authorized under state law to act under the challenged statute, *see Russell v. Lundergan-Grimes*, 784 F.3d 1037, 1048–49 (6th Cir. 2015); *Chamber of Commerce*, 594 F.3d at 760, or that the official possess some non-attenuated supervisory authority, *see Kitchen v.* Herbert, 755 F.3d 1193, 1202–04 (10th Cir. 2014); *McBurney*, 616 F.3d 400–402; *K.P. v. LeBlanc*, 627 F.3d at 124–25.

3. It is also worth observing that although Article III standing and sovereign immunity doctrines are conceptually distinct, federal appellate courts consistently recognize that, as a practical matter, *Young*'s "some connection" requirement generally overlaps with Article III's causation and redressability requirements. "[T]he two inquiries are similar," because officials who are not responsible for enforcing a challenged law not only will fail to have "some connection" to the challenged law—they also will not have a causal connection to the plaintiff's injury, and an injunction against them will not redress the injury. *Calzone v. Hawley*, 866 F.3d 866, 869 (8th Cir. 2017). Thus, "[t]he requirements of *Lujan* are entirely consistent with the long-standing rule that a plaintiff may not sue a state official who is without any power to enforce the complained-of statute." *Okpalobi v. Foster*, 244 F.3d 405, 426 (5th Cir. 2001) (*en banc*); *see also Russell v. Lundergan-Grimes*, 784 F.3d 1037, 1049 (6th Cir. 2015) ("Denying Defendants' claims of Eleventh Amendment immunity also confirms our jurisdiction to adjudicate this case."); *Kitchen*, 755 F.3d

at 1201 ("The causation [and redressability] element[s] . . . require[] the named defendants to possess authority to enforce the complained-of provision . . . [and w]hether the Defendants have enforcement authority is related to whether, under *Young*, they are proper state officials for suit." (internal brackets, quotation marks, and citations omitted)).

The decisions below also noted the similarity between the standing and the *Young* questions. The Seventh Circuit explicitly observed that "where a plaintiff sues a state official to enjoin the enforcement of a state statute, the requirements of *Ex parte Young* overlap significantly with the last two standing requirements – causation and redressability." Pet. App. 4. And while the district court generally focused on the standing inquiry, it relied upon cases in what it recognized as the "analogous Eleventh Amendment context." Pet. App. 34 (citing *Hearne v. Bd. of Educ. of City of Chicago*, 185 F.3d 770, 777 (1999); *Okpalobi*, 244 F.3d at 426; *Shell Oil*, 608 F.2d at 211).

In this case, both the Article III and *Young* inquiries produce the same straightforward conclusion, recognized by both the district court and the Seventh Circuit: Doe has sued the wrong defendants. There is no need for the Court to review this conclusion, as there is no dispute among the lower courts regarding either of these standards. The Court has reiterated the causation and redressability elements of Article III standing so many times that they are by now "crystal clear." *Gagliardi v. TJCV Land Trust*, 889 F.3d 728, 732 (11th Cir. 2018). And federal courts have applied *Young* for well over a century, and "[f]rom its earliest

years until the present, it has spawned numerous cases upholding, explaining, and recognizing its fundamental principle: that the defendant state official must have some enforcement connection with the challenged statute." *Okpalobi*, 244 F.3d at 415. From this rich doctrinal background, Doe does not so much as *attempt* to identify a lower-court conflict. The absence of a conflict requiring the Court's resolution thus undermines any rationale for the petition.

## II. The Decision Below Correctly Concluded That Sovereign Immunity Bars Doe's Claims Against the State Defendants

The Seventh Circuit properly applied *Young* to hold that the Eleventh Amendment bars Doe's suit: Indiana law does not vest authority to enforce or implement the name-change statute with the governor, the attorney general, or the Indiana Supreme Court's chief administrative officer.

1. With respect to the governor, the Seventh Circuit properly observed that the "[t]he mere fact that a governor is under a general duty to enforce state laws does not make him a proper defendant in every action attacking the constitutionality of a state statute." Pet. App. 5 (quoting *Shell Oil Co. v. Noel*, 608 F.2d 208, 211 (1st Cir. 1979)). Doe not contest this conclusion and argues only that the governor's "oversight" of the Bureau of Motor Vehicles provides a sufficient connection to the enforcement of Indiana's name-change law under *Young*. Pet. 11–12. Doe is wrong.

First, the BMV has no authority to enforce the name-change law. It simply issues identification cards that reflect an individual's legal name, as evidenced by one of several different legal documents. *See* 140 Ind. Admin. Code 7-1.1-3(b)(1)(A)–(J). If an applicant's name is different from the name stated in these documents, the applicant must show proof of the name change, such as through a court order approving a name change. *Id.* 7-1.1-3(b)(1)(K). But the BMV has no more connection with the process for obtaining a court order of a name change than it has to the process of obtaining some other proof of legal name and identity, such as a passport or green card. And surely no one would contend that the Indiana BMV would be a proper defendant in a suit challenging some element of the passport or green card application process.

Second, Doe's suit does not seek an injunction ordering the governor to require the BMV to cease enforcing its regulation requiring applications to show proof of a name change. Rather, Doe seeks an injunction against the enforcement of the name-change statute itself. But the governor has no connection to the enforcement of that law. If the district court had granted Doe's request, the injunction against the governor would be a nullity. Doe's claim against the governor neither establishes "some connection" between the governor and the name-change law nor supports the causation and redressability elements of Article III standing.

2. Doe's arguments regarding the State's attorney general fare no better. As the Seventh Circuit observed, a State's attorney general cannot be sued merely because he has a duty to defend the constitutionality of a challenged law. *See* Pet. App. 6 (citing *Mendez v. Heller*, 530 F.2d 457, 460 (2d Cir. 1976)). And the attorney general's connection to the enforcement certain criminal laws—such as laws against making a false identity statement, perjury, and obstruction of justice, Pet. 13—does not give him "some connection" to the enforcement of the name-change law. Indiana's Attorney General does not even have the power initiate prosecutions. *See* Ind. Code § 4-6-1-6; *id.* § 33-39-1-5; *State v. Holovachka*, 142 N.E.2d 593, 602–03 (Ind. 1957). Moreover, these criminal laws merely prohibit Doe from giving false information regarding his legal name; they do not regulate or enforce the *process for changing* his legal name. Even if the enforcement of these laws were enjoined as to Doe, he still would be unable to obtain the name change he desires.

3. Finally, the Seventh Circuit was correct to conclude that the "generation and publication of non-mandatory forms" by the Indiana Supreme Court's chief administrative officer is not connected to the enforcement of the name-change statute. Pet. App. 9. These forms *inform* readers of the name-change law's proof-of-citizenship requirement; they do not have "some connection with the *enforcement*" of the challenged law. *Ex parte Young*, 209 U.S. 123, 157 (1908) (emphasis added).

The mere act of publishing a law does not render a government official a proper defendant under *Young*. If it did, the Indiana Legislative Council—which is responsible for "arrang[ing] and contract[ing] for the printing of . . . the Indiana Code and . . . the Indiana Administrative Code," Ind. Code § 2-5-1.1-6—would be a proper defendant in a suit challenging the constitutionality of *any* Indiana law. This may be "a very convenient way for obtaining a speedy judicial determination of questions of constitutional law," but it is foreclosed by the Court's precedents. *Fitts v. McGhee*, 172 U.S. 516, 530 (1899).

The Seventh Circuit identified the correct standard to determine when a state official is a proper defendant to a constitutional challenge to a state law, and it applied this standard correctly. Under *Young*, the State Defendants do not have "some connection with the enforcement" of the name-change law and Doe's challenge to that law therefore cannot proceed against them.

## III. This Case Does Not Present an Important Question of Federal Law for Any Other Reason

Even beyond Doe's failure to identify a lower-court conflict or an error in the Seventh Circuit's reasoning, his case has none of the attributes that normally merit the exercise of the Court's certiorari jurisdiction. With respect to the public as a whole, Doe's case raises no "important question of federal law." U.S.

Sup. Ct. R. 10. And even with respect to Doe in particular, his case presents no need for the Court's intervention.

1. The Court has long confined the exercise of its certiorari jurisdiction to petitions providing "compelling reasons," particularly those petitions presenting an "important question of federal law." U.S. Sup. Ct. R. 10. *See also Rice v. Sioux City Mem'l Park Cemetery*, 349 U.S. 70, 73–74 (1955) (noting that former Supreme Court Rule 19, which asked whether "there are special and important reasons" for granting the writ of certiorari, "embodies the criteria, developed ever since the Evarts Act of 1891, by which the Court determines whether a particular case merits consideration"). And in light of Doe's unique situation and the nature of his arguments against the decision below, the questions presented very likely are significant to no one other than Doe himself.

First, Doe's petition asks the Court to explain how the causation and redressability requirements of Article III standing, along with the *Young* exception to state sovereign immunity, apply in the narrow and singular situation in which Doe finds himself. Pet. i. Few, if any, other individuals are likely to experience similar circumstances: Doe does not identify any cases or statutes presenting comparable scenarios, and he even concedes that the state law to which he objects is "unique." Pet. 6. In fact, both Doe and the dissent below acknowledge that Doe's circumstances present, "of course, an unusual case." Pet. 32; Pet. App. 13 (Wood, C.J., dissenting) ("This is an unusual

case. . . ."). The questions for which Doe seeks an answer simply do not rise to the level of national importance.

Second, the gravamen of Doe's petition is that the Seventh Circuit should have applied the *Young* "some connection" standard differently. Doe acknowledges that the standard courts use to determine whether a state government official is a proper defendant "is whether the named state defendant has 'some connection' to the enforcement of the state law challenged as unconstitutional." Pet. 10 (quoting *Ex parte Young*, 209 U.S. 123, 157 (1908)). And this is precisely the standard the Seventh Circuit used below. *See* Pet. App. 4 ("A plaintiff can avoid this [state sovereign immunity] bar, however, by naming a state official who has 'some connection with the enforcement' of an allegedly unconstitutional state statute for the purpose of enjoining that enforcement." (quoting same)). Doe merely argues that the Seventh Circuit should have emphasized particular functions the State Defendants have outside of the name-change process.

Even if Doe were to identify an error in the Seventh Circuit's application of *Young*—and again he has not—this objection is plainly unsuited to the Court's certiorari jurisdiction. *See* U.S. Sup. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.").

2. The "importance" referred to in Supreme Court Rule 10 "relates, of course, to the importance of the

issues 'to the public as distinguished from' importance to the particular 'parties' involved." E. Gressman, K. Geller, S. Shapiro, T. Bishop, & E. Hartnett, Supreme Court Practice 263 (9th ed. 2007) (quoting *Layne & Bowler Corp. v. Western Well Works*, 261 U.S. 387, 393 (1923)). Each petitioner's case, after all, is important to *him*. But here the Court's intervention is not necessary even for Doe in particular: To this day, Doe remains able to petition for a name change in state court and to raise a constitutional objection if his petition is denied.

Doe complains, however, that the Seventh Circuit's decision renders the federal courts "unavailable." Pet. 23. He acknowledges that he could present his arguments to state courts and seek redress in this Court if those arguments are rejected, but he fears that inappropriate political considerations will make state courts less receptive to his claims. *Id.* at 28–31. Doe contends that "[w]ith one eye on the surmised views of voters who determine whether they retain their position and the other on the federal Constitution and its mandates, state-court judges are inappropriate adjudicators of such matters." *Id.* at 33.

The Court, however, has repeatedly rejected this argument: "[S]tate courts, as judicial institutions of co-extant sovereigns, are equally capable of safeguarding federal constitutional rights." *Haw. Hous. Auth. v. Midkiff*, 463 U.S. 1323, 1325 (1983). "[S]tate courts have inherent authority, and are thus presumptively competent, to adjudicate claims arising under the laws of the United States. This principle applies to claimed violations of constitutional, as well

as statutory, rights." *Burt v. Titlow*, 571 U.S. 12, 19 (2013) (internal citations and quotation marks omitted).

For example, in *Stone v. Powell*, the Court repudiated the argument Doe makes here, "that state courts cannot be trusted" to effectuate constitutional protections, and that "the oversight jurisdiction of this Court on certiorari is an inadequate safeguard." 428 U.S. 465, 493 n.35 (1976). The Court was "unwilling to assume that there now exists a general lack of appropriate sensitivity to constitutional rights in the trial and appellate courts of the several States," noting that state courts "have a constitutional obligation to safeguard personal liberties and to uphold federal law." *Id. See also* S.D. O'Connor, *Trends in the Relationship Between the Federal and State Courts from the Perspective of a State Court Judge*, 22 Wm. & Mary L. Rev. 801, 813 (1981) ("There is no reason to assume that state court judges cannot and will not provide a 'hospitable forum' in litigating federal constitutional questions.").

Not only is there no constitutional problem with state courts considering federal constitutional claims in the first instance, it is not particularly unusual for them to do so. *See, e.g.,* 28 U.S.C. § 1341 (prohibiting lower federal courts from restraining "the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State"); *id.* § 1342 (restraining lower federal courts from enjoining state public utility rate orders). Doe can proceed in state court. The Court should leave him to it.

## CONCLUSION

The Petition should be denied.

Respectfully submitted,

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