

No. 26-297

In the
Supreme Court of the United States

PATRICK MORRISEY, et al.,

Petitioners,

v.

JONATHAN R., MINOR,
BY NEXT FRIEND SARAH DIXON, et al.,

Respondents.

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

**BRIEF FOR *AMICI CURIAE* WEST
VIRGINIA HOUSE OF DELEGATES
SPEAKER ROGER HANSHAW AND SENATE
PRESIDENT RANDY SMITH ON BEHALF
OF THE WEST VIRGINIA LEGISLATURE ET
AL. IN SUPPORT OF PETITIONERS**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
STATEMENT OF INTEREST	1
SUMMARY OF THE ARGUMENT	2
ARGUMENT.....	5
I. State Legislatures Are A Vital Feature Of Our System Of Government	5
II. Federal Courts Lack Equitable Authority To Issue Structural Injunctions That Usurp Authority From State Legislatures	13
CONCLUSION	20
APPENDIX OF <i>AMICI CURIAE</i>	

TABLE OF AUTHORITIES

Cases

<i>Alden v. Maine</i> , 527 U.S. 706 (1999).....	5
<i>Bond v. United States</i> , 572 U.S. 844 (2014).....	5
<i>Brown v. Plata</i> , 563 U.S. 493 (2011).....	15
<i>CFPB v. Cmty. Fin. Servs. Ass’n of Am.</i> , 601 U.S. 416 (2024).....	8
<i>City of New Orleans v. Clark</i> , 95 U.S. 644 (1877).....	10
<i>Doe 4 ex rel. Lopez</i> <i>v. Shenandoah Valley Juv. Ctr. Comm’n</i> , 985 F.3d 327 (4th Cir. 2021).....	9
<i>FERC v. Mississippi</i> , 456 U.S. 742 (1982).....	7
<i>Garcia v. S.A. Metro. Transit Auth.</i> , 469 U.S. 528 (1985).....	7, 16
<i>Greenholtz</i> <i>v. Inmates of Neb. Penal & Corr. Complex</i> , 442 U.S. 1 (1979).....	7
<i>Gregory v. Ashcroft</i> , 501 U.S. 452 (1991).....	7
<i>Grupo Mexicano de Desarrollo, S.A.</i> <i>v. All. Bond Fund</i> , 527 U.S. 308 (1999).....	14
<i>Horne v. Flores</i> , 557 U.S. 433 (2009).....	9, 12

<i>Int’l Union, United Mine Workers of Am.</i> <i>v. Bagwell</i> , 512 U.S. 821 (1994).....	4, 11, 15, 19
<i>Louisiana ex rel. Elliott v. Jumel</i> , 107 U.S. 711 (1883).....	17
<i>Mem’l Hosp. v. Maricopa Cnty.</i> , 415 U.S. 250 (1974).....	10
<i>Meriwether v. Garrett</i> , 102 U.S. 472 (1880).....	8, 17
<i>Missouri v. Jenkins</i> , 515 U.S. 70 (1995).....	3, 8, 11, 13, 15, 16, 17
<i>Murphy v. NCAA</i> , 584 U.S. 453 (2018).....	12
<i>New State Ice Co. v. Liebmann</i> , 285 U.S. 262 (1932).....	7
<i>Pac. States Tel. & Tel. Co. v. Oregon</i> , 223 U.S. 118 (1912).....	7
<i>Parklane Hosiery Co. v. Shore</i> , 439 U.S. 322 (1979).....	16
<i>Rees v. City of Watertown</i> , 86 U.S. (19 Wall.) 107 (1873).....	10
<i>Reynolds v. Sims</i> , 377 U.S. 533 (1964).....	7
<i>Rudisill v. McDonough</i> , 601 U.S. 294 (2024).....	9
<i>Rufo v. Inmates of Suffolk Cnty. Jail</i> , 502 U.S. 367 (1992).....	9
<i>Sekhar v. United States</i> , 570 U.S. 729 (2013).....	2

<i>Spencer v. Merchant</i> , 125 U.S. 345 (1888).....	10
<i>Trump v. CASA</i> , 606 U.S. 831 (2025).....	3, 5, 14, 18, 19
<i>Trump v. Hawaii</i> , 585 U.S. 667 (2018).....	14
<i>United States</i> <i>v. Hinds Cnty. Bd. of Supervisors</i> , 128 F.4th 616 (5th Cir. 2025)	13
<i>Valentine v. Collier</i> , 993 F.3d 270 (5th Cir. 2021).....	13
Constitutional Provisions	
U.S. Const. amend. X	7
W. Va. Const. art. X, §5.....	9
Statute	
Judiciary Act of 1789, 1 Stat. 73.....	14
Other Authorities	
An Old Whig I (Oct. 12, 1787), in <i>The</i> <i>Federalist and Anti-Federalist Papers:</i> <i>Debates That Made America</i> (2009)	6
Brutus No. 1 (Oct. 18, 1787), in <i>The Complete Anti-Federalist</i> (H. Storing ed., 1981).....	6, 13
Brutus No. 11 (Jan. 31, 1788), in <i>The Complete Anti-Federalist</i> (H. Storing ed., 1981).....	16
John P. Dwyer, <i>Pendent Jurisdiction</i> <i>and the Eleventh Amendment</i> , 75 Cal. L. Rev. 129 (1987)	11, 18

Federal Farmer No. 15 (Jan. 18, 1788), <i>in The Complete Anti-Federalist</i> (H. Storing ed., 1981).....	15
Donald L. Horowitz, <i>Decreeing Organizational Change: Judicial Supervision of Public Institutions</i> , 1983 Duke L.J. 1265 (1983).....	10, 11, 18
Brett Kavanaugh, <i>Fixing Statutory Interpretation</i> , 129 Harv. L. Rev. 2118 (2016).....	8
Karl T. Kurz, Ctr. for the Study of Federalism, <i>State Legislatures</i> (last updated 2006), https://perma.cc/YX9Y-NY96	7
<i>Learning the Game</i> , Nat'l Conf. of State Legislatures, https://tinyurl.com/2pt6k6pk (last visited Oct. 6, 2026).....	8
Robert F. Nagel, <i>Separation of Powers and the Scope of Federal Equitable Remedies</i> , 30 Stan. L. Rev. 661 (1978)	17
Robert G. Natelson, <i>The Original Scope of the Congressional Power to Regulate Elections</i> , 13 U. Pa. J. Const. L. 1 (2010).....	6
Susan Poser, <i>What's a Judge to Do? Remedying the Remedy in Institutional Reform Litigation</i> , 102 Mich. L. Rev. 1307 (2004).....	11
David A. Super, <i>Rethinking Fiscal Federalism</i> , 118 Harv. L. Rev. 2544 (2005)	8
<i>The Federalist</i> No. 26 (Alexander Hamilton) (Clinton Rossiter ed., 1961)	6

<i>The Federalist</i> No. 39 (James Madison) (Clinton Rossiter ed., 1961)	6
<i>The Federalist</i> No. 45 (James Madison) (Clinton Rossiter ed., 1961)	5
<i>The Federalist</i> No. 58 (James Madison) (Clinton Rossiter ed., 1961)	8
John Choon Yoo, <i>Who Measures the Chancellor's Foot? The Inherent Remedial Authority of the Federal Courts</i> , 84 Cal. L. Rev. 1121 (1996)	11, 15

STATEMENT OF INTEREST¹

Amici curiae are a bipartisan group of legislative leaders and bodies from 18 States across the Nation.² Under the federalist system of government enshrined in the Constitution, the States are separate and independent sovereigns, and state legislatures are the entities entrusted to wield most of the power that affects Americans' day-to-day lives. State legislatures have jealously guarded their power against encroachment from the federal government ever since the Founding, and their roles as laboratories of democracy have made this Nation the success that it is today.

Starting in the second half of the 20th century, however, federal courts began to upset this longstanding power dynamic and to usurp state legislative authority by issuing so-called “structural injunctions.” Structural injunctions are all-encompassing equitable devices in which federal courts seize control of and directly manage state institutions and bureaucracies to correct perceived legal or constitutional violations, while mandating that the States bear the financial costs of those

¹ Pursuant to Supreme Court Rule 37.2, counsel of record for all parties received notice of *amici curiae*'s intention to file this brief at least 10 days prior to the due date. Pursuant to Supreme Court Rule 37.6, *amici curiae* state that no counsel for any party authored this brief in whole or in part and that no entity or person, aside from *amici curiae*, their members, and their counsel, made any monetary contribution toward the preparation or submission of this brief.

² The complete list of *amici curiae* on this brief is available in the Appendix to this brief.

reforms without regard to the ordinary budgetary and appropriations processes, which almost uniformly grant the power of the purse to state legislatures directly responsive to the people. These injunctions allow federal judges to act as policymakers, and they strip state legislatures of their ability to decide how to best allocate limited state resources. The Fourth Circuit’s decision here is just the latest—and nearly the greatest—example of this federalism-defying device. But structural injunctions suffer from a fatal defect: They have no grounding in Founding-era equitable practice. Structural injunctions thus are invalid, and federal courts may not use them to redress a plaintiff’s asserted injury. Because the Fourth Circuit concluded otherwise below, *amici curiae* file this brief in support of petitioners and to restore the federal-state balance of power.

SUMMARY OF THE ARGUMENT

The Fourth Circuit decision here holds that the federal judiciary has equitable authority to “step in and govern” West Virginia’s foster-care system top-to-bottom by issuing a “structural injunction” that would necessarily require the State to divert resources away from other governmental programs in the State. Pet.App.13a. The notion that federal courts have authority to take over state institutions, dictate their day-to-day operations, and make the type of resource-allocation decisions historically entrusted to state legislatures “sounds absurd, because it is.” *Sekhar v. United States*, 570 U.S. 729, 738 (2013). Unfortunately, however, the sweeping conception of the federal judicial power reflected in the decision below is no outlier, but rather the latest in a string of

overreaching decisions over the past few decades. But while these structural injunctions date back to the middle part of the 20th century, they do not date back to the framing of the Nation and have no grounding in the authority that the federal courts received via the Judiciary Act of 1789. That underscores a fatal problem under the principles set forth in *Trump v. CASA*, 606 U.S. 831 (2025). It is time for this Court “to put the genie back in the bottle,” *Missouri v. Jenkins*, 515 U.S. 70, 123 (1995) (Thomas, J., concurring), and hold that federal courts lack equitable authority to issue structural injunctions, which usurp state legislative authority and are beyond the equitable powers conferred on the courts by the First Congress.

State legislatures are a vital feature of our system of government, and the Framers worked hard to shield them from federal interference. During the ratification debates, Anti-Federalists worried that the new federal government would absorb the authority of state legislatures. In response, the Federalists provided reassurances, and the First Congress proposed and the people ratified the Tenth Amendment, which ensured that the States would retain the majority of governing authority. Time bore out the wisdom of that judgment. For most of this Nation’s history, state legislatures served as the fountainhead of representative democracy in the country, and using their power of appropriation, they have funded and supported policies that are responsive to the will of the people while making this Nation the envy of the world.

Structural injunctions upset that traditional federal-state balance of power. When deploying such injunctions, federal judges install themselves as the superintendents of state institutions and demand that those institutions take all manner of specific actions to correct perceived legal or constitutional deficiencies. Those injunctions often last for years on end, and federal courts generally demand that States themselves foot the bill for the court-ordered remedial plans. Such injunctions are the antithesis of the kind of targeted equitable remedies that the First Congress envisioned and that lend themselves to a more limited and manageable judicial role. *See, e.g., Int’l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 841-43 (1994) (Scalia, J., concurring). Structural injunctions are likewise a serious affront to state sovereignty. They force state legislatures to adopt particular solutions to problems even if the legislatures would have resolved them differently, and they bypass the normal and politically responsive budgetary processes by requiring those legislatures to divert resources away from other worthy programs.

Federal courts lack the equitable authority to issue these kinds of structural injunctions. To be sure, federal courts have the duty to say what federal law is and the authority to enter injunctions against state institutions. But they cannot say what the law is—and then legislate a specific and costly plan for compliance and engage in indefinite oversight. That exceeds the authority that the First Congress conveyed in 1789 and usurps the role of state legislatures. Those flaws are fatal. As this Court explained just last year in *CASA*, a federal court’s equitable authority derives from the Judiciary Act of

1789, and an equitable order from a federal court thus is valid only if it has a “founding-era antecedent.” 606 U.S. at 846-47. But structural injunctions have no founding-era antecedent—only a midcentury-modern one. They are more Jackson Pollock than Gilbert Stuart. And the notion that the same Congress that developed the Tenth Amendment also enacted the Judiciary Act to authorize federal courts to step in and govern state institutions is as implausible as it sounds.

ARGUMENT

I. State Legislatures Are A Vital Feature Of Our System Of Government.

The Framers drafted a Constitution that created a “compound republic,” which “keeps power ‘divided between two distinct governments’”: the federal government and the States. *Bond v. United States*, 572 U.S. 844, 866 (2014). But most of the powers affecting average Americans’ lives belong to the States. As James Madison explained, the powers reserved to the States are “numerous and indefinite,” while those delegated to the federal government “are few and defined.” *The Federalist* No. 45, at 292-93 (James Madison) (Clinton Rossiter ed., 1961); see *Alden v. Maine*, 527 U.S. 706, 714 (1999) (explaining that the Constitution “reserves” to the States “a substantial portion of the Nation’s primary sovereignty”).

That division of authority is no accident. Anti-Federalists viewed state legislatures as closer to the people and “more likely to be in sympathy with the interests of the people.” Robert G. Natelson, *The Original Scope of the Congressional Power to Regulate*

Elections, 13 U. Pa. J. Const. L. 1, 31 (2010). During the debates preceding the ratification of the Constitution, Anti-Federalists thus voiced concern that “[t]he legislatures of the states will be but forms and shadows” once a powerful central government took hold. An Old Whig I (Oct. 12, 1787), in *The Federalist and Anti-Federalist Papers: Debates That Made America* 318 (2009). As Brutus decried, the “legislatures of the several states” will “dwindle away” and “their powers absorbed in that of the general government.” Brutus No. 1 (Oct. 18, 1787), in 2 *The Complete Anti-Federalist* 366 (H. Storing ed., 1981).

Federalists spent much of the ratification debates seeking to allay those fears. They rejected the idea of an all-powerful central government and instead described the proposed Constitution as “partly federal and partly national.” *The Federalist* No. 39, at 246 (James Madison). They also explained that the States would “form distinct and independent portions of the supremacy, no more subject, within their respective spheres, to the general authority than the general authority is subject to them, within its own sphere.” *Id.* at 245. And they declared that “the State legislatures” would serve as the “jealous guardians of the rights of the citizens against encroachments from the federal government.” *The Federalist* No. 26, at 172 (Alexander Hamilton).

The ratified Constitution reflected these assurances. Aside from “the limitation on federal authority inherent in the delegated nature of Congress’ Article I powers,” the Framers included numerous other mechanisms “to protect the States from overreaching” by the federal government. *Garcia*

v. S.A. Metro. Transit Auth., 469 U.S. 528, 550-51 (1985). And to eliminate any doubt about the power dynamic, the First Congress immediately moved to propose and adopt the Tenth Amendment, thereby making explicit what the constitutional structure already implied: States and their legislatures would maintain significant authority in the new Nation. *See* U.S. Const. amend. X.

For much of the Nation's history, the Framers' design worked as intended. As the Court explained over a century ago, "[s]tate legislatures are a vital feature of our government." *Pac. States Tel. & Tel. Co. v. Oregon*, 223 U.S. 118, 139 n.§ (1912). Far from serving as "field offices of the national bureaucracy," *FERC v. Mississippi*, 456 U.S. 742, 767 n.30 (1982); *id.* at 777 (O'Connor, J., concurring in the judgment in part and dissenting in part), state legislatures instead have "historically" served as "the fountainhead of representative government in this country," *Reynolds v. Sims*, 377 U.S. 533, 564 (1964), and as the driving forces behind our "laborator[ies]" of democracy, *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting); *see also Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991) (federalism "increases opportunity for citizen involvement in democratic processes" and "allows for more innovation and experimentation in government"); *Greenholtz v. Inmates of Neb. Penal & Corr. Complex*, 442 U.S. 1, 13 (1979) ("Our system of federalism encourages ... state experimentation."). Indeed, "[m]ost new ideas in domestic policy are first debated and negotiated in the states." Karl T. Kurz, Ctr. for the Study of Federalism, *State Legislatures* (last updated 2006), <https://perma.cc/YX9Y-NY96>.

State legislatures fulfill their vital roles in large part through the power of appropriation. *See, e.g., CFPB v. Cmty. Fin. Servs. Ass'n of Am.*, 601 U.S. 416, 430 (2024); *Meriwether v. Garrett*, 102 U.S. 472, 516 (1880); *cf.* Brett Kavanaugh, *Fixing Statutory Interpretation*, 129 Harv. L. Rev. 2118, 2126 (2016) (book review). The Framers regarded the “power over the purse ... as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure.” *The Federalist* No. 58, at 359 (James Madison). That understanding has withstood the test of time. Still today, the appropriations process in state legislatures “affects many facets of your life—the taxes you pay, the highways on which you drive, public schools, the state-supported colleges and universities you or your children might attend, the state parks that provide recreation for you and your family, social programs, funding for the judicial system. The list goes on.” *Learning the Game*, Nat’l Conf. of State Legislatures, <https://tinyurl.com/2pt6k6pk> (last visited Oct. 6, 2026). The state appropriations process thus is one of the most critical processes to our Nation’s system of government.

But the “public funds” available for appropriation by state legislatures are “scarce,” and scarcity forces hard choices between competing demands. *Jenkins*, 495 U.S. at 77 (Kennedy, J., concurring in part and concurring in judgment); *see* David A. Super, *Rethinking Fiscal Federalism*, 118 Harv. L. Rev. 2544, 2592 (2005). No state legislature—whether West Virginia’s or any other—enjoys unlimited resources.

Nearly every State operates under some form of constitutional or statutory balanced-budget requirement, *see, e.g.*, W. Va. Const. art. X, §5, and even those with borrowing flexibility face hard ceilings set by revenue, bond ratings, and taxpayer tolerance. As a result, “every dollar spent for one purpose is a dollar that cannot be spent for something else.” *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 396 (1992) (O’Connor, J., concurring in judgment). In other words, the “spending process” is “a zero-sum game, where money spent on one group means less money for other groups and other ... priorities.” *Rudisill v. McDonough*, 601 U.S. 294, 317 (2024) (Kavanaugh, J., concurring). More spending on highways means less for higher education; a larger reserve fund is a smaller current appropriation for public health; a new tax credit for working families is revenue not available for prison construction or courts. It is the state legislature’s job to work through those trade-offs through the political process. Indeed, the very “essence of the legislative process [is] to weigh some needs against others” and to decide where to allocate state resources. *Doe 4 ex rel. Lopez v. Shenandoah Valley Juv. Ctr. Comm’n*, 985 F.3d 327, 354 (4th Cir. 2021) (Wilkinson, J., dissenting) (emphasis omitted). That process also keeps the decisionmakers accountable to the people who must live with the results. *See Horne v. Flores*, 557 U.S. 433, 448-49 (2009) (States “depen[d] upon successor officials ... to bring new insights and solutions to problems of allocating revenues and resources”).

For most of the Nation’s history, federal courts left the delicate state appropriations process virtually untouched. As this Court explained long ago, a

“legislature of a State” possesses an “unlimited” “power of appropriation” over “moneys raised” in the State, *City of New Orleans v. Clark*, 95 U.S. 644, 654 (1877). And the Court emphasized that it is “[e]specially ... beyond the power of the Federal judiciary to assume the place of a State in the exercise of” that authority. *Rees v. City of Watertown*, 86 U.S. (19 Wall.) 107, 116-17 (1873); *see also, e.g., Spencer v. Merchant*, 125 U.S. 345, 354 (1888) (stating that only a “legislature determines expenditures and amounts to be raised for their payment,” and “the whole discussion and all questions of prudence and propriety and justice [is] confided to its jurisdiction”); *Mem’l Hosp. v. Maricopa Cnty.*, 415 U.S. 250, 279 (1974) (Rehnquist, J., dissenting) (the “choice between” spending “a finite amount of resources is a classic example ... within the competence of the state legislature to decide”).

Unfortunately, however, that traditional and federalism-respecting approach began to unravel in the second half of the 20th century with the advent of the structural injunction. Under that kind of injunction, a federal court does not merely declare certain state practices unlawful or unconstitutional while giving a state institution flexibility to determine compliance mechanisms. *See* Donald L. Horowitz, *Decreeing Organizational Change: Judicial Supervision of Public Institutions*, 1983 Duke L.J. 1265, 1266 (1983) (explaining that courts traditionally issued “decision[s] merely permitting or forbidding certain conduct”). Instead, under such an injunction, a federal court effectively takes over a state institution entirely and “specif[ies] the type, quantity, and quality of services the institution must provide”—all of which

typically necessitates “a small bureaucracy consisting of special masters and a professional staff to manage the institution and make the day-to-day decisions necessary for interpreting and implementing the decree.” John P. Dwyer, *Pendent Jurisdiction and the Eleventh Amendment*, 75 Cal. L. Rev. 129, 162 (1987). Making matters worse, these structural injunctions often persist for years or even decades and blur lines of accountability. See Susan Poser, *What’s a Judge to Do? Remediating the Remedy in Institutional Reform Litigation*, 102 Mich. L. Rev. 1307, 1310-25 (2004). And structural injunctions generally require States to foot the bill for the reform projects, meaning that States are “pay[ing] substantial sums.” John Choon Yoo, *Who Measures the Chancellor’s Foot? The Inherent Remedial Authority of the Federal Courts*, 84 Cal. L. Rev. 1121, 1150 n.160 (1996).

The upshot is that modern structural injunctions look nothing like their Founding-era antecedents. See *Bagwell*, 512 U.S. at 841-43 (Scalia, J., concurring). Worse still, they “eviscerate[] a State’s discretionary authority over its own program[s] and budgets and force[] state officials to reallocate state resources and funds,” all “at the expense of other citizens, other government programs, and other institutions not represented in court.” *Jenkins*, 515 U.S. at 131 (Thomas, J., concurring). That is legislative activity, pure and simple. See, e.g., Horowitz, *supra*, at 1267 (“[S]tructural decrees are legislative in the double sense of entailing fundamental alterations of policy direction and of frequently requiring augmentation of financial resources.”). And “[a] more direct affront to state sovereignty” than federal usurpation of state legislative authority “is not easy to imagine.” *Murphy*

v. NCAA, 584 U.S. 453, 474 (2018). This Court has made clear that “[f]ederalism concerns are heightened” when “a federal court decree has the effect of dictating state ... budget priorities,” as states “have limited funds” and “order[ing] that money be appropriated for one program” necessarily “take[s] funds away from other important programs.” *Horne*, 557 U.S. at 448. That is precisely what structural injunctions do.

This case—involving West Virginia’s foster-care system—is illustrative of this recent phenomenon. Here, the Fourth Circuit held that “there is no question a court may generally order the ‘payment of state funds ... as a necessary consequence of compliance.’” Pet.App.23a. And the court of appeals did so in a case in which the plaintiffs have asked the federal judiciary to establish foster-plan timetables, select outside contractors to run foster-child placements, mandate needs evaluations of every child within 30 days of entering the system, create individualized case plans, develop reunification and permanency plans for every child within 60 days of entering care, recruit more foster homes, impose caseload limits per worker, create new hiring qualifications, overhaul caseworker recruitment and training, set numerical limits on negative indicators, and install a politically unaccountable monitor to oversee it all. See CA4.App.246-51, 1416-44. That is nothing short of a demand to seize “control over the budget and salaries and benefits for personnel,” which would effectively “allow[] the [court] to dictate the state’s authority ... by controlling the purse strings” and “assume[s] a responsibility that should be left for the legislature.” *United States v. Hinds Cnty. Bd. of*

Supervisors, 128 F.4th 616, 638 (5th Cir. 2025) (quoting *Valentine v. Collier*, 993 F.3d 270, 294-95 (5th Cir. 2021) (Oldham, J., concurring in judgment)).

Nor is this case an isolated phenomenon. To the contrary, federal courts across the country have issued structural injunctions “to supervise our Nation’s schools” and “to manage prisons,” “mental hospitals,” and “public housing.” *Jenkins*, 515 U.S. at 126 (Thomas, J., concurring). They have also issued structural injunctions to oversee “[p]olice [d]epartment[s],” “state programs for people with disabilities,” and “child welfare programs.” Pet.App.15a-16a. And the list goes on. In short, a structural injunction is a mechanism that threatens to cause the “legislatures of the several states” to “dwindle away,” with “their powers absorbed in that of the general government.” Brutus No. 1 (Oct. 18, 1787), in *The Complete Anti-Federalist* at 366. That is antithetical to our system of government.

II. Federal Courts Lack Equitable Authority To Issue Structural Injunctions That Usurp Authority From State Legislatures.

Structural injunctions are not merely disruptive to the state legislative process; they are beyond the scope of federal judicial authority altogether. As the district court recognized even before this Court issued the decision in *CASA*, federal courts are “not allow[ed] ... to develop public policy, write budgets, hire caseworkers, or administer state agencies.” Pet.App.62a. *CASA* confirms as much, and the Fourth Circuit cannot evade that conclusion by pretending as though *CASA* does not exist.

As this Court explained in *CASA*, *see* 606 U.S. at 841, a federal court’s authority to issue equitable relief derives from the Judiciary Act of 1789, which gave federal courts jurisdiction over “all suits ... [in] common law or *in equity*,” §11, 1 Stat. 73, 78 (emphasis added). While that language gives federal courts “flexible” equitable authority, the authority is hardly “freewheeling.” *CASA*, 606 U.S. at 841. To the contrary, the Judiciary Act’s grant of equitable authority “encompasses only those sorts of equitable remedies ‘traditionally accorded by courts of equity’ at our country’s inception.”³ *Id.* at 841-42.

Accordingly, the relevant question here is whether a federal-court order imposing a structural injunction—*i.e.*, an injunction that “intervene[s] into the operation of state governmental institutions” over a State’s objection, Pet.App.47a (Rushing, J., concurring in part and dissenting in part)—is “sufficiently ‘analogous’ to the relief issued ‘by the High Court of Chancery in England at the time of the adoption of the Constitution and the enactment of the original Judiciary Act.’” *CASA*, 606 U.S. at 841-42 (quoting *Grupo Mexicano de Desarrollo, S.A. v. All. Bond Fund*, 527 U.S. 308, 318-19 (1999)). The answer to that question is a resounding no.

As Justice Scalia explained, “structural injunctions are radically different from the injunctions traditionally issued by courts of equity.” *Brown v.*

³ Even “assuming” that federal courts possess “inherent constitutional authority to grant equitable relief” under Article III, that “authority is also limited by the traditional rules of equity that existed at the founding.” *Trump v. Hawaii*, 585 U.S. 667, 715 (2018) (Thomas, J., concurring).

Plata, 563 U.S. 493, 554 (2011) (Scalia, J., dissenting). Those courts exhibited “a historical prejudice ... against rendering decrees” at the “termination of litigation” that “called for more than a single affirmative act”; they “did not engage in any ongoing supervision of the litigant’s conduct” at the end of the litigation; and they did not “continue to regulate” the litigant’s “behavior” at the end of the litigation either. *Bagwell*, 512 U.S. at 841-42 (Scalia, J., concurring). Structural injunctions—in which federal courts commandeer state institutions over the States’ objections and install federal judges as “long-term administrators of complex social institutions”—thus “depart from ... historical practice[s].” *Brown*, 563 U.S. at 555 (Scalia, J., dissenting).

Structural injunctions are also “at odds with ... the Framers’ design” and the federalism principles at the very heart of it. *Jenkins*, 515 U.S. at 126 (Thomas, J., concurring). At the Founding, “the Framers approached equity with suspicion,” *id.* at 128, and Anti-Federalists in particular thought that the “equity power would allow the judiciary to assist Congress in expanding the powers of the federal government, and hence, the powers of the federal courts, over the states,” Yoo, *supra*, at 1154. For example, the Federal Farmer argued that, “by thus joining the word equity with the word law, if we mean any thing, we seem to mean to give the judge a discretionary power.” Federal Farmer No. 15 (Jan. 18, 1788), in *The Complete Anti-Federalist* at 322. And Brutus similarly argued that equity would permit federal courts to “explain the constitution according to the reasoning spirit of it, without being confined to the words or letter,” all of which would inevitably lead to

the “entire subversion of the legislative, executive, and judicial powers of the individual states.” Brutus No. 11 (Jan. 31, 1788), in *The Complete Anti-Federalist* at 419-20.

Federalists again took pains to assuage those concerns. The “rules and established practices” of the English equity courts, they explained, would restrict the federal judicial power—and thereby preserve state authority—and American courts would simply exercise “jurisdiction over certain types of cases rather than ... a broad remedial power.” *Jenkins*, 515 U.S. at 129-30 (Thomas, J., concurring). They also offered more than verbal promises. The First Congress—the same Congress that enacted the Judiciary Act of 1789—provided critical reassurance to the Anti-Federalist critics of the Constitution by proposing the Bill of Rights, including the eventual text of the Tenth Amendment. See *Garcia*, 469 U.S. at 569 (Powell, J., dissenting); *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 343 n.9 (1979) (Rehnquist, J., dissenting). The notion that the same Congress that expressly preserved state sovereignty in the Tenth Amendment nonetheless *sub silentio* handed federal courts the sweeping power to run state institutions over the States’ objection is a complete non-starter.

Against that backdrop, “it should come as no surprise that there is no early record of the exercise of broad remedial powers.” *Jenkins*, 515 U.S. at 130 (Thomas, J., concurring). “Certainly there were no ‘structural injunctions’ issued by the federal courts, nor were there any examples of continuing judicial supervision and management of governmental institutions.” *Id.* After all, “[s]uch exercises of judicial

power would have appeared to violate principles of state sovereignty and of the separation of powers,” which the Framers had just worked so hard to enshrine. *Id.*

There is also no record that federal courts exercised broad remedial powers vis-à-vis the States later in the 19th century. In fact, on the few occasions that this Court even considered the subject, it made clear that no such authority exists. For example, in *Meriwether v. Garrett*, 102 U.S. 472 (1880), the Court prohibited a lower federal court from appointing a receiver to levy taxes that would benefit the bondholders of a bankrupt city, with a plurality of the Court “particularly concerned with federal judicial usurpation of the state legislative power,” Robert F. Nagel, *Separation of Powers and the Scope of Federal Equitable Remedies*, 30 Stan. L. Rev. 661, 675 (1978). And in *Louisiana ex rel. Elliott v. Jumel*, 107 U.S. 711 (1883), the Court concluded that a lawsuit “to compel the state to abide by and perform its contract ... by assuming the control of the administration of the fiscal affairs of the state” fell outside the judiciary’s power. *Id.* at 722. The Court explained that such a remedy would “require the court to assume all the executive authority of the state, so far as it related to the enforcement of this law, and 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.” *Id.* at 727. The Court determined that “[i]t needs no argument to show that the political power cannot be thus ousted of its jurisdicti[o]n, and the judiciary set in its place.” *Id.* at 727-28; *see also* Nagel, *supra*, at 675-77 & n.86 (gathering other cases).

Given that sort of judicial hostility, it should also come as no surprise that “[i]nstitutional reform suits”—which have an “especially great impact on state sovereignty”—“were virtually unknown” for most of this Nation’s history. Dwyer, *supra*, at 162. Indeed, plaintiffs did not even begin seeking structural injunctions in earnest until the 1950s and 1960s. *See, e.g., id.* (stating that suits for affirmative injunctions arose only after “desegregation litigation in the 1950’s and 1960’s”); Horowitz, *supra*, at 1266 (“[U]ntil the 1960’s, the courts had rarely, if ever, told states ... something other than that they legally could or could not do what they had been doing. The courts had not, in short, prescribed for them what they must do.”). Structural injunctions thus are of the very same vintage as the universal injunctions at issue in *CASA*. *See* 606 U.S. at 844 (“The D.C. Circuit issued what some regard as the first universal injunction in 1963.”).

This Court’s holding in *CASA* accordingly applies with full force here. The structural injunction “was conspicuously nonexistent for most of our Nation’s history,” and the “absence from 18th- and 19th-century equity practice settles the question of judicial authority.” *Id.* at 845. “That the absence continued into the 20th century renders any claim of historical pedigree still more implausible.” *Id.* at 846. If anything, a federal court’s decision to enter a federalism-destroying structural injunction against a non-consenting state institution is even more obviously impermissible since it not only exceeds the authority granted by the Judiciary Act of 1789, but also undermines the guarantee of the Tenth Amendment. The First Congress provided a belt and

suspenders against this undemocratic and federalism-defying result.

The Fourth Circuit reached a contrary conclusion in this case only because it ignored *CASA*. That is no exaggeration: *CASA* makes no appearance at all in the decision below. Unsurprisingly, then, the court of appeals' decision veers far off-track. The court concluded that federal courts have "authority" to "step in and govern" state programs" by issuing structural injunctions like the one here based entirely on a "modern" "history of institutional reform decrees in the federal court system spanning most of the last century." Pet.App.7a, 13a-14a. The existence of that modern history is undeniable, but it is relevant only to underscore the vast disconnect between those modern innovations and anything that the First Congress could have contemplated. *Accord Bagwell*, 512 U.S. at 841-43 (Scalia, J., concurring). A remedial practice's mid-20th-century pedigree is not evidence of its Founding-era pedigree, and only the latter matters under *CASA*. "Because the [structural] injunction lacks" the requisite "historical pedigree, it falls outside the bounds of a federal court's equitable authority under the Judiciary Act." *CASA*, 606 U.S. at 847.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for certiorari.

Respectfully submitted,

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October 8, 2026

APPENDIX

TABLE OF APPENDICES

APPENDIX: *AMICI CURIAE* ON THIS BRIEF.....1a

APPENDIX: *AMICI CURIAE* ON THIS BRIEF

Alabama:

Nathaniel Ledbetter, Speaker of the House of
Representatives

Arizona:

The Arizona Legislature

Arkansas:

Brian Evans, Speaker of the House of
Representatives

Georgia:

Jon Burns, Speaker of the House of
Representatives

Hawaii:

Ron Kouchi, President of the Senate

Indiana:

Todd Huston, Speaker of the House of
Representatives

Iowa:

Mike Klimesh, Senate Majority Leader

Kentucky:

Robert Stivers, President of the Senate

David Osborne, Speaker of the House of
Representatives

Missouri:

Chad Perkins, Speaker Pro Tempore

Montana:

Matt Regier, President of the Senate

Brandon Ler, Speaker of the House of
Representatives

Nevada:

Steve Yeager, Speaker of the State Assembly

Ohio:

Matt Huffman, Speaker of the House of
Representatives

Oklahoma:

Kyle Hilbert, Speaker of the House of
Representatives

South Carolina:

Thomas Alexander, President of the Senate

G. Murrell Smith, Jr., Speaker of the House of
Representatives

Tennessee:

Cameron Sexton, Speaker of the House of
Representatives

Texas:

Dustin Burrows, Speaker of the House of
Representatives

West Virginia:

Roger Hanshaw, Speaker of the House of
Delegates

Randy Smith, President of the Senate

Wisconsin:

Robin Vos, Speaker of the House of
Representatives