No. 20-

IN THE

Supreme Court of the United States

WATERFRONT COMMISSION OF NEW YORK HARBOR,
Petitioner,

v.

GOVERNOR OF NEW JERSEY, ET AL.,
Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Interstate compacts are an important and effective means for interstate cooperation, allowing States to resolve disputes or a shared problem while avoiding costly and time-consuming original jurisdiction litigation. Under the Compact Clause of the United States Constitution, Congress has the authority to approve those compacts, and congressional approval gives compacts the status of federal law. Often, congressionally approved interstate compacts create agencies responsible for enforcing the terms of the compact, including through litigation. In a ruling that conflicts with decisions of other courts of appeals, the Third Circuit held below that sovereign immunity bars an interstate compact agency from suing a state official to prevent enforcement of a state law that would violate a congressionally enacted compact. The question presented in this case is:

Whether, under the doctrine of *Ex parte Young*, 209 U.S. 123 (1908), an interstate compact agency may sue a state official to prevent that official from implementing a state law that would be preempted under a congressionally approved interstate compact.

PARTIES TO THE PROCEEDING

Petitioner is the Waterfront Commission of New York Harbor, who was the plaintiff in the district court and appellee in the court of appeals.

Respondents are the Governor of New Jersey, who was the defendant in the district court and appellant in the court of appeals; the President of the New Jersey State Senate, Speaker of the New Jersey General Assembly, New Jersey Senate, and General Assembly of the State of New Jersey, who were the intervenor-defendants in the district court and appellants in the court of appeals.

CORPORATE DISCLOSURE STATEMENT

Petitioner is an interstate compact agency; it has no parent corporation and no stock.

RELATED PROCEEDINGS

Waterfront Commission of New York Harbor v. *Governor of New Jersey, et al.*, Nos. 19-2458, 19-2459 (3d Cir.) (opinion and judgment issued on June 5, 2020; rehearing denied on July 8, 2020; mandate stayed July 20, 2020)

Waterfront Commission of New York Harbor v. *Phil Murphy, in his official capacity as Governor of New Jersey, et al.*, No. 2:18-cv-00650-SDW-LDW (D.N.J.) (preliminary injunction granted on June 1, 2018; summary judgment granted on May 29, 2019)

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PETITION FOR A WRIT OF CERTIORARI

The Waterfront Commission of New York Harbor ("Commission") respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit.

INTRODUCTION

Interstate compacts are an important cooperative mechanism in our federalism. States frequently join together to solve a problem or to further their common interests, and in the process create an agency to administer their agreement. That is what New York and New Jersey did half a century ago, when they entered into the Waterfront Commission Compact ("Compact") and created the Commission to combat widespread cor-

ruption and racketeering at the Port of New York–New Jersey. The Compact was approved by Congress and thus became federal law. For decades since, the Commission has successfully rooted out illegal activities at the port.

In 2018 New Jersey had a late change of heart and enacted a law to withdraw itself unilaterally from the Compact. That state law (Chapter 324) purports to dissolve the Commission and divert revenues that would otherwise fund the Commission to the New Jersey state police, who would assume the Commission's regulatory responsibilities over the New Jersey side of the port. The Commission brought this action to enjoin the New Jersey Governor from enforcing Chapter 324 as preempted under the Compact. The district court granted summary judgment to the Commission, but the Third Circuit reversed, holding that the Commission's suit does not fall within the *Ex parte Young* doctrine and is thus barred by sovereign immunity.

That decision is wrong and conflicts with the decisions of two other courts of appeals. The decision also raises issues of broad significance for interstate compacts. It destabilizes dozens of similar compacts by heightening the risk of a violation of the compact or a unilateral withdrawal with no readily available recourse. And given that interstate compacts approved by Congress have the status of federal law, the decision undermines the strong federal interest in encouraging States to cooperate with each other by entering into and adhering to compacts. The Court should grant review and reverse.

OPINIONS BELOW

The opinion of the court of appeals (App. 1a-14a) is reported at 961 F.3d 234. The district court's opinion granting summary judgment to the Commission (App. 15a-36a) is reported at 429 F. Supp. 3d 1. The district court's opinion granting a preliminary injunction to the Commission (App. 37a-66a) is unpublished but is available at 2018 WL 2455927.

JURISDICTION

The judgment of the court of appeals was entered on June 5, 2020. A timely petition for rehearing was denied on July 8, 2020. On March 19, 2020, this Court extended the time for filing a petition for certiorari in all cases to 150 days following, as relevant here, the denial of rehearing, or December 5, 2020. This Court has jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Supremacy Clause (art. VI, cl. 2) and the Compact Clause (art. I, §10, cl. 3) of the U.S. Constitution, the congressionally approved Waterfront Commission Compact, Act of Aug. 12, 1953, Pub. L. No. 83-252, 67 Stat. 541, and Chapter 324, the New Jersey law at issue, 2017 N.J. Law Ch. 324 (2018), are reproduced in the appendix to this petition.

STATEMENT

A. Interstate Compacts

Interstate compacts perform "high functions in our federalism" as one of two means provided by the Constitution to settle controversies between States. *Petty* v. *Tennessee-Missouri Bridge Comm'n*, 359 U.S. 275,

279 & n.5 (1959). The other means is the filing of an original action before this Court, which is "burdensome," *Texas* v. *New Mexico*, 462 U.S. 554, 571 n.18 (1983), and less "effective" than cooperation between States under a compact, *West Virginia ex rel. Dyer* v. *Sims*, 341 U.S. 22, 31 (1951). As this Court has explained, an interstate compact "'adapts to our Union of sovereign States the age-old treaty-making power of independent sovereign nations,'" one that had been "'practiced by the States before the adoption of the Constitution, and had been extensively practiced in the United States for nearly half a century before this Court first'" exercised original jurisdiction in settling a boundary dispute in 1838. *Petty*, 359 U.S. at 279 n.5 (quoting *Hinderlider* v. *La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92, 104 (1938)). This Court has thus emphasized interstate compacts as the practical solution to "interests and problems that … may be badly served or not served at all by the ordinary channels of National or State political action," *Hess* v. *Port Auth. Trans-Hudson Corp.*, 513 U.S. 30, 40 (1994) (quotation marks omitted).

That "suggestion has had fruitful response." *Dyer*, 341 U.S. at 27. Particularly in the last several decades, States have entered into numerous compacts to address wide-ranging issues, including infrastructure, resource management, transportation, and law enforcement. *See generally Petty*, 359 U.S. at 279 n.6 (listing compacts); *De Veau* v. *Braisted*, 363 U.S. 144, 147-151 (1960) (history of the Waterfront Commission Compact). Currently more than 200 interstate compacts operate in the country, with most States belonging to between 21 and 30 compacts. National Center for Interstate Compacts, *Compact Fact Sheet* 1, https://tinyurl.com/ybalqt4r (visited Dec. 4, 2020).

Although interstate compacts vary in scope and operation, they generally share three characteristics relevant to this case. First, compacts are often subject to congressional consent. Congressional approval is required where the compact would tend to increase "'political power in the states, which may encroach upon or interfere with the just supremacy of the United States.'" *U.S. Steel Corp.* v. *Multistate Tax Comm'n*, 434 U.S. 452, 468 (1978). And "having received Congress's blessing," a compact becomes federal law. *Kansas* v. *Nebraska*, 574 U.S. 445, 455 (2015); *accord Cuyler* v. *Adams*, 449 U.S. 433, 438 (1981). A congressionally approved compact then governs the member States' actions as federal law, meaning a State's violation of the compact is a violation of federal law, and a state law contrary to the compact is preempted. *See Kansas*, 574 U.S. at 472; *Tarrant Reg'l Water Dist.* v. *Herrmann*, 569 U.S. 614, 627 n.8 (2013).

Second, interstate compacts often create a commission, an agency composed of state and sometimes federal officials, to manage "vast interstate enterprises," *Petty*, 359 U.S. at 279. Commissions may be empowered to administer the compact, including by "mak[ing] rules and decid[ing] particular cases" that bind the member States. *Dyer*, 341 U.S. at 30. This Court has explained that "[w]hen it is able to act," a compact commission is "a completely adequate means of vindicating either State's interests" should a dispute arise among the compacting States. *Texas*, 462 U.S. at 570-571 & n.18.

Third, interstate compacts frequently specify uniform rules and procedures for member States to follow. For example, a compact may specify what States may or may not do under the terms of the compact regarding the subject matter at issue and how a commission is

to be funded. *E.g.*, *Tarrant Reg'l*, 569 U.S. at 626-628; *Texas*, 462 U.S. at 559; *Dyer*, 341 U.S. at 25. Compacts may also specify whether and how States may amend or withdraw from the compact—commonly through concurrent legislation in the States. In many cases, a compact's requirement that States act mutually if they wish to amend or withdraw from the compact is essential to the agreement's success. As this Court has explained, among the "classic indicia of a compact" is the member States' lack of authority to "modify or repeal" the compact unilaterally. *Northeast Bancorp, Inc.* v. *Board of Governors of Fed. Reserve Sys.*, 472 U.S. 159, 175 (1985); *see Dyer*, 341 U.S. at 28 ("[A]n agreement solemnly entered into between States … can[not] be unilaterally nullified, or given final meaning by an organ of one of the contracting States.").

B. The Waterfront Commission

The Waterfront Commission of New York Harbor was created by a compact between New York and New Jersey. In 1953, the two States formed the Commission to extirpate rampant corruption and racketeering at the Port of New York–New Jersey—a problem that had resisted many previous efforts. *See* App. 2a-3a; *see also* N.J. Stat. Ann. §§32:23-1 et seq. (repealed 2018); N.Y. Unconsol. Law §§9801 et seq.; *De Veau*, 363 U.S. at 147-151 (discussing the Compact's history). The two States understood that they were "'dealing with a single shipping industry operating in a single harbor'" and thus "'the only real solution'" to corruption and illegal activities at the port was to create "'a single bistate agency,'" the Commission. App. 31a (quoting New Jersey Governor Driscoll). For the Compact to work, the States also recognized, each had to bear "'equal responsibility'" regardless of the number of employees at the

New York or New Jersey side of the port. App. 31a-32a (quoting Governor Driscoll).

Pursuant to the Compact Clause of the United States Constitution, art. I, §10, cl. 3, New York and New Jersey presented the Compact to Congress for approval. Congress in turn consented, enacting the Compact into federal law. App. 70a-104a (Waterfront Commission Compact, Act of Aug. 12, 1953, Pub. L. No. 83-252, 67 Stat. 541). As this Court noted, that congressional approval "was no perfunctory consent." *De Veau*, 363 U.S. at 149. "Congress had independently investigated the evils that gave rise to" the Compact, and concluded that the Compact was "urgently needed" to eradicate "public evils" like "crime, corruption, and racketeering" on the waterfront. *Id.* at 149-150 (quotation marks omitted).

The "heart" of the Compact included establishing the Commission, which was empowered to "license, register and regulate the waterfront employment." *De Veau*, 363 U.S. at 149; *see* N.Y. Unconsol. Law §§9807, 9810. Cooperation between the two States is a fundamental aspect of the Commission's design. As a "body corporate and politic" and "an instrumentality of the States of New York and New Jersey," the Commission is headed by two commissioners, one appointed by the Governor of New York and one by the Governor of New Jersey. App. 75a (art. III, ¶¶1-2). The Commission may "act only by unanimous vote of both members." App. 75a (art. III, ¶3). And neither State may amend or supplement the Compact "to implement the purposes thereof" except with the consent of the other State's legislature. App. 103a-104a (art. XVI, ¶1). Congress has expressly reserved to itself the "[t]he right to alter, amend, or repeal" the Compact. App. 104a (art. XVI, §2).

The Compact entrusts the Commission with several powers and duties, including the power "[t]o sue and be sued." App. 76a (art. IV). Those powers have proven essential to the Commission's task of rooting out corruption and racketeering. The Compact also gave the Commission authority to fund its operations by levying assessments on port employers (which it has done), instead of drawing on state treasuries. App. 3a (citing N.Y. Unconsol. Law §9858); *see also* App. 3a n.2.

For many years, the Commission has "worked to expose the continued corrupt and discriminatory hiring practices on the waterfront and to implement measures to address them." App. 39a-40a (quoting C.A.J.A. 63 (Compl. ¶27)). The Commission has also "'undertaken scores of investigations that have led to the conviction of hundreds of individuals who were conducting illicit activities in the Port, including, but not limited to, drug trafficking, theft, racketeering, illegal gambling, loansharking, and murder[.]'" App. 39a (quoting C.A.J.A. 62 (Compl. ¶26a)).

Despite this remarkable record, in 2018 New Jersey enacted legislation—Chapter 324—that purported to withdraw the State unilaterally from the Compact and to dissolve the Commission. App. 105a-178a (2017 N.J. Law Ch. 324 (2018)). Chapter 324 "immediately repealed the New Jersey legislation that had contributed to the formation of the Compact," and "set out additional steps intended to further the State's withdrawal from the Compact." App. 4a. Specifically, Chapter 324 "required the New Jersey Governor to notify Congress, the Governor of New York, and the Commission of the 'intention to withdraw.'" *Id.* (quoting App. 107a (2017 N.J. Law Ch. 324, § 2.a)). Ninety days after that notification, "the Compact and the Commission would be 'dissolved,'" and "the New Jersey Division of State Po-

lice would assume the Commission's law enforcement functions on the New Jersey side of the Harbor." *Id.*[1] As a result, New Jersey will receive the Commission's current liquid assets attributable to the State and begin collecting assessments that would have otherwise funded the Commission. App. 11a.

C. Proceedings Below

1. District Court Proceedings

New Jersey Governor Christie signed Chapter 324 on January 15, 2018, his last day in office.[2] One day later, the Commission filed suit against New Jersey Governor Murphy in his official capacity, seeking "a declaration that Chapter 324 violate[s] the Compact and the Supremacy Clause of the U.S. Constitution, and an injunction against its enforcement." App. 4a-5a.[3] Shortly thereafter, the Commission sought a preliminary injunction to prevent the Governor from taking any steps

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[1] Chapter 324 does not include the fair hiring and anti-discrimination measures currently set forth in Section 5-p of the Compact, which empowers the Commission to carry out the Compact's core purposes of ending racial discrimination in employment and combatting organized crime and corruption. *See* N.Y. Unconsol. Law § 9920 (codifying section 5-p of the Waterfront Commission Act); *see also* App. 105a-178a (2017 N.J. Law Ch. 324) (omitting section 5-p of the Waterfront Commission Act).

[2] Governor Christie had previously vetoed virtually identical legislation because, as he noted, he was "'advised that federal law does not permit one state to unilaterally withdraw from a bi-state compact approved by Congress.'" App. 59a n.14.

[3] The Commission sued the Governor because he plays a key role in implementing Chapter 324. Without the Governor's notification of the intent to withdraw, the steps leading to New Jersey's unilateral withdrawal under Chapter 324 would not occur.

to implement or enforce Chapter 324 that would lead to New Jersey's withdrawal from the Compact. App. 41a-42a. The New Jersey Senate, the New Jersey General Assembly, and the leaders of both houses (collectively, "the Legislature") intervened. App. 5a. The Governor and the Legislature opposed the preliminary injunction and moved to dismiss the case, arguing that sovereign immunity bars the Commission's suit. App. 42a.

The district court granted the preliminary injunction and denied dismissal. The court noted that to determine whether the exception to sovereign immunity under *Ex parte Young*, 209 U.S. 123 (1908) applies, "a 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." App. 46a (quoting *Verizon Md., Inc.* v. *Public Serv. Comm'n of Md.*, 535 U.S. 635, 645 (2002) (quotation marks omitted)). The court determined that the Commission's suit satisfies those criteria because "[i]nterstate compacts are not only contracts between states, but also federal statutes," and yet Chapter 324 "seeks to undo the Compact, which has the force and effect of federal law." App. 46a-47a.

The district court also found that the Commission had satisfied the requisite elements for a preliminary injunction. App. 55a-65a. As to the likelihood of success on the merits, the court found it significant that, although the Compact "does not explicitly address how a state may withdraw from or end it," the Compact requires concurrent legislation for *amending* the Compact. App. 56a-57a. Thus, the court noted, Chapter 324's "directives to unilaterally withdraw from and nullify the Compact directly conflicts with the Compact." App. 57a. The court also determined that the Commission would suffer irreparable harm if a preliminary in-

junction were not entered because Chapter 324 "divests [the Commission] of its 'powers, rights, assets, and duties.'" App. 62a. And lastly, the district court concluded that the balance of harms and the public interest warranted entering a preliminary injunction. App. 63a-65a. The court therefore granted the preliminary injunction to "preserve the status quo of a sixty-five-year-old Compact that embodies a concerted effort between New Jersey, New York, and Congress during the pendency of this matter." App. 65a.

All parties subsequently moved for summary judgment. The district court granted summary judgment to the Commission on the merits, largely for the reasons set forth in its preliminary injunction decision. App. 26a-36a.

2. Proceedings On Appeal

The court of appeals did not reach the merits of the dispute; instead, it concluded that the Commission's suit was barred by state sovereign immunity. App. 6a, 14a. Even though this lawsuit was brought against the Governor, not the State, the court held that this case does not fall within the *Ex parte Young* exception to sovereign immunity. Rather, it concluded, "the relief nominally sought from the Governor in this case would operate against the State itself," making New Jersey "the real, substantial party in interest." App. 10a.

The court of appeals gave two reasons for its conclusion. First, it reasoned that the judgment sought by the Commission "'would expend itself on the public treasury or domain.'" App. 10a-11a (quoting *Virginia Office for Prot. & Advocacy* v. *Stewart* ("*VOPA*"), 563 U.S. 247, 255 (2011)). The court noted that Chapter 324 directs the Commission to transfer its liquid assets at-

tributable to New Jersey to the New Jersey State Treasurer, and also purports to rechannel assessments that the Commission has imposed on private employers to finance the Commission's operations to the New Jersey General Fund for the benefit of the state police. App. 11a-12a. Thus, the court concluded, "[t]his suit is no mere attempt to compel or forestall a state official's actions consistent with *Ex parte Young*'s holding. Rather, … a judgment for the Commission would divert state treasury funding and thereby operate against the State." App. 12a.

Second, the court of appeals concluded that the Commission's suit "effectively seeks 'specific performance of a state contract.'" App. 12a (quoting *VOPA*, 563 U.S. at 257). The court first observed that, "[l]ike other interstate compacts, the Waterfront Commission Compact is a contract subject to our construction." App. 13a. And, it noted, "[b]y enacting Chapter 324, the State of New Jersey has chosen to discontinue its performance of the Compact and to resume the full exercise of its police powers on its own side of the Harbor." *Id.* Thus, the court reasoned, invalidating Chapter 324 "would compel New Jersey to continue to abide by the terms of an agreement it has decided to renounce." *Id.*

Because the court of appeals concluded that the case is barred by sovereign immunity, it directed dismissal of the Commission's complaint. App. 14a. The court stayed its mandate pending the disposition of the Commission's petition for certiorari. App. 179a-180a.

REASONS FOR GRANTING THE PETITION

The court of appeals' decision deviates from this Court's sovereign-immunity decisions and conflicts

with decisions of other circuits concerning *Ex parte Young*, especially in the context of an interstate compact. That by itself would be enough to justify this Court's review. But the decision also warrants review because it destabilizes congressionally approved interstate compacts as a means to promote interstate cooperation and to reconcile and resolve conflicting state interests. By holding that a state official may not be sued under *Ex parte Young* to prevent effectuation of a State's unilateral and unauthorized withdrawal from a compact, the decision below will undermine the effectiveness of interstate compact agencies. This Court should grant review and make clear that a claim seeking to prevent state officials from violating federal law by moving to abandon an interstate compact will lie under *Ex parte Young*, no less than any other claim seeking to prevent state officials from violating federal law.

I. THE THIRD CIRCUIT'S DECISION DEPARTS FROM THIS COURT'S SOVEREIGN IMMUNITY DECISIONS

The court of appeals' decision effectively allows New Jersey, acting unilaterally, to purport to dissolve the Commission in violation of the Compact. That decision contravenes a long line of this Court's decisions, including *Ex parte Young*, 209 U.S. 123 (1908).

For more than a century, *Ex parte Young* has provided "an important limit" on sovereign immunity to "'permit the federal courts to vindicate federal rights.'" *Virginia Office for Prot. & Advocacy* v. *Stewart* ("*VOPA*"), 563 U.S. 247, 254-255 (2011). The doctrine rests on the premise that "when a federal court commands a state official to do nothing more than refrain from violating federal law, he is not the State for sovereign-immunity purposes." *Id.* at 255; *see Young*, 209 U.S. at 159-160. To determine whether the *Ex parte*

Young doctrine applies, "a 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." *VOPA*, 563 U.S. at 255 (quotation marks omitted).

This case satisfies both requirements. The Commission brought suit to prevent the New Jersey Governor from implementing Chapter 324 on the ground that doing so would violate the congressionally approved interstate compact, which is federal law. The district court concluded that the Commission seeks only the prospective relief of enjoining an ongoing violation of federal law (here, the Compact), and the Third Circuit did not hold otherwise. App. 46a-47a; App. 10a-14a. That should have been the end of the matter under *Ex parte Young*.

Instead, the court of appeals held that *Ex parte Young* does not apply, for two reasons. First, the court stated, the requested injunction would "divert state treasury funding and thereby operate against the State." App. 10a-12a. Second, the court stated, the suit "effectively seeks 'specific performance of a State's contract.'" App. 12a-13a. Neither reason is persuasive, and both conflict with this Court's decisions.

A. Any Financial Effect On New Jersey Is Ancillary To Prospective Relief Permissible Under *Ex parte Young*

1. This Court has held that the State is "the real, substantial party in interest," and thus *Ex parte Young* does not apply, where "the 'judgment sought would expend itself on the public treasury or domain.'" *VOPA*, 563 U.S. at 255 (quoting *Pennhurst State Sch. & Hosp.* v. *Halderman*, 465 U.S. 89, 101 n.11 (1984)). Such is the

case, the Court indicated, when "the object of the suit against a state officer is to reach funds in the state treasury." *Id.* at 258. But a judgment does not impermissibly expend itself on the public treasury merely because it has financial effects on the State. Indeed, this Court has repeatedly held that *Ex parte Young* applies even when the relief would have "fiscal consequences to state treasuries," as long as those consequences are merely an "ancillary effect" of the relief that is "prospective in nature." *Edelman* v. *Jordan*, 415 U.S. 651, 667-668 (1974).

This Court thoroughly articulated the difference between permissible prospective relief that has an ancillary effect on state finances and impermissible retrospective relief directed at the state treasury in *Edelman*, and the Court's discussion there explains why the Third Circuit erred. *Edelman* involved a suit to compel Illinois officials to conform their implementation of a federal-state cooperative assistance program to the requirements of federal law. This Court held that the Eleventh Amendment barred the retroactive aspect of the judgment insofar as it directly "require[d] the payment of a very substantial amount of money which [the district court] held should have been paid but was not," 415 U.S. at 664, stressing that those funds "must inevitably come from the general revenues of the State," *id.* at 665. But the Court was equally firm that the *prospective* aspect of the judgment it was reviewing, which merely enforced conformance with federal law in the future, was not barred by the Eleventh Amendment, even though the financial effect of that judgment on the State was certain to be substantial. *Id.* at 664. As the Court explained, "[s]uch an ancillary effect on the state treasury is a permissible and often an inevitable conse-

quence of the principles announced in *Ex parte Young*." *Id.* at 668.

Cases applying that principle are legion. In *Ex parte Young* itself, the Court authorized an injunction against a Minnesota official from enforcing a state law that would violate federal law, even though the state law would have provided "substantial monetary penalties" against noncompliant entities and thus would have boosted "the State's revenues." *Edelman*, 415 U.S. at 667; *see Young*, 209 U.S. at 127-128. And the Court has approved judgments prohibiting state officials from denying or terminating benefits in certain situations, where compliance would require States to expend significant resources. *Edelman*, 415 U.S. at 667 (discussing *Graham* v. *Richardson*, 403 U.S. 365 (1971); *Goldberg* v. *Kelly*, 397 U.S. 254 (1970)). Similarly, in *Milliken* v. *Bradley*, 433 U.S. 267 (1977), the Court approved an injunction that required state officials to share the costs of desegregating a school system "notwithstanding [the] direct and substantial impact on the state treasury." *Id.* at 289-290. And in *Hutto* v. *Finney*, 437 U.S. 678 (1978), the Court authorized an attorney's fee award against state officials designed to enforce compliance with the court's order, finding that "[c]ompensation was not the sole motive for the award." *Id.* at 689-692. In all of those cases, the financial impact on the state treasury was ancillary because it was merely "the necessary result of compliance with decrees which by their terms were prospective in nature." *Edelman*, 415 U.S. at 667-668.

2. The court of appeals' decision departs from these precedents. The Commission's suit is a paradigmatic example of a suit that falls under the *Ex parte Young* doctrine; it seeks only the prospective relief of enjoining the Governor from enforcing Chapter 324 in viola-

tion of federal law, the Compact. Moreover, that injunction would not require the payment of funds from the State's treasury at all. As the court of appeals acknowledged, the Commission's operations are funded exclusively through assessments paid by waterfront employers who operate in the Port of New York–New Jersey—*not* from the States' treasuries. App. 3a & n.2. Thus, a judgment requiring the Governor not to enforce Chapter 324 would have no direct effect on New Jersey's finances. If anything, the financial impact on New Jersey from a judgment in this case is more remote than the numerous ancillary effects this Court has approved, where the State had to "*spend* money" to comply with the requested relief, *Edelman*, 415 U.S. at 668 (emphasis added). *See Milliken*, 433 U.S. at 289-290; *Hutto*, 437 U.S. at 690-691.

To be sure, the injunction against the Governor would mean that New Jersey would not realize a *new* revenue stream, since Chapter 324 requires the assessments currently imposed by the Commission on the employers to "flow into New Jersey's coffers" and the Commission's current liquid assets to be deposited to the State. App. 11a. But that is no different from *Ex parte Young*, where the relief enjoined enforcement of the Minnesota law that would have increased the State's revenue through "substantial monetary penalties." *Edelman*, 415 U.S. at 667; *see Young*, 209 U.S. at 127-128. That the injunction here would "divert" (App. 12a) New Jersey's anticipated funding by maintaining the proper funding channel—the Commission—does not change the prospective nature of the relief, and any such "diversion" remains "ancillary," incidental to complying with the injunction.

The Third Circuit mentioned the "ancillary effects" doctrine in passing but did not apply it. App. 8a-9a n.7,

12a n.11. Instead, the court emphasized "'the *effect* of the relief sought,'" namely New Jersey's loss of future revenue. App. 8a, 11a-12a. Insofar as the court focused on the *degree* of financial effects, that is irrelevant. States are not immunized "from their obligation to obey costly federal-court orders." *Hutto*, 437 U.S. at 690; *see also Papasan* v. *Allain*, 478 U.S. 265, 278 (1986) ("relief that serves directly to bring an end to a present violation of federal law is not barred by the Eleventh Amendment even though accompanied by a substantial ancillary effect on the state treasury"). As the Court noted, "'[a]ncillary' costs may be very large indeed," such as the millions of dollars the state defendants in *Milliken* were ordered to pay to comply with the court's order. *See Hutto*, 437 U.S. at 690 n.15. What matters is the *character* of the relief as prospective and any attendant costs as ancillary. The injunction here plainly so qualifies and therefore does not violate sovereign immunity.

B. The Prospective Relief Sought By The Commission Does Not Amount To Specific Performance

The Third Circuit held that "[e]ven if the effect on New Jersey's treasury can be deemed ancillary to permissible prospective relief," the Commission's suit is nonetheless barred by sovereign immunity because "it effectively seeks specific performance of the Compact." App. 12a n.11. In the court's view, New Jersey's "contractual performance" under the Compact "consists primarily of permitting the Commission" to perform its regulatory and enforcement functions as provided in the Compact. App. 13a. Chapter 324 discontinues that performance, the court stated, and yet granting the injunction would "compel New Jersey to continue to

abide by the terms of an agreement it has decided to renounce," which is "tantamount to specific performance." *Id.* The court concluded that sovereign immunity prohibited such an outcome, citing *Edelman* and *Ex parte Ayers*, 123 U.S. 443 (1887). App. 8a-9a, 12a-13a.

The court of appeals again misunderstood this Court's sovereign immunity decisions. It is true that this Court has held *Ex parte Young* inapplicable to certain suits where the relief sought would require specific performance of a State's contract. *See Edelman*, 415 U.S. at 666-667 (discussing *Ex parte Ayers* and *Hagood* v. *Southern*, 117 U.S. 52 (1886)). But that exception does not apply here, for several reasons.

1. *Hagood* and *Ayers* involved suits brought by actual parties to a contract seeking a remedy that would inescapably have amounted to specific performance by the State and nothing more. The claimants in *Hagood* and *Ayers* held state-issued revenue bond scrip or tax-receivable coupons, which the State had promised they could use to pay taxes. But the State changed its mind and rendered the scrip or coupons largely ineffective. *Hagood*, 117 U.S. at 63-64, 65-67; *Ayers*, 123 U.S. at 446-448, 492-493. The claimants sought to compel state officials to levy a tax to fund redemption of the scrip (*Hagood*, 117 U.S. at 65, 68), or to enjoin officials from bringing tax collection suits against those who had paid taxes with coupons (*Ayers*, 123 U.S. at 445-450)—all to enforce their agreement with the State. *See Young*, 209 U.S. at 151-152. The Court held that those suits were barred by the Eleventh Amendment. *Hagood*, 117 U.S. at 67-69; *Ayers*, 123 U.S. at 502-503.

This case is materially different. The Commission is not a party to the Compact alleging a contractual

breach. Instead, the heart of the Commission's claim is that the Compact is itself federal law, and that the Governor's enforcement of Chapter 324 would violate that federal law by unilaterally withdrawing New Jersey from the Compact and purporting to destroy the Commission, in contravention of its terms. This is not a case, therefore, where the plaintiff is seeking an injunction on the ground that, without it, there "would be a breach of a contract with the state," *Young*, 209 U.S. at 152.

That distinction is important because this Court has held that *Ex parte Young* permits suits similar to the Commission's, which allege that a state enactment violates a federal law and therefore should be enjoined, even if the effect of the judgment would be to vindicate contractual rights. In *Georgia Railroad & Banking Co.* v. *Redwine*, 342 U.S. 299, 300-301 (1952), a railroad claiming to have a contractually based exemption from state taxation sued to enjoin the enforcement of a new state law that purported to remove that exemption. This Court held that the suit could proceed under *Ex parte Young*, even though the plaintiff claimed that the threatened taxation would "impair the obligation of contract" between the plaintiff and the State. *Id.* at 304-305. Distinguishing *Ayers*, the Court rejected the characterization of the suit "as one to enforce an alleged contract with the State of Georgia, and, as such, a suit against the State," noting that the "complaint is not framed as a suit for specific performance," but rather as a suit seeking to "enjoin [a state official] from collecting taxes in violation of … the Federal Constitution." *Id.* at 304-306.

Likewise, in *Pennoyer* v. *McConnaughy*, 140 U.S. 1 (1891), the Court held that a suit seeking to enjoin Oregon officials from selling land pursuant to an allegedly

unconstitutional state law was not barred by sovereign immunity, even though the plaintiff claimed the sale would "impair[] the obligation of the [prior sales] contract" to which the State was a party. *Id.* at 8, 18-19. The Court explained that, notwithstanding *Hagood* and *Ayers*, the principle that federal courts "will restrain a state officer from executing an unconstitutional statute of the state, … has never been departed from." *Id.* at 9-10, 12. That principle, reiterated in *Ex parte Young*, covers the Commission's suit as well.

2. In addition, the nature of the specific performance at issue in *Hagood* and *Ayers* bears no resemblance to what New Jersey would be required to do under the injunction in this case. *Hagood* and *Ayers* are part of a line of cases that stand for the unremarkable principle that courts should not "require, by *affirmative official action* on the part of the [state officials], the performance of an obligation which belongs to the State in its political capacity." *Hagood*, 117 U.S. at 70 (emphasis added). That has no application to the Commission's suit.

Hagood, for example, was "directly within the authority of" *Louisiana ex rel. Elliott* v. *Jumel*, 107 U.S. 711 (1883), which held that sovereign immunity prohibits an action to compel state officials to levy a tax to pay bondholders. *Hagood*, 117 U.S. at 68; *see Jumel*, 107 U.S. at 720-723, 727-728. Such an action was barred by sovereign immunity, the Court explained, because the remedy sought would require the court to "'supervise the conduct of all persons charged with any official duty in respect to the levy, collection, and disbursement of the tax in question, until the bonds, principal and interest, were paid in full.'" *Hagood*, 117 U.S. at 68 (quoting *Jumel*, 107 U.S. at 727-728). Similarly, the injunction sought in *Ayers* "was to restrain the state officers from

commencing suits … to *recover taxes for its use*, on the ground that, if such suits were commenced, they would be a breach of a contract with the state." *Young*, 209 U.S. at 152; *see Ayers*, 123 U.S. at 445-450. In other words, granting the requested remedies in these cases would have required the court to "assum[e] the control of the administration of the fiscal affairs of the state to the extent that may be necessary to accomplish the end in view." *Jumel*, 107 U.S. at 722.

Nothing of the sort would happen by enjoining the Governor from enforcing Chapter 324. The Commission's suit seeks a prohibitory injunction restraining the Governor from violating federal law, not a mandatory injunction compelling state authorities to exercise their political authority. Certainly, New Jersey would be required to continue to adhere to the terms of the Compact as the governing federal law, but the court would not "'supervise the conduct'" of any state officials, *Hagood*, 117 U.S. at 67-68, or "assum[e] control of the administration of" state affairs, *Jumel*, 107 U.S. at 722. Instead, granting the injunction in this case is merely "rendering and enforcing [of] a judgment in the ordinary form of judicial procedure." *Jumel*, 107 U.S. at 722.[4]

The court of appeals' decision unravels these important distinctions by holding, in effect, that whenever

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[4] Moreover, as this Court explained in *Ex parte Young*, the suits in *Hagood* and *Ayers* were prohibited because "a decree in favor of plaintiff" in those cases would have "affect[ed] the treasury of the state," *Young*, 209 U.S. at 151, which suggests that those remedies would have expended themselves on the public treasury and thus operated against the State within the meaning of the Eleventh Amendment. But as noted above, the Commission's suit has no such effect. *See* pp. 14-18, *supra*.

resolution of a dispute would lead to a State's compliance with its contractual obligations, the relief sought must be treated as beyond the bounds of *Ex parte Young*. But that is an extravagant reading of *Hagood* and *Ayers*, and it cannot be reconciled with many other decisions of this Court. And as explained further below (pp. 26-31, *infra*), it also has profoundly adverse ramifications. If the injunction here were deemed a contract remedy, then all suits challenging a State's violation of a congressionally approved interstate compact could be deemed mere contractual disputes and any injunction sought could be considered specific performance. Interstate compacts could be rendered effectively unenforceable, except through the cumbersome mechanism of this Court's original jurisdiction. *Hagood* and *Ayers*—contract disputes involving States' tax policies from the 1880s—should not be read to compel such an outcome.

II. THE THIRD CIRCUIT'S DECISION CONFLICTS WITH DECISIONS OF OTHER COURTS OF APPEALS

Unsurprisingly, other courts of appeals have reached conclusions contrary to the Third Circuit's. Applying the settled principles of *Ex parte Young*, the Eighth and Tenth Circuits have held that a suit seeking injunctive relief against state officials to prevent their noncompliance with a congressionally approved interstate compact to which the State is a party does not run afoul of the Eleventh Amendment. The conflict among the circuits created by the decision below further warrants this Court's review.

In *Entergy, Arkansas, Inc.* v. *Nebraska*, 210 F.3d 887 (8th Cir. 2000), an interstate compact agency sought injunctive relief against Nebraska state officials, alleging that the officials were violating the compact by

delaying and denying a license for a nuclear waste disposal facility in Nebraska. *Id.* at 890. The Eighth Circuit held that the suit fell within the *Ex parte Young* doctrine. The court followed the well-established principle that "a party may sue a state officer for prospective relief in order to stop an ongoing violation of a federal right." *Id.* at 897. The court further reasoned that "[t]he Compact is federal law because it is a congressionally sanctioned agreement within the meaning of the Compact Clause," and the "rights that the Commission seeks to enforce are federal rights which arise under the Compact." *Id.* The compact agency's requested relief, the court noted, was also purely prospective because it sought to enjoin the state proceeding regarding the denied license that allegedly violated the compact. *Id.* at 897-898. Accordingly, the Eighth Circuit concluded that federal courts "had jurisdiction to enjoin state officers under *Ex parte Young*." *Id.* at 898.[5]

The Commission's suit here is similar in all relevant respects. Like the agency in *Entergy*, the Commission is a compact agency created by a congressionally approved interstate compact. And as in *Entergy*, the Commission seeks to prevent a state official from violating federal law as set forth in the Compact.

The Third Circuit's decision also conflicts with the Tenth Circuit's decision in *Tarrant Regional Water District* v. *Sevenoaks*, 545 F.3d 906 (10th Cir. 2008).[6] In that case, a Texas agency sued Oklahoma officials,

[5] The court of appeals alternatively concluded that Nebraska had waived its sovereign immunity. *Entergy*, 210 F.3d at 896-897.

[6] The case eventually reached this Court on questions concerning the interpretation of the compact, having passed the sovereign immunity hurdle in the lower court. *See Tarrant Reg'l Water Dist.* v. *Herrmann*, 569 U.S. 614 (2013).

claiming that an Oklahoma statute prohibiting the exportation of surface water to out-of-state users was preempted by the congressionally approved Red River Compact to which both States were members. *See id.* at 909-910. The Oklahoma officials sought to dismiss the case on sovereign immunity grounds (among others), but the district court and court of appeals rejected that argument. *See id.* at 910-914.

As the Tenth Circuit explained, sovereign immunity "does not extend to a state official sued in his official capacity when the plaintiff seeks only prospective, injunctive relief," and that is true even when the "prospective relief could have financial consequences" to the State. *Tarrant Reg'l*, 545 F.3d at 911. Rather, the court explained, a suit is barred when it seeks relief "akin to a retrospective damages award." *Id.* Applying those principles, the Tenth Circuit held that the suit was authorized by *Ex parte Young* because the Oklahoma officials were sued in their official capacity for violating the compact and the suit sought "only prospective, injunctive relief" that would prohibit the Oklahoma officials from enforcing state laws that were allegedly preempted by the compact. *Id.* at 911-914. The Commission's suit here seeks the same kind of prospective relief as in *Tarrant Regional*—an injunction prohibiting a state official from enforcing a state law preempted by an interstate compact.

Had this case arisen in the Eighth or Tenth Circuit, the courts would have held that sovereign immunity is no bar to the case. This Court should grant review to resolve this conflict in the circuits and hold that this case falls within the ambit of *Ex parte Young*.

III. THE QUESTION PRESENTED IS IMPORTANT

The Third Circuit's decision places a cloud of uncertainty over dozens of congressionally approved interstate compacts. The effect of that decision—especially its "specific performance" rationale—is that a state officer cannot be sued in federal district court to prevent that official from taking action that would violate a compact. Under the court of appeals' reasoning, state officials could act in blatant violation of an interstate compact, and the federal courts would be powerless to compel those state officials to comply with federal law.

The only recourse in such a situation would be for one of the other compacting States to sue the offending State in an original action in this Court. That is a highly imperfect solution, as this Court has expressed many times. In the first place, nonstate parties injured by such a violation of federal law—such as the Commission, but also private parties—would have no access to such relief. Moreover, this Court has consistently discouraged resort to its original jurisdiction where other avenues of redress are available. The enforceability of a congressionally approved interstate compact should not be made dependent on such extraordinary measures, especially where Congress has established an interstate compact agency and given it authority to administer the compact. Because the court of appeals' decision undermines the stability of congressionally approved interstate compacts by removing the most efficient and straightforward mechanism for their enforcement, this Court should grant review.

1. Interstate compacts affect every geographic corner of the United States and cover every imaginable field amenable to interstate cooperation, including water resources, flood control, infrastructure, law en-

forcement, education, historic preservation, transportation, natural resource management, and waste management.[7] They have proven extraordinarily effective in avoiding interstate conflict and reducing the need for States to bring burdensome litigation in this Court.

The Third Circuit's decision casts a significant shadow over that practical approach to interstate accommodation. Under the court's reasoning, no entity could sue in federal court to compel a state officer to stop violating an interstate compact. That reasoning cannot be confined to the compact at issue in this case. There are dozens of congressionally approved interstate compacts.[8] And even as to the specific issue here—whether one State's officials may, in effect, unilaterally destroy an interstate compact and dissolve an interstate compact commission—the potential consequences are broad. Numerous congressionally approved compacts that create interstate agencies do not expressly allow unilateral withdrawal or dissolution of the compact by a compacting State. *See* App. 104a (art. XVI, §2) ("The right to alter, amend, or repeal this Act is hereby expressly reserved.").[9] And several

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[7] *See* nn.8-10, *infra*.

[8] *See, e.g.*, Thames River Valley Flood Control Compact, Pub. L. No. 85-526, 72 Stat. 364 (1958); Conn. Gen. Stat. Ann. §25-101; Mass. Gen. Laws 91 app. §3-3; Merrimack River Flood Control Compact, Pub. L. No. 85-23, 71 Stat. 18 (1957); Mass. Gen. Laws Ann. 91 app. §2-1; N.H. Rev. Stat. Ann. §484:7; Wheeling Creek Watershed Protection and Flood Prevention Compact, Pub. L. No. 90-181, 81 Stat. 553 (1967); 32 Pa. Stat. and Cons. Stat. Ann §819.1; W. Va. Code §29-1F-1.

[9] *See, e.g.*, Merrimack River Flood Control Compact, Pub. L. No. 85-23, 71 Stat. 18 (1957); Mass. Gen. Laws Ann. 91 app. §2-1; N.H. Rev. Stat. Ann. §484:7; Wheeling Creek Watershed Protection and Flood Prevention Compact, Pub. L. No. 90-181, 81 Stat.

compacts, like the one at issue here, provide for compact amendment only by mutual consent of both States. *See* App. 103a-104a (art. XVI, ¶1) ("Amendments and supplements to this compact to implement the purposes thereof may be adopted by the action of the Legislature of either State concurred in by the Legislature of the other.").[10] Accordingly, under the Third Circuit's decision, state officials that violate such a compact—or

553 (1967); 32 Pa. Stat. and Cons. Stat. Ann §819.1; W. Va. Code §29-1F-1; Thames River Valley Flood Control Compact, Pub. L. No. 85-526, 72 Stat. 364 (1958); Conn. Gen. Stat. Ann. §25-101; Mass. Gen. Laws Ann. 91 app. §3-3; Delaware River Port Authority Compact, S.J. Res. 41, 72d Cong., 47 Stat. 308; 36 Pa. Stat. and Cons. Stat. Ann. §3503; N.J. Stat. Ann. §32:3-2; Delaware River Joint Toll Bridge Compact, Pub. L. No. 74-411, 49 Stat. 1051 (1932); N.J. Stat. Ann. §32:8-1; 36 Pa. Stat. and Cons. Stat. Ann §3401; Arkansas-Mississippi Great River Bridge Construction Compact, Pub. L. No. 99-560, 100 Stat. 3146 (1986); Ark. Code Ann. §27-89-301; Miss. Code Ann. §65-25-101; New Hampshire-Vermont Interstate School Compact, Pub. L. No. 91-21, 83 Stat. 14 (1969); Vt. Stat. Ann. tit. 16, §771; N.H. Rev. Stat. Ann. §200-B:1; the Potomac Highlands Airport Authority Compact, Pub. L. No. 105-348, 112 Stat. 3212 (1998); Md. Code Ann., Transp. §10-103; the Delaware River and Bay Authority Compact, Pub. L. No. 87-678, 76 Stat. 560 (1962); Del. Code Ann. tit. 17, §1701; N.J. Stat. Ann. §32:11E-1; the Bi-State Development Agency Compact, Pub. L. No. 81-743, 64 Stat. 568 (1950); 45 Ill. Comp. Stat. 100/0.01; Mo. Ann. Stat. §70.370; the Kansas City Area Transportation Compact, Pub. L. No. 89-599, 80 Stat. 826 (1966); Mo. Ann. Stat. §238.010; Kan. Stat. Ann. §12-2524; and the New York-New Jersey Port Authority Compact of 1921, S.J. Res. 88, 27th Cong., 42 Stat. 174; N.J. Stat. Ann. §32:1-1; N.Y. Unconsol. Law §6401; the Columbia River Gorge Compact, Pub. L. No. 99-663, 100 Stat. 4274 (1986); Or. Rev. Stat. §196.150; Wash. Rev. Code Ann. §43-97-015.

[10] *See, e.g.*, The Breaks Interstate Park Compact, Pub. L. No. 83-543, 68 Stat. 571 (1954); Ky. Rev. Stat. Ann. §148.220; Va. Code Ann. §10.1-205.1; the Palisades Interstate Park Compact, Pub. L. No. 75-65, 50 Stat. 719 (1937); N.Y. Parks Rec. & Hist. Preserv. Law §9.01; N.J. Stat. Ann. §32:17-4.

even, as here, unilaterally repudiate it altogether—will understand that they cannot be ordered to comply with that compact by a federal district court, and that the only mechanism to enforce compliance will be an original suit brought by another State.

2. These consequences will significantly undermine the important federal interest in promoting interstate cooperation through adherence to interstate compacts. As explained above, most interstate compacts are subject to congressional approval pursuant to the Compact Clause of the Constitution. *See U.S. Steel Corp.* v. *Multistate Tax Comm'n*, 434 U.S. 452, 468 (1978). And "a compact when approved by Congress becomes a law of the United States." *Texas* v. *New Mexico*, 482 U.S. 124, 128 (1987).

The federal nature of interstate agreements is not novel. As then-Professor Frankfurter explained, "the Compact Clause has its roots deep in colonial history" when agreements between the colonies were approved and enforced by the Crown. Frankfurter & Landis, *The Compact Clause of the Constitution—A Study in Interstate Adjustments*, 34 Yale L. J. 685, 692 (May 1925); *see also id.* at 691-695 (historical analysis of the origins of the interstate compact clause); *Hinderlider* v. *La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92, 104 (1938) (reviewing history of interstate compacts). He further noted that the Framers intended that Congress would "exercise national supervision through its power to grant or withhold consent, or to grant it under appropriate conditions." 34 Yale L.J. at 695. Accordingly, a State's attempt to violate—or as here, unilaterally dissolve—an interstate compact is a matter of significant federal interest and should be subject to review by a federal court.

3. The only other possible mechanism for enforcement of an interstate compact—a suit within the original jurisdiction of this Court—is not an adequate substitute for an *Ex parte Young* action, for several reasons. In the first place, a nonstate party may not bring an action against a State within this Court's original jurisdiction. *See* 28 U.S.C. §1251(b)(3) (vesting this Court with original but not exclusive jurisdiction over suits brought by States against citizens of other States, but not *vice versa*). Thus, a nonstate party harmed by a state official's violation of an interstate compact—like the Commission here, and like the plaintiffs in both *Entergy* and *Tarrant Regional*—would have no court to which it could turn for redress. This lack of redress places interstate compact agencies in a particularly difficult position. Here, for example, the Commission is left to decide for itself and its employees whether to continue to enforce the congressionally approved Compact as still codified in federal law and the laws of New York or to abandon its obligations under the Compact in light of Chapter 324. The operational confusion that results from this legal limbo is exacerbated by the Third Circuit's decision, which erroneously removes from the Commission the most direct and immediate avenue for resolving the issue—an *Ex parte Young* action preventing the New Jersey Governor from acting in contravention of a congressionally approved compact.

An original action to remedy a violation of an interstate compact is much less desirable than a straightforward *Ex parte Young* action. As the Court has explained, "[t]his Court is … structured to perform as an appellate tribunal, ill-equipped for the task of factfinding and so forced, in original cases, awkwardly to play the role of factfinder without actually presiding over

the introduction of evidence." *Ohio* v. *Wyandotte Chemicals Corp.*, 401 U.S. 493, 498 (1971); *see South Carolina* v. *North Carolina*, 558 U.S. 256, 278 (2010) (Roberts, C.J., concurring in the judgment in part and dissenting in part) ("We are not well suited to assume the role of a trial judge."). Indeed, the Court has consistently held that, when other avenues of relief are available in the lower federal courts, parties should take them rather than invoke the Court's original jurisdiction. *See Illinois* v. *City of Milwaukee*, 406 U.S. 91, 93-94 (1972) ("We incline to a sparing use of our original jurisdiction so that our increasing duties with the appellate docket will not suffer."); *Washington* v. *General Motors Corp.*, 406 U.S. 109, 113-114 (1972); *see also Arizona* v. *New Mexico*, 425 U.S. 794, 796-797 (1976) (per curiam).

In sum, the court of appeals' decision makes it much more difficult—and in many cases, practicably impossible—for violations of interstate compacts to be redressed. To avoid that adverse consequence, this Court should grant review and make clear that an action under *Ex parte Young* is appropriate to enjoin state action that contravenes a congressionally approved interstate compact.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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