No. 24-796

In the Supreme Court of the United States

STATE OF MISSOURI, et al.,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the U.S. Court of Appeals for the Eighth Circuit

REPLY BRIEF OF PETITIONERS

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The Federal Government admits the Eighth Circuit erred. Courts review what a statute *does* in operation, not what it *says* in rhetoric. *See California* v. *Texas*, 593 U.S. 659, 671 (2021). Here, the Government identifies no difference "in practice" between Missouri's law and a differently worded law that likewise withdraws state resources from the Federal Government. BIO.14–15. Because the Government concedes there are serious "concerns" that "the judgment below extends too far and enjoins applications of the Act that do constitute mere non-enforcement of federal law protected under the anti-commandeering doctrine," the Government agrees Missouri should receive at least some relief from "judgment under Federal Rule of Civil Procedure 60(b)" in the district court. BIO.16.

It is perplexing, then, that the Government asks this Court to *deny* relief. What does the Government expect the district court to do with a Rule 60 motion if the Eighth Circuit decision remains in place? The Eighth Circuit ruled that the *entire* state law is unconstitutional because of the "reason" the legislature passed it. App.10a. The Government fails to explain how the district court, bound by Eighth Circuit precedent, could grant the relief the Government concedes Missouri is entitled to receive.

Even assuming the district court can amend its judgment, an Eighth Circuit decision *both* sides agree is wrong should not remain. The Eighth Circuit rested on a single rationale that the Government declines to defend. The Government does not even dispute that the decision would have come out the other

way had the Eighth Circuit applied the canon of constitutional avoidance, as Missouri asked it to do, and as it had a "plain duty" to do. *U.S. ex rel. Atty. Gen.* v. *Delaware & Hudson Co.*, 213 U.S. 366, 407 (1909). On this error alone, the Court could summarily reverse and permit the Government to raise its alternative argument for narrower relief below.

The Government also fails to seriously dispute the circuit splits. Some splits, it does not dispute at all. Where it does dispute a split, its analysis falters. Its sole attempt to distinguish other Tenth Amendment cases is by noting that the Eighth Circuit focused on the legislative findings of Missouri's law. That is the point: other courts disregard legislative motive—unlike the Eighth Circuit.

No better is the attempt to distinguish the Fifth Circuit's decision on equitable causes of action. The Government suggests that case "differs markedly" because Missouri's case involves a law that "regulates state officials." BIO.11. The same was true in the Fifth Circuit decision.

Without relief, all States in the Eighth Circuit will be saddled with precedent (1) requiring courts to second-guess the "reason" a State exercises Tenth Amendment authority and (2) permitting state officials to be sued simply because they "comply with" a law. App.7a–10a. Nobody—not the Eighth Circuit, not the Government—has identified any case supporting either novelty. "It is a familiar principle of constitutional law that this Court will not strike down an otherwise constitutional statute on the basis of an alleged illicit legislative motive." *United States* v. *O'Brien*, 391 U.S. 367, 383 (1968).

The Court should grant certiorari or at least grant, vacate, and remand.

I. The Court should at minimum vacate the opinion that the United States acknowledges is wrong.

The Government correctly declines to defend the Eighth Circuit's sole rationale for "invalidating" the Act, conceding that this case "raises more difficult questions than the Eighth Circuit recognized." BIO.6. The Government agrees Missouri is entitled at least to some relief and proposes that the district court amend its judgment. *Ibid.* But the Government never explains how the district court could amend its judgment without this Court first vacating the Eighth Circuit opinion. The Court should vacate the decision that the Government concedes is wrong so that the parties may litigate the Government's request for narrower relief below.

1. The Eighth Circuit offered only one reason for its decision: Missouri's law (at §§ 1.420–1.430) opines that some federal laws violate the Second Amendment and expresses the truism that unconstitutional laws are "invalid." App.10a. The court held that this rhetoric taints the entire Act—even while acknowledging that an Act that operates the same way, but lacks this rhetoric, would be lawful. App.10a–11a.

The Government conspicuously declines to defend this rationale—instead *agreeing* the reasoning was wrong and conceding Missouri is entitled at least to some relief from judgment. The Government admits it is unable to identify any difference "in practice" between Missouri's law and a State's undisputedly con-

stitutional decision to withhold assistance from federal law enforcement. BIO.14–15. This, of course, is fatal because courts concern themselves with what laws *do*, not with what legislative findings *say*.[1] An injunction against legislative findings is an improper injunction against "laws themselves." *Whole Woman's Health* v. *Jackson*, 595 U.S. 30, 44 (2021); *accord California* v. *Texas*, 593 U.S., at 671 (attacking "language alone is not sufficient"). Any law that has the same *effect* as a law valid under the Tenth Amendment must likewise be valid. The Government does not dispute Missouri's law has that same effect. BIO.14–15.

Nor does the Government dispute that the Eighth Circuit flouted its "plain duty" to apply constitutional avoidance and that the result would have been different under that canon. *Delaware & Hudson Co.*, 213 U.S., at 407. Even assuming Missouri's legislative findings could be read in a way that invalidates Missouri's law, the Eighth Circuit was supposed to adopt—but did not adopt—any plausible interpretation that would render Missouri's law constitutional. *Ibid.* The court should have read Missouri's law merely to express the legislature's opinion that some federal laws are unconstitutional—an opinion elected officials, who take an oath to the Constitution, have "not just the right but the duty to make." *City of Boerne* v. *Flores*, 521 U.S. 507, 535 (1997). For example, the Eighth Circuit focused on the legislature's use of the term "invalid" to describe some federal statutes,

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[1] The Eighth Circuit's holding focused on language found in sections 1.420 and 1.430, App.10a–12a, which contain only "legislative finding and declarations." *City of St. Louis* v. *State*, 643 S.W.3d 295, 297 (Mo. 2022).

but that term mirrors the "common judicial shorthand" this Court has long used when describing laws as unconstitutional. *Barr* v. *Am. Ass'n of Pol. Consultants, Inc.*, 591 U.S. 610, 627 n.8 (2020) (plurality op.); *Marbury* v. *Madison*, 5 U.S. 137, 177 (1803).

Like the Eighth Circuit, the Government cannot identify any case holding that a law becomes unconstitutional merely because it was motivated by a belief that certain federal laws are unconstitutional. No wonder; the Eighth Circuit's novel holding runs headlong into longstanding precedent. State officers, who take an oath to the Constitution, have "not just the right but the duty to make [their] own informed judgment on the meaning and force of the Constitution." *City of Boerne*, 521 U.S., at 535. And "[i]t is a familiar principle of constitutional law that this Court will not strike down an otherwise constitutional statute on the basis of an alleged illicit legislative motive." *O'Brien*, 391 U.S., at 383.

2. Having conceded that the Eighth Circuit decision is wrong, the Government admits (at 6) that Missouri is entitled at least to some relief under Rule 60, but the Government fails to explain how Missouri could obtain that relief without this Court vacating the Eighth Circuit's decision.

How, for example, could the district court adopt the Government's position that several sections of Missouri's law are *lawful* when the Eighth Circuit says the whole law is tainted? Under Eighth Circuit precedent, a district court cannot, under Rule 60, "alter or amend anything expressly or implicitly ruled on by the appellate court." *Hartis* v. *Chicago Title Ins.*, 694 F.3d 935, 950 (CA8 2012) (quotation omitted). The Government never grapples with this problem.

Instead, the Government says "some" sections of Missouri's law may be constitutional and "some" may be unconstitutional based on theories not accepted by the Eighth Circuit. BIO.5–7, 12–13. All the more reason to vacate. It is far from clear the parties could litigate those issues below if the district court is bound to hold the entire law unconstitutional. Even assuming the district court could grant partial relief from judgment and declare only parts of the law unconstitutional based on the Government's alternate theories, it is far from clear Missouri could appeal in light of Eighth Circuit precedent. The Eighth Circuit decision is a barrier both to Missouri *and* the Federal Government.

II. The Government's brief highlights that the Eighth Circuit is a stark outlier in holding that federal courts may second-guess a State's reason for exercising Tenth Amendment authority.

The Eighth Circuit gave just one reason for facially invalidating Missouri's law: the legislature enacted the law for a "reason" the Eighth Circuit believed is forbidden. App.10a. Conversely, consistent with this Court's rule in *O'Brien*, the Ninth Circuit and the Seventh Circuit disregard a State's "reasons" for exercising Tenth Amendment authority. *See City of Chicago* v. *Sessions*, 888 F.3d 272, 282–83 (CA7 2018); *McHenry County* v. *Raoul*, 44 F.4th 581, 591–94 (CA7 2022); *United States* v. *California*, 921 F.3d 865, 875, 890–91 (CA9 2019).

The Government fails in its single attempt to distinguish those decisions. It notes that the States in those cases had *different* reasons than Missouri for withholding assistance from the Federal Government.

BIO.15–16. That misses the point. The Seventh and Ninth Circuits, unlike the Eighth, decline to consider a State's reason at all. That is a square split—one where nobody (not the Eighth Circuit, not the Government) can identify a single case supporting the Eighth Circuit's position.[2]

Consider also that the Seventh and Ninth Circuit decisions involved jurisdictions openly hostile to federal immigration law. In contrast, Missouri is trying to *uphold* the highest federal law, the U.S. Constitution. Missouri's now-enjoined law even includes a state-equivalent of § 1983. *See* § 1.460 (creating a cause of action with respect to a state official who "knowingly deprives a citizen of Missouri of the rights or privileges ensured by Amendment II of the Constitution of the United States"). Missouri legislators simply believe some federal statutes are inconsistent "with the Nation's historical tradition of firearm regulation," *New York State Rifle & Pistol Assn., Inc.* v. *Bruen*, 597 U.S. 1, 24 (2022), so Missouri has declined to help enforce those laws. That is a better motivation than open hostility to undoubtedly constitutional immigration law. If States can withhold assistance because of hostility to immigration law, then certainly Missouri can withhold assistance because of concerns that some federal statutes enacted before *Bruen* cannot satisfy *Bruen*.

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[2] The Eighth Circuit relied on an inapposite case about the Takings Clause. App.10a (quoting *Horne* v. *Dep't of Agric.*, 576 U.S. 350, 362 (2015)).

III. The Government's brief confirms that the Eighth Circuit is alone in holding that plaintiffs can challenge laws by suing individuals who merely "comply with" those laws.

The Government agrees that the Eighth Circuit's opinion allows suits in equity against defendants who "comply with" a challenged law. BIO.8–10. But the Government cannot identify any other case holding that a plaintiff can challenge a law by suing a *regulated* party, rather than an official with enforcement authority. That is telling, because federal courts must trace their "jurisdiction" to historical equity. *Grupo Mexicano de Desarrollo S.A.* v. *All. Bond Fund, Inc.*, 527 U.S. 308, 318 (1999). Unable to identify any historical case, the Government cannot evade the conclusion that the district court's injunction is *not* an injunction against "individuals tasked with enforcing laws" but instead is an injunction against "the laws themselves." *Whole Woman's Health* v. *Jackson*, 141 S. Ct. 2494, 2495 (2021).

Other circuits have rejected the Eighth Circuit's view. The Government fails to refute the splits on Article III standing and lack of a cause of action.

1. On standing, the Government never disputes the Eighth Circuit's square split with the First and Fourth Circuits. *See Disability Rts. S.C.* v. *McMaster*, 24 F.4th 893 (CA4 2022); *Shell Oil Co.* v. *Noel*, 608 F.2d 208 (CA1 1979). That justifies certiorari.

Certiorari is especially justified because the Eighth Circuit's decision sharply breaks from redressability jurisprudence, specifically *Murthy* v. *Missouri*,

603 U.S. 43 (2024). The plaintiffs there sought an injunction "stopping certain Government agencies and employees from coercing or encouraging [social media] platforms to suppress speech." *Id.*, at 73. This Court said that "the plaintiffs have a redressability problem" because, even with an injunction in place, "the platforms remain free to enforce, or not to enforce, those policies." *Ibid.*

So too here. The Government contends it is injured when Missouri officers withdraw assistance from federal enforcement. BIO.7. But the district court's judgment said only that Missouri officials "may" help facilitate federal laws, not that officials must. App.43a–44a. And the Eighth Circuit's opinion acknowledges that Missouri *still* "may lawfully withhold its assistance from federal law enforcement" as "a matter of policy." App.10a. Like the platforms in *Murthy*, Missouri officials "remain free to enforce, or not to enforce, those policies." *Murthy*, 603 U.S., at 73. The Missouri Attorney General, for example, continues to voluntarily follow the text of the law, withholding state resources from federal enforcement. Petn.21. The district court's decision did not mandate change in the Attorney General's behavior at all.

The Government's speculation (at 8) that "some state officials" might assist federal law enforcement is far from sufficient for redressability. The same was said of social media companies in *Murthy*. *See* 603 U.S., at 97 (Alito, J., dissenting). "Redressability requires that the court be able to afford relief through the *exercise* of its power, not through the persuasive or even awe-inspiring effect of the opinion explaining the exercise of its power." *Haaland* v. *Brackeen*, 599 U.S. 255, 294 (2023) (emphasis added). The "remedy" the district court issued was not an exercise of

judicial power in the traditional sense—it required nothing of Missouri officials. So the district court did not (contrary to the Government's contention) issue a "partial remedy" as in *Uzuegbunam* v. *Preczewski*, 592 U.S. 279, 291 (2021). Rather, it issued a *speculative* remedy that will not necessarily redress anything. The parties are thus left with Eighth Circuit precedent that imposes a straightjacket on Missouri and six other States, but affords no relief to the United States.

Unable to identify any case like the Eighth Circuit decision, the Government resorts to an inapposite hypothetical about firefighters refusing to provide services because of race. But if a court issued an injunction in that circumstance, the firefighters, unlike in *Murthy*, would *not* "remain free to [provide], or not to [provide]" firefighting services. 603 U.S., at 73. They would have to do so. Here, the injunction the Government requested requires nothing of Missouri officials (nor could it under the anti-commandeering doctrine). The injunction says that the Act is invalid and that Missouri officers "may" assist federal officers. App.43a. It is speculative to conclude that Missouri officers will start assisting federal officers because of the district court's order. Indeed, the Government provides *zero* examples of Missouri officials doing so since the district court's judgment.

The firefighter hypothetical also is nowhere near as broad as the Eighth Circuit's holding that plaintiffs can sue defendants who simply "comply with" a challenged law. That holding blasts open the gates of traditional equity. Under that holding, a teenager upset that minimum wage hikes make it harder for low-experience applicants to find work could sue McDonald's because McDonald's is a regulated party that must "comply with" the minimum wage law.

The Eighth Circuit's holding cannot be squared with traditional equity.

2. Turning to the Government's lack of a cause of action,[3] the United States at least denies a split exits, but its cursory analysis falls short. The Eighth Circuit split most clearly with *United States* v. *Texas*, No. 21-50949, 2021 WL 4786458 (CA5 Oct. 14, 2021).

The Government says *Texas* was "markedly different" because Missouri's law "regulates state officials" and allegedly "injures the United States itself." BIO.11. But the same was true in *Texas*. That law regulated state officials. Tex. Health & Safety Code § 171.208(a)(1)–(3). And the United States alleged that the law injured the United States by regulating federal workers. *See* Complaint ¶¶ 63–64, 85–91, *United States* v. *Texas*, 2021 WL 4099545 (W.D.Tex. 2021). In any event, these facts played no role in the Fifth Circuit's analysis. *Texas* stayed a preliminary injunction against the state law because the Fifth Circuit concluded that the United States could not sue state officials to challenge a law enforceable only through private suits, *see* 2021 WL 4786458, even though state officials were regulated and thus had to "comply with" the law. In other words, had Missouri's case been decided in the Fifth Circuit instead of the Eighth, it would have come out the other way.

The Eighth Circuit also split with *United States* v. *Abbott*, 85 F.4th 328 (CA5 2023), and *Free Speech*

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[3] The Government incorrectly contends that Missouri "conceded below that the United States 'has an equitable cause of action'" here. BIO.9. No. Missouri said the Government "*sometimes* has an equitable cause of action" but "an *Ex parte Young* action cannot be brought" here because no named defendant enforces the Act. *See* Doc.13, at 11–15 (emphasis added).

Coal., Inc. v. *Anderson*, 119 F.4th 732 (CA10 2024). The Government tries to dismiss both as cases about sovereign immunity, not equitable causes of action. BIO.10. But that overlooks that under *Ex parte Young*, 209 U.S. 123 (1908), sovereign-immunity and the availability of an equitable cause of action are inextricably linked. Lower courts regularly answer both questions together. *See Freedom From Religion Found., Inc.* v. *Mack*, 4 F.4th 306, 311 n.3 (CA5 2021) (even when "no one ... is arguing about sovereign immunity," *Ex parte Young* is relevant to "whether [the plaintiff] has an equitable cause of action"). For example, even though *Texas* had nothing to do with sovereign immunity, the Court relied on the progeny of *Ex parte Young*. *See* 2021 WL 4786458 (citing *Whole Woman's Health*, 141 S. Ct. 2494).

Further, the Government fails to cite *any* case allowing the unprecedented suit in equity the Eighth Circuit permitted here. No other circuit holds that a plaintiff can sue to "invalidat[e]" a law by suing those who "comply with" it. App.7a, 43a. That is nothing like the "narrow exception grounded in traditional equity practice" recognized in *Ex parte Young* and reaffirmed in *Whole Woman's Health*, 595 U.S., at 39.

CONCLUSION

In the Government's words, this case "raises more difficult questions than the Eighth Circuit recognized." BIO.6. Indeed it does. The Eighth Circuit's reasoning is a Pandora's Box that will misguide lower courts and impose a straitjacket on States. *See generally* Montana Amicus Br. No wonder the Government refuses to defend it.

This Court should grant certiorari, or at least grant, vacate, and remand.

Respectfully submitted,

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