

No. 26-297

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**In the Supreme Court of the United States**

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PATRICK MORRISEY, ET AL.,  
*Petitioners,*

v.

JONATHAN R., MINOR,  
BY NEXT FRIEND SARAH DIXON, ET AL.,  
*Respondents.*

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

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**BRIEF OF AMICI CURIAE  
STATES OF SOUTH CAROLINA, ALASKA, AND  
20 OTHER STATES  
IN SUPPORT OF PETITIONERS**

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**INTEREST OF AMICI CURIAE<sup>1</sup>**

Like West Virginia, many Amici States have watched their foster care systems be commandeered by federal courts through institutional reform litigation. In such cases, Amici States' sovereignty is subjected to the oversight of federal courts. But Article III does not "confer on federal judges some amorphous power to supervise the operations of government and reimagine [them] from the ground up." *Whole Woman's Health v. Jackson*, 595 U.S. 30, 40 (2021) (citation modified). And yet, the Fourth Circuit concluded below that a district court had such power to enact reforms of West Virginia's foster care system. It also told the district court that it had a *duty* to use that power. Pet. App. 7a. That's wrong. And the consequences that follow require this Court's correction.

State child welfare systems will never be perfect solutions to intricate and delicate social problems. But the improvement of those systems must come through proper political channels: state legislative and executive branches. Because it is state institutions that are hijacked in cases like this, the outcome of this petition is of vital importance to all states, not just Amici. The stakes are clear: if federal courts have the authority to "direct the use of state funds" and to "enact expansive reforms," Pet. App. 13a, the very sovereignty of the states and our system of federalism is at risk.

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<sup>1</sup> Counsel of record for all parties timely received notice of Amici States' intention to file this brief.

## SUMMARY OF ARGUMENT

Before this Court are two questions. Answering the first question in the negative is essential to our constitutional structure, and of great importance to Amici States. That question asks whether a claim is “redressable when the only relief said to be effective requires a federal court to become the ‘manager or policy planner’ of a state agency.” Pet. I. The Fourth Circuit concluded that a federal court can grant such relief. But that gets the redressability analysis all wrong. For one, redressability in this instance assumes that Article III courts can provide far broader equitable relief than they are constitutionally allowed. For another, it risks serious damage to principles of federalism, as well as the separation of powers.

This case presents an excellent opportunity to bring clarity to the issues that institutional reform litigation and structural injunctions pose. In the foster care context alone, at least thirty-four states have had their institutions challenged in court. *See* SUMMARY OF CHILD WELFARE CLASS ACTION LITIGATION, CASEY FAM. PROGRAMS (Apr. 15, 2026), <https://tinyurl.com/425we69d>. Many have been operating under court supervision for years, and others are still caught up in years-long litigation. For those currently subject to court oversight, there are real questions about whether the so-called structural reforms have been effective. While the facts of each state’s situation are different, the result of litigation is often the same: the courts are used as open forums for policymaking, giving plaintiffs greater capacity to shape public policy outside of the proper channels. And as experience has shown, such judicial policymaking extends well beyond the child-welfare system. If the Fourth

Circuit’s decision is allowed to stand, that judicial policymaking will extend even further.

## **REASONS FOR GRANTING THE PETITION**

### **I. The Article III question is exceptionally important to Amici States.**

Both questions presented are worthy of this Court’s review. But Amici States highlight the first, which is of particular importance to the states. That question asks, “[i]s a claim redressable when the only relief said to be effective requires a federal court to become the ‘manager or policy planner’ of a state agency?” Pet. I. For Amici States, the answer is unequivocally “no.” Anything else erodes our system of federalism, blurs the separation of powers, and assigns dangerous power to the “least dangerous” branch. *See* THE FEDERALIST No. 78, at 465 (A. Hamilton) (Clinton Rossiter ed., 1961).

For starters, the Fourth Circuit’s decision gets the Article III standing requirement of redressability wrong. As a component of standing, redressability is a threshold Article III requirement for a federal court to exercise jurisdiction over a case or controversy. *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021). To establish redressability, a plaintiff must show that “the injury would likely be redressed by judicial relief.” *Id.*; *see also United States v. Texas*, 599 U.S. 670, 676 (2023) (requiring an injury that is “traditionally redressable in federal court.”). In other words, redressability “requires that the court be able to afford relief through the exercise of its power.”

*Haaland v. Brackeen*, 599 U.S. 255, 294 (2023) (citation modified).

The redressability inquiry recognizes the limits of judicial power. That’s important. If courts had the power to grant any relief requested by a litigant, no matter how intrusive into other spheres of power, the redressability inquiry would be unnecessary, as every claim would theoretically be redressable. That would certainly contradict the “the Framers’ concept of the proper—and properly limited—role of the courts in a democratic society.” *Diamond Alternative Energy, LLC v. Env’t Prot. Agency*, 606 U.S. 100, 111 (2025) (citation modified). And it would establish a regime of “government by lawsuit” that standing doctrine is designed to prevent. *See Texas*, 599 U.S. at 704 (Gorsuch, J., concurring) (citation modified).

Unfortunately, that is the regime the Fourth Circuit’s decision condones. Allowing it to stand would be disastrous for Amici States. It would give judges ample opportunity to override the democratic process. “Such gross overreaching by a federal district court simply cannot be tolerated in our federal system.” *Lewis v. Casey*, 518 U.S. 343, 363 (1996) (Thomas, J., concurring). So courts should be restrained “from altering rights and obligations more broadly in ways that would interfere with the power reserved to the people’s elected representatives.” *Texas*, 599 U.S. at 704 (Gorsuch, J., concurring).

Fortunately, this Court has already acknowledged limitations on the relief that federal courts can provide. For example, the “equitable authority” granted

to federal courts by the Judiciary Act of 1789 is not “freewheeling.” *Trump v. CASA, Inc.*, 606 U.S. 831, 841 (2025). Instead, courts’ equitable authority “encompasses only those sorts of equitable remedies traditionally accorded by courts of equity at our country’s inception.” *Id.* (citation modified). In *CASA*, this Court found that the “universal injunction” was not one of those equitable remedies rooted in historical practice. *Id.* at 842.

Much like the “universal injunction,” the “structural injunction” sought by Respondents also departs from historical practice. *See Brown v. Plata*, 563 U.S. 493, 555 (2011) (Scalia, J., dissenting). This type of injunction is “radically different from the injunctions traditionally issued by courts of equity.” *Id.* at 554. For example, the mandatory injunctions traditionally issued by courts of equity usually required a “single simple act.” *See id.* (quoting H. McClintock, *Principles of Equity* § 15, pp. 32–33 (2d ed.1948)). Conversely, the complete revision or remaking of a complex social institution or program would take far more than one act.

In this case, for example, Respondents would have West Virginia spend years chasing forty-seven vague and internally inconsistent metrics, requiring potentially thousands of acts over a period of many years. Pet. I. Such a programmatic challenge is therefore outside of an Article III court’s province to adjudicate. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 568 (1992) (“Suits challenging the particular programs agencies establish to carry out their legal obligations are, even

when premised on allegations of several instances of violations of law, rarely if ever appropriate for federal-court adjudication.”) (citation modified).

The programmatic, government-by-litigation, structural injunction approach finds no basis in Article III courts’ equitable authority. So any claim seeking this type of relief simply does not present an injury that is redressable by a federal court. And for good reason. Allowing such claims to proceed would seriously injure “[p]rinciples of federalism and separation of powers,” which “dictate that exclusive responsibility for administering state [institutions] resides with the State and its officials.” *Lewis*, 518 U.S. at 363 (Thomas, J., concurring). Opening that “exclusive responsibility” up to federal courts undermines those doctrines and the sovereignty of Amici States.

#### **A. Federalism is undermined when federal courts commandeer state prerogatives.**

Institutional reform litigation is nothing new for Amici States. That’s because such litigation “commonly involves areas of core state responsibility” and “often raise[s] sensitive federalism concerns.” *Horne v. Flores*, 557 U.S. 433, 448 (2009). And the resulting federal court entanglement with state executive agencies is a growing problem that threatens the carefully crafted vertical balance of power necessary for a functioning republic.

By design, the Constitution establishes a system of “dual sovereignty.” *Printz v. United States*, 521 U.S.

898, 918 (1997) (citation modified). The states “surrendered many of their powers to the new Federal Government,” but “they retained ‘a residuary and inviolable sovereignty.’” *Id.* at 918–19 (quoting THE FEDERALIST No. 39, at 245 (J. Madison)). And “state sovereignty is not just an end in itself.” *Bond v. United States*, 564 U.S. 211, 221 (2011) (citation modified). Rather, the dual sovereign model “is one of the Constitution’s structural protections of liberty.” *Printz*, 521 U.S. at 921; *see also Bond*, 564 U.S. at 221 (“[F]ederalism secures to citizens the liberties that derive from the diffusion of sovereign power.”) (citation modified).

As this Court has made clear, “[j]ust as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the states and the Federal Government will reduce the risk of tyranny and abuse from either front.” *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991). That balance of power creates a “double security” for people’s rights. THE FEDERALIST No. 51, at 323 (J. Madison) (Clinton Rossiter ed., 1961). But that “double security” will only be effective if both powers remain “credible.” *Gregory*, 501 U.S. at 459.

To maintain our Constitutional structure and the rights that it protects, “appropriate consideration must be given to principles of federalism in determining the availability and scope of equitable relief.” *Rizzo v. Goode*, 423 U.S. 362, 379 (1976). Federal courts, in devising a remedy, “must take into account

the interests of state and local authorities in managing their own affairs, consistent with the Constitution.” *Milliken v. Bradley*, 433 U.S. 267, 280–81 (1977). They must “pause before using their inherent equitable powers to intrude into the proper sphere of the States.” *Missouri v. Jenkins*, 515 U.S. 70, 131 (1995) (Thomas, J., concurring). And “what the federal courts cannot do at the federal level they cannot do against the States.” *Id.* at 132. Otherwise, we risk the “entire subversion of the legislative, executive and judicial powers of the individual states.” *Id.* at 129 (quoting Brutus No. 11, Jan. 31, 1788, in 2 THE COMPLETE ANTI-FEDERALIST 420 (H. Storing ed. 1981)). A structural reform decree, like the one sought by Respondents, does just that.

Such broad injunctive relief “eviscerates a State’s discretionary authority over its own program and budgets and forces state officials to reallocate state resources and funds.” *Id.* at 131. It “turn[s] judges into long-term administrators of complex social institutions” and “require[s] judges to play a role essentially indistinguishable from the role ordinarily played by executive officials.” *Brown*, 563 U.S. at 555 (Scalia, J., dissenting). In other words, a structural reform theory of jurisprudence requires a federal court to effectively *replace* a state official with itself, or worse, *restructure* a state program based on what *it* thinks will achieve a desired outcome.

That depth of “relief” is inappropriate here. “Judges are not politicians.” *Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 437 (2015). They do not possess the

electoral mandate of the people, nor do they possess the administrative expertise to run complex state social institutions like the foster care system. State officials not only “bear the responsibility for [institutional] decisions, they also are better equipped than a single federal judge to make the day-to-day policy ... and funding choices.” *Jenkins*, 515 U.S. at 131–32 (Thomas, J., concurring).

That proper division of responsibility is a feature, not a flaw, of our Constitutional structure. It “allows local policies more sensitive to the diverse needs of a heterogenous society, permits innovation and experimentation, enables greater citizen involvement in democratic processes, and makes government more responsive by putting the States in competition for a mobile citizenry.” *Bond*, 564 U.S. at 221 (citation modified). That’s why child welfare is traditionally within the exclusive province of the states. *See Moore v. Sims*, 442 U.S. 415, 435 (1979) (“Family relations are a traditional area of state concern.”); *Ex parte Burrus*, 136 U.S. 586, 593–94 (1890) (“The whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the states, and not to the laws of the United States.”).

In sum, federalism “allows States to respond, through the enactment of positive law, to the initiative of those who seek a voice in shaping the destiny of their own times.” *Bond*, 564 U.S. at 221. But, when we presume that federal courts have the institutional ability and authority to set effective policy themselves, “we transform the least dangerous branch into

the most dangerous one.” *Jenkins*, 515 U.S. at 132 (Thomas, J., concurring). The states, as well as their constituents, are especially sensitive to that danger.

**B. Horizontal separation of powers is impaired when courts intrude into the operations of the political branches.**

Article III standing “is built on a single basic idea—the idea of separation of powers.” *TransUnion LLC*, 594 U.S. at 422 (citation modified). The doctrine of standing functions as a “landmark” that aids in “setting apart the Cases and Controversies that are the justiciable sort referred to in Article III.” *Lujan*, 504 U.S. at 560 (citation modified). It “prevent[s] the judicial process from being used to usurp the powers of the political branches.” *Texas*, 599 U.S. at 676 (citation modified).

Judicial intervention in executive agency practices undermines the separation of powers. By usurping the legislative and executive branches’ role in setting the rules of operation, courts claim a power and expertise that was never entrusted to them. *Brown*, 563 U.S. at 558 (Scalia, J., dissenting) (“Three years of law school and familiarity with pertinent Supreme Court precedents give no insight whatsoever into the management of social institutions.”).

For example, this Court “has consistently recognized that federal courts are generally not the proper forum for resolving claims that the Executive Branch should make more arrests or bring more prosecutions.” *Texas*, 599 U.S. at 680. Indeed, the separation

of powers “forbid[s] judicial interference with the exercise of executive discretion.” *Gaines v. Thompson*, 74 U.S. 347, 353 (1868). And tthe “province of the court is, solely, to decide on the rights of individuals, not to enquire how the executive, or executive officers, perform duties in which they have a discretion.” *Marbury v. Madison*, 5 U.S. 137, 170 (1803). “Questions, in their nature political, or which are, by the constitution and laws, submitted to the executive, can never be made in this court.” *Id.*

Everyone expects courts to be experts on the law. *Id.* at 177 (“It is emphatically the province and duty of the judicial department to say what the law is.”). In fact, in *Loper Bright*, this Court recognized that federal courts don’t owe deference to government agencies on questions of law. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412–13 (2024). But Courts must not substitute their own wisdom for the wisdom of legislative policy decisions and executive agency practices. And they certainly must not commandeer government agencies and run them as if they were agency heads. “Our constitutional system of separation of powers contemplates a more restricted role for Article III courts.” *Texas*, 599 U.S. at 681 (citation modified).

“In establishing the system of divided power in the Constitution, the Framers considered it essential that ‘the judiciary remain[ ] truly distinct from both the legislature and the executive.’ *Stern v. Marshall*, 564 U.S. 462, 483 (2011) (quoting THE FEDERALIST No. 78, at 466 (C. Rossiter ed. 1961) (A. Hamilton)). That’s

why they enjoy protections from removal and salary reductions. *See id.* at 484 (“By appointing judges to serve without term limits, and restricting the ability of the other branches to remove judges or diminish their salaries, the Framers sought to ensure that each judicial decision would be rendered, not with an eye toward currying favor with Congress or the Executive, but rather with the ‘[c]lear heads ... and honest hearts’ deemed ‘essential to good judges.’”) (quoting 1 Works of James Wilson 363 (J. Andrews ed. 1896)). Because of this insulation, the federal judiciary is better able to serve as a check on the legislative and executive branches.

But that insulation raises the question of accountability. The political branches face accountability in the ballot box. “The Constitution presumes that even improvident decisions will eventually be rectified by the democratic processes.” *United States v. Skrmetti*, 605 U.S. 495, 510 (2025) (citation modified). But who can check a federal judge running a political agency? Only a higher court. And that is the situation before this Court. The judiciary’s lack of political accountability makes granting this petition imperative.

## **II. The Court should answer this question now.**

West Virginia’s experience is not the first of its kind, but it should be the last. States across the country have confronted institutional reform litigation in the foster care context and have experienced the judicial oversight that follows. At least thirty-four states have been sued over their foster care systems, and

most of those states continue to operate under court scrutiny, either by consent decree or structural injunction. *See* CASEY FAM. PROGRAMS, *supra*. Fourteen cases remain pending in thirteen states. *Id.* And a number of these states have been sued in this regard more than once. *Id.* Unless this Court steps in, that trend will continue, and it will expand to other government agency contexts as well. Now is the time.

South Carolina is no stranger to judicial oversight. In January 2015, a class of children sued the Governor and the South Carolina Department of Social Services (SCDSS), alleging systemic deficiencies in the State's foster care system. *See* Complaint, *Michelle H., et al. v. McMaster and Catone*, 2:15-cv-00134-RMG, ECF No. 1 (D.S.C. Jan. 12, 2015) (originally filed as *Michelle H., et al. v. Haley and Alford*). The State defendants thereafter entered into a settlement agreement with the plaintiff class, resulting in over a decade of court-ordered monitoring and reporting on compliance with the settlement agreement's terms. *See id.*, Final Judgment and Order Approving Class Action Settlement, ECF No. 48 (Oct. 4, 2016). For example, in December 2018, the district court began requiring monthly status conferences to assess SCDSS's implementation of the reforms mandated by the settlement agreement. *See id.*, Order, ECF No. 98 (Dec. 5, 2018).

Apart from routine monitoring, the district court has actively required SCDSS to create new plans to address specific issues, subject to its approval, and has even ordered the creation of task forces to address

those specific issues. *See id.*, Order, ECF No. 331 (Oct. 18, 2024); *id.*, Order, ECF No. 340 (Jan. 3, 2025). South Carolina continues to operate under the original 2016 court-supervised settlement agreement.

Take Alaska’s experience as well. There, plaintiffs wanted the court to order, among a list of things, caseworker recruitment and retention measures like “structured career progression,” “salary parity with comparable state position,” and “financial incentives for remote areas”; a strict 15-child cap on caseloads; a “structured training program,” “standardized assessment,” “shadowing period,” and “[a]nnual continuing education” for caseworkers; a “data-driven placement matching process”; and a “comprehensive, readily accessible database.” Pls.’ Supp. Resp. to Defs.’ First Set of Interrogatories, Ex. AB to Defs.’ Mot. for Summ. J. on Counts One and Two at 3–11, *Jeremiah M v. Crum* (later *Mary B. v. Dompeling*), No. 3:22-cv-00129-SLG, ECF No. 232-31 (Mar. 17, 2025). They also asked the court to order that “Alaska’s overall rate of maltreatment in care should not exceed the national average,” that the “rate of placement stability shall meet or exceed national standards,” and that the agency “ensure equitable access to services across all regions of Alaska.” *Id.* Such an intrusive order represents an overhaul of the entire foster care system in Alaska. And not only does it require policy changes or new standards, but it also requires the State to use its limited funds to enact them.

The problems the Alaska plaintiffs saw in Alaska’s child welfare system—such as not enough

caseworkers, foster homes, or local service providers—were not the kinds of things a federal court could fix by injunction.<sup>2</sup> Agencies across the country face challenges like high caseworker turnover and difficulty recruiting and retaining foster homes, compounded by pervasive societal issues. *See id.*, Expert Report of Jon Rubin at 11–18, Ex. A to Defs.’ Mot. for Summ. J. on Counts One and Two, ECF No. 232-2 (Mar. 17, 2025); *id.*, Expert Report of James T. Dimas at 23–24, Ex. AC to Defs.’ Mot. for Summ. J. on Counts One and Two, ECF No. 232-32 (Mar. 17, 2025). And Alaska’s vastness, geography, and climate present unique challenges that are difficult for a federal court to grasp. Caseworkers often must travel by boat (or drive on frozen rivers in winter), small aircraft, or all-terrain vehicle. *See* Expert Report of Jon Rubin, *supra*, at 20–21. A federal court cannot conjure up a larger, more qualified workforce or a wider variety of service providers in such communities. *See* Expert Report of James T. Dimas, *supra*, at 17–21.

Alaska nonetheless had to go through nearly four years of litigation, burdensome discovery, and an eleven-day trial before the district court concluded that none of the named plaintiffs had even suffered a

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<sup>2</sup> Notably, some of this requested relief is a moving target not within state control, and thus also contravenes the “bedrock principle that a federal court cannot redress injury that results from the independent action of some third party not before the court.” *Murthy v. Missouri*, 603 U.S. 43, 57 (2024) (citation modified).

sufficient injury to have standing. *See Mary B. v. Dompeling*, No. 3:22-cv-00129-SLG, 2026 WL 892039 at \*21 (D. Alaska Mar. 31, 2026). But that hard-fought victory provides Alaska no repose: because the case ended on standing, the district court decertified the classes and entered judgment against the named plaintiffs alone, binding no absent class member. *Mary B.*, ECF No. 466 at 3–4. Alaska won on the facts (after years of effort) but can simply be sued again by other plaintiffs seeking the same improper remedies.

Look also at Texas’s experience. In *M. D. v. Abbott*, a district court issued a sweeping opinion declaring the Texas foster system “broken” and Texas’s Department of Family and Protective Services’ policies unconstitutional. 152 F. Supp. 3d 684, 828 (S.D. Tex. 2015), *aff’d in part, rev’d in part, and remanded sub nom. M. D. by Stukenberg v. Abbott (Stukenberg I)*, 907 F.3d 237 (5th Cir. 2018). The court issued a permanent injunction imposing “dozens of specific remedial measures,” some of which the Fifth Circuit took issue with as “significantly overbroad,” *Stukenberg I*, 907 F.3d at 271, and “well beyond” what was “necessary to achieve constitutional compliance,” *id.* at 272. As a result, Texas “has been under constant, intrusive, and costly surveillance by a team of monitors and the district court” for more than a decade. *M. D. by Stukenberg v. Abbott (Stukenberg IV)*, 119 F.4th 373, 385 (5th Cir. 2024); *Stukenberg I*, 907 F.3d at 271–87.

Adding to the Texas chaos was a virtual revolving door of litigation between the district court and the

Fifth Circuit over the span of six years. The Fifth Circuit remanded back to the district court to modify its injunction decree in accordance with the Fifth Circuit's alterations three separate times. *See Stukenberg I*, 907 F.3d at 237; *M. D. by Stukenberg v. Abbott (Stukenberg II)*, 929 F.3d 272, 275 (5th Cir. 2019); *M. D. by Stukenberg v. Abbott (Stukenberg III)*, 977 F.3d 479 (5th Cir. 2020). Litigation did not end there. On April 15, 2024, the district court issued a contempt order against the Executive Commissioner of the Health and Human Services Commission of the State of Texas for alleged noncompliance with its injunction decree. *Stukenberg IV*, 119 F.4th at 377. The order imposed a fine of \$100,000 *per day* until the State certified substantial compliance with the district court's orders. *Id.*

On appeal, the Fifth Circuit remarked that the contempt order resembled “conditions of ‘supervised release’ for parolees” and “seem[ed] a harbinger of even more drastic district court micromanagement” to come. *Id.* at 381, 386. It also concluded that, “as a general rule of law federal judges are not allowed to become permanent de facto superintendents of major state agencies.” *Id.* at 395. In the end, the court vacated the contempt order and took the extraordinary step of removing the judge. *Id.*

The Texas lesson not only highlights the proliferation of institutional reform litigation but also serves as an example of the difficulties that arise when a federal court purports to direct a state agency. Around a decade of judicial oversight and never-ending

litigation cost Texas \$150 million for compliance and \$60 million for court-mandated monitors, *Stukenberg IV*, 119 F.4th at 385.

A common thread through the states' experience with institutional reform litigation is that the relief requested (and in many cases granted) is primarily a matter of policy and state resource balancing that requires long-term court oversight of on-the-ground state agency practices. And because the nature of the relief is an exercise in policymaking, the courts are naturally not equipped to oversee or implement it. For instance, structural reform remedies "are undermined by the judge's and the plaintiffs' lack of access to information about how the targeted institution operates, the inability to reach other government actors who are implicated in the institution's ability to comply with the law, and the limited influence on low-level bureaucrats who must ultimately carry out the sought-after reforms." Jason Parkin, *Aging Injunctions and the Legacy of Institutional Reform Litigation*, 70 VAND. L. REV. 167, 184 (2017).

What's worse is that the duration of these institutional reform injunctions is often unknown and linked to arbitrary timelines or benchmarks. *See id.* at 170 ("[I]nstitutional reform injunctions are terminating according to their own design. An institutional reform injunction can be written so that it applies in perpetuity, or it can specify the terms of its demise in a termination or 'sunset' provision. Such provisions are typically triggered by the passage of a specified period of time or by the defendant's satisfaction of

performance benchmarks.”). The experiences of many Amici States indicate that the problems inherent in judicial policymaking are not going away anytime soon.

Foster care systems are not the only state institutions that have been targeted and changed through institutional reform litigation. Public schools, other social services agencies, correctional facilities, housing authorities, and police departments have all been subject to structural change by court order. *See id.* at 168. The lesson is clear: the federal courts have been used, at an increasing pace, to hijack the states’ responsibilities, to cut away at the states’ constitutional autonomy, and to cancel out the democratic process designed to remedy the complex social problems of society. The Court should put a stop to this now. There’s no need to wait any longer.

### CONCLUSION

This Court should grant the petition.

[Signature on following page]

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