Nos. 25-1232 and 25-1239

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

JONATHAN R., *et al.*,

Plaintiffs-Appellants/Cross-Appellees,

v.

PATRICK MORRISEY, *et al.*,

Defendants-Appellees/Cross-Appellants.

On Appeal from the United States District Court for the
Southern District of West Virginia (No. 3:19-cv-00710) (Goodwin, J.)

BRIEF OF *AMICUS CURIAE* THE LIBERTY JUSTICE CENTER IN SUPPORT OF DEFENDANTS-APPELLEES/CROSS-APPELLANTS AND AFFIRMANCE

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June 20, 2025

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

DISCLOSURE STATEMENT

- In civil, agency, bankruptcy, and mandamus cases, a disclosure statement must be filed by **all** parties, with the following exceptions: (1) the United States is not required to file a disclosure statement; (2) an indigent party is not required to file a disclosure statement; and (3) a state or local government is not required to file a disclosure statement in pro se cases. (All parties to the action in the district court are considered parties to a mandamus case.)
- In criminal and post-conviction cases, a corporate defendant must file a disclosure statement.
- In criminal cases, the United States must file a disclosure statement if there was an organizational victim of the alleged criminal activity. (See question 7.)
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No. 25-1232 & 25-1239 Caption: Jonathan R. v. Morrisey

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who is amicus, makes the following disclosure:
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1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

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If yes, identify all parent corporations, including all generations of parent corporations:

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If yes, identify all such owners:

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If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐YES ☑NO
If yes, the debtor, the trustee, or the appellant (if neither the debtor nor the trustee is a party) must list (1) the members of any creditors' committee, (2) each debtor (if not in the caption), and (3) if a debtor is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of the debtor.

7. Is this a criminal case in which there was an organizational victim? ☐YES ☑NO
If yes, the United States, absent good cause shown, must list (1) each organizational victim of the criminal activity and (2) if an organizational victim is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of victim, to the extent that information can be obtained through due diligence.

Signature: /s/ Joel S. Nolette Date: June 20, 2025

Counsel for: the Liberty Justice Center

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STATEMENT OF INTEREST[1]

The Liberty Justice Center is a nonprofit, nonpartisan public-interest law firm that litigates cutting edge strategic, precedent-setting cases nationwide, focusing on free speech, educational freedom, workers' rights, and government overreach. Through such cases, the Center seeks to defend constitutional restraints on government power and protections for individual rights. The Center pursues these goals both by representing parties in lawsuits and by participating itself as *amicus curiae* in other cases.

The Center is interested in this case because the Center recognizes the importance of having a judiciary robust enough to protect individual rights, yet sufficiently constrained so as not to impinge on those rights itself. A properly ordered judiciary likewise should be capable of checking overreach from other branches of government while not exceeding its own authority in the process. The Center regularly litigates cases, such as this one, to preserve this essential constitutional balance. *See, e.g.*, *V.O.S. Selections, Inc. v. United States*, No. 25-00066, 2025 WL 1514124 (Ct. Int'l Trade May 28, 2025).

[1] All parties have consented to the filing of this brief. No party's counsel authored this brief in whole or in part; no party or party's counsel contributed money intended to fund the brief's preparation or submission; and no person other than the Liberty Justice Center or its counsel contributed money intended to fund the brief's preparation or submission.

INTRODUCTION AND SUMMARY

In wielding the judicial power to "say what the law is" (as Chief Justice Marshall immortally quipped), federal courts serve a vital role checking overreach by legislatures and executives and protecting individual rights and liberties. But the judicial power vested in federal courts by Article III does not license a roving commission to do justice, unmoored from the structural constraints, both horizontal and vertical, of our constitutional order. Centralizing such power in one governmental body, no matter how benevolent, not only undermines our constitutional system of government but also threatens those rights and liberties that courts exist to protect.

The sort of far-reaching structural-injunctive relief Plaintiffs-Appellants demand in this case exceeds a federal court's Article III authority, in light of both the separation of powers created by the Constitution and the federalist structure embodied therein. The district court rightly recognized these points in dismissing the case. Its decision to do so for these reasons should be affirmed.

ARGUMENT

I. THE RELIEF PLAINTIFFS-APPELLANTS DEMAND IS NOT WITHIN THE NATURE AND SCOPE OF THE JUDICIAL POWER.

A. The Judiciary Is the "Least Dangerous" Branch Precisely Because Judges Are Not Policymakers.

Article III of the U.S. Constitution vests the "judicial Power" of the United

States in the federal judiciary. U.S. Const. art. III, § 1. But apart from providing that the "judicial Power" extends to certain classes of "Cases" and "Controversies," the Constitution does not expressly delineate the nature and scope of that power. Instead, "the Constitution presupposed an historic content for that phrase" based on what were to the Framers "the familiar operations of the English judicial system and its manifestations on this side of the ocean before the Union." *Coleman v. Miller*, 307 U.S. 433, 460 (1939) (Frankfurter, J., dissenting); *accord Lujan v. Defs. of Wildlife*, 504 U.S. 555, 559–60 (1992) ("[T]he Constitution's central mechanism of separation of powers depends largely upon common understanding of what activities are appropriate to legislatures, to executives, and to courts."). Thus, original meaning, history, and tradition in accordance with the understanding of the Founding Fathers dictate what the judicial power entails and—to the point here—what it does not. *E.g.*, *United States v. Texas*, 599 U.S. 670, 676 (2023); *see also Erlinger v. United States*, 602 U.S. 821, 835 n.1 (2024); *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 535 (2022).

In the well-nigh canonical summation of the Framers' understanding of the judicial power, Alexander Hamilton observed that "[w]hoever attentively considers" the tripartite scheme of government embodied in the Constitution "must perceive" that the "judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to

annoy or injure them." The Federalist No. 78, at 465 (Alexander Hamilton) (Clinton Rossiter ed., 1961); *see also, e.g.*, *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 223 (1995) (quoting The Federalist No. 78). That is because in the American system of government, most power and discretion lie in the political branches. For instance, the Legislative Branch "not only commands the purse" but also "prescribes the rules" by which the public at large is governed. The Federalist No. 78, at 465. The Executive Branch, in turn, "holds the sword of the community" to enforce the rules enacted by the legislature. *Id.*

In stark contrast to the Legislative and Executive Branches, the Judicial Branch "has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever." *Id.* That is, courts possess "neither FORCE nor WILL but merely judgment." *Id.* (emphasis in original). And to the extent the exercise of that judgment bears on the exercise of executive and legislative power by the other branches, it generally does so by virtue of the other branches' respect for the courts' decisions and the indirect, downstream effects those judgments have on the executive's and legislature's actions. *See, e.g.*, *id.* at 465, 470 (observing that the judiciary "must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments" and that "the scruples of the courts" operate as a "check upon the legislative body" by indirectly influencing legislators "to qualify their

attempts" in enacting "mischiefs"). In other words, in our constitutional system, "'courts are essentially passive instruments of government.'" *United States v. Sineneng-Smith*, 590 U.S. 371, 376 (2020) (brackets omitted).

This arrangement not only follows from the "natural feebleness" of the judicial power but also advances the cause of individual liberty by making the courts defensive "bulwarks of a limited Constitution" rather than active policymaking or law-enforcing bodies free to "substitute their own pleasure" for the policy choices of the political branches. The Federalist No. 78, at 466–69. And "so long as the judiciary remains truly distinct from both the legislature and the Executive" in this way, the "general liberty of the people can never be endangered from that quarter." *Id.* at 466; *see also, e.g.*, Mass. Const. pt. 1, art. XXX (1780) (John Adams) ("[T]he judicial [department] shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men."). On the other hand, the "very definition of tyranny" consists of the combination of these powers "in the same hands." The Federalist No. 47, at 301 (James Madison) (Clinton Rossiter ed., 1961); *accord* 3 Joseph Story, *Commentaries on the Constitution of the United States* § 1568 (1833) ("'[T]here is no liberty, if the judiciary power be not separated from the legislative and executive powers.'").

To be sure, a court's power to "declare the sense of the law" in cases properly before it is no trifling matter. *See* The Federalist No. 78, at 469; *see also Marbury*

v. Madison, 5 U.S. (1 Cranch) 137, 177 (1803) ("It is emphatically the province and duty of the judicial department to say what the law is."). The "judicial department has imposed upon it by the constitution, the solemn duty to interpret the laws, in the last resort," however "disagreeable" a court's determination may be to the political branches "in cases where its own judgment shall differ" from theirs. *United States v. Dickson*, 40 U.S. (15 Pet.) 141, 162 (1841). And as the then-longest-serving Justice of the Supreme Court observed, after serving more than thirty-four years there, this "power of declaring the law"—a "negative power" to restrain encroachments by the other branches—is a "safeguard which keeps the whole mighty fabric of government from rushing to destruction." *Judge Field's Resignation*, 6 Mich. L.J. 262, 266 (1897) (quoting Justice Stephen J. Field).

To be a "faithful guardian[] of the Constitution" in this way, The Federalist No. 78, at 470, is to wield a "potent" and great power, *United States v. Richardson*, 418 U.S. 166, 191 (1974) (Powell, J., concurring). But "[w]ith great power comes great responsibility." *Montpelier U.S. Ins. Co. v. Collins*, No. 11-cv-141, 2012 WL 588799, at *1 (E.D. Ky. Feb. 22, 2012) (Thapar, J.) ("This often-repeated Voltaire quote worked for Spider–Man, and it works for federal jurisdiction as well."). The judicial power must always be exercised with a view to its limits embodied in our "constitutional tradition." *See Brown v. Electrolux Home Prods., Inc.*, 817 F.3d 1225, 1233 (11th Cir. 2016) (Pryor, J.). And that tradition—per which courts defend

rights and liberties and uphold the rule of law through the negative power of their judgments rather than through wielding the sword or managing the purse—dictates that "Article III courts" do not possess an "amorphous" power of "general supervision of the operations" of the other departments of government. *Raines v. Byrd*, 521 U.S. 811, 828–29 (1997) (internal quotation marks omitted); *see also TransUnion LLC v. Ramirez*, 594 U.S. 413, 423–24 (2021) ("Federal courts do not exercise general legal oversight of the Legislative and Executive Branches . . . .").

Thus, while courts have an essential obligation to say what the law is in cases properly before them, *see, e.g.*, *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 404 (1821), in doing so they cannot transgress constitutional bounds and veer into those lanes reserved for the other branches. As this Court has emphasized, "the judiciary should not be in the business of administering institutions." *Matherly v. Andrews*, 859 F.3d 264, 275–76 (4th Cir. 2017); *see also DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 346 (2006) (rejecting an approach to Article III standing that would "interpose the federal courts as virtually continuing monitors of the wisdom and soundness of state fiscal administration, contrary to the more modest role Article III envisions for federal courts" (internal quotation marks omitted)). "[I]t is not the role of courts, but that of the political branches, to shape the institutions of government in such fashion as to comply with the laws and the Constitution." *Lewis v. Casey*, 518 U.S. 343, 349 (1996).

B. Courts May Not Exceed the Judicial Power When Sitting in Equity.

The "judicial Power," to be sure, extends to cases "in . . . Equity." U.S. Const., art. III, § 2. And one of the most common remedies available in equity is the injunction. But the general availability of such a remedy does not license federal courts to grant any relief whatsoever and label that relief an "injunction." Here too, original meaning, history, and tradition govern the scope of the courts' equitable remedial powers. *E.g.*, *Grupo Mexicano de Desarrollo S.A. v. All. Bond Fund, Inc.*, 527 U.S. 308, 318–19 (1999). Those considerations point in the same direction and preclude the idea that "equity" opens a remedial back door to authority that the "judicial Power" bars at the front door.

Federal-court authority "to entertain suits in equity is an authority to administer in equity suits the principles of the system of judicial remedies which had been devised and was being administered by the English Court of Chancery at the time of the separation of the two countries." *Atlas Life Ins. Co. v. W.I. S., Inc.*, 306 U.S. 563, 568 (1939); *accord Robinson v. Campbell*, 16 U.S. (3 Wheat.) 212, 222–23 (1818). And an "indispensable" constraint on equity at that time were "strict rules and precedents" that "bound down" courts to prevent "arbitrary discretion" in the imposition of remedies. *See* The Federalist No. 78, at 471; *see also Missouri v. Jenkins*, 515 U.S. 70, 127–28 (1995) (Thomas, J., concurring) (noting how, in his 1768 *Commentaries on the Laws of England*, Blackstone "emphasized that courts of

equity must be governed by rules and precedents no less than the courts of law").

Thus, equity does not vest federal courts with "pretorian discretion." *Jenkins*, 515 U.S. at 128 (quoting 9 Papers of Thomas Jefferson 71 (J. Boyd ed. 1954)). Instead, whether a particular equitable remedy is available in federal court turns, at bottom, on whether that "relief . . . was traditionally accorded by courts of equity" at the time of the Founding. *Grupo Mexicano de Desarrollo*, 527 U.S. at 319.

Far-reaching structural injunctions of the sort sought in this case do not fare well under this inquiry. As even those supportive of broad equitable relief recognize, the structural injunction was not created until the mid-twentieth century—"understandabl[y]" so, given the egregious resistance to desegregation plaguing the country that courts were confronted with, *Jenkins*, 515 U.S. at 125—and was a "totally new remed[y] unknown in English practice" at the time of the Founding. Ezra Ishmael Young, *The Chancellors Are Alright: Nationwide Injunctions and an Abstention Doctrine to Salve What Ails Us*, 69 Clev. St. L. Rev. 859, 897 (2021); *accord Jenkins*, 515 U.S. at 130–31.[2]

Granted, "weighty considerations" might seem to call for such an intervention in certain cases. *See Grupo Mexicano de Desarrollo*, 527 U.S. at 330–32. And the care and well-being of foster children implicated in this case is undoubtedly weighty.

[2] By contrast, another modern remedy, the so-called "nationwide injunction," has "plenty of precursors" in history by which "[e]quity courts . . . granted broad injunctions protecting the rights of non-parties." Young, *supra*, at 871.

"But the hardship of the case . . . is not sufficient to justify a court of equity" to "assume an unregulated power of administering abstract justice at the expense of well-settled principles." *Heine v. Bd. of Levee Comm'rs*, 86 U.S. (19 Wall.) 655, 658 (1873). Ultimately, the relief Plaintiffs-Appellants demand is fundamentally "incompatible with the democratic and self-deprecating judgment" in Article III because the judiciary has no "power to create remedies previously unknown to equity jurisprudence." *See Grupo Mexicano de Desarrollo*, 527 U.S. at 332.

That the Supreme Court and this Court have, "[s]ince *Brown II*" in 1955, sometimes approved structural remedies, *see* Opening Br. of Pls.-Appellants at 21–26, does not mean that the structural injunction that Plaintiffs-Appellants seek in this case is permissible under Article III. Although the "'judicial Power' established in Article III incorporates the principle of *stare decisis*, both vertical and horizontal," the "text and history still matter a great deal," even when binding precedent speaks to an issue before the reviewing court. *United States v. Rahimi*, 602 U.S. 680, 729–30 (2024) (Kavanaugh, J., concurring) (citing The Federalist No. 78, at 471). Unless that precedent squarely decides the issue, the reviewing court must decide "how broadly or narrowly to read [the] precedent" and whether "to extend, limit, or narrow [the] precedent." *Id.* at 730. In answering those questions, the reviewing court must "consider how the precedent squares with the Constitution's text and history" and must allow those considerations to exert a "gravitational pull" on the court's

"interpretation of [the] precedent." *Id.*; *see also Briskin v. Shopify, Inc.*, 135 F.4th 739, 769 (9th Cir. 2025) (Bumatay, J., concurring) (explaining that precedent must be read to "bend" in "the direction of constitutional history").

Thus, insofar as structural equitable remedies are permitted, they must be limited to what is "necessary" to redress the claimed harms so as not to improperly deprive "democratically-elected officials" of their "designated legislative and executive powers." *Horne v. Flores*, 557 U.S. 433, 449–50 (2009) (internal quotation marks omitted); *accord Lewis*, 518 U.S. at 357, 361; *Bell v. Wolfish*, 441 U.S. 520, 562 (1979). And structural injunctions must be a "remedy of last resort," *see* Bijal Shah, *Judicial Administration*, 11 UC Irvine L. Rev. 1119, 1147 & n.168 (2021), available "only where the intervention" is "essential" to protect against "injuries otherwise irremediable," *see Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982) (internal quotation marks omitted), by a less-intrusive solution, *e.g.*, *Lewis*, 518 U.S. at 362–63 (reversing a structural injunction for being "inordinately . . . intrusive").

The district court's analysis comported with these principles. *See also* Br. of Defs.-Appellees/Cross-Appellants at 26–36. Plaintiffs-Appellants' requested relief would have required the district court to manage West Virginia's foster-care system "top to bottom," thereby usurping state and local control and the policymaking discretion of elected officials in West Virginia. *Id.* at 33–36. And the remedy

requested would come after West Virginia, through the work of those elected officials and their deputies, has significantly improved its foster-care system and continues to do so. *See id.* at 4–15. Accordingly, the district court did not err in concluding that the redress sought in this case must come from "officials outside of the Judicial Branch of Government." *See Bell*, 441 U.S. at 562.

II. RESPECT FOR FEDERALISM FURTHER LIMITS THE "JUDICIAL POWER."

The foregoing considerations suffice to support the district court's conclusion that it lacked "judicial Power" to grant the structural-injunction remedy requested in this case. But the federalism implications of this case reinforce this conclusion. *See Jenkins*, 515 U.S. at 132 ("[W]hat the federal courts cannot do at the federal level they cannot do against the States . . . .").

Where, as here, a federal court is asked to wield broad managerial and supervisory authority over state agencies, especially in areas implicating "core state responsibility" such as family relations, "[f]ederalism concerns" reinforce the inherent constraints on the court's remedial power. *See Horne*, 557 U.S. at 448. "A structural reform decree," after all, can "eviscerate[] a State's discretionary authority over its own program and budgets" and "deny their existence as independent governmental entities." *Jenkins*, 515 U.S. at 131; *cf. Heath v. Alabama*, 474 U.S. 82, 89 (1985) ("[T]he States are separate sovereigns with respect to the Federal Government . . . ."). Far-reaching structural injunctions, like the one requested in

this case, conflict with the federalism-related principles encapsulated in two distinct constitutional provisions.

First, the Tenth Amendment provides that the "powers not delegated to the United States by the Constitution . . . are reserved to the States respectively, or to the people." U.S. Const., Amend. X. This provision "confirms that the power of the Federal Government is subject to limits" vis-à-vis "state sovereignty." *New York v. United States*, 505 U.S. 144, 157 (1992); *see also Texas v. White*, 74 U.S. (7 Wall.) 700, 725 (1868) ("[T]he preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National government."). A corollary of this principle is the anti-commandeering doctrine: the Constitution does not "confer upon Congress the ability to require the States to govern according to Congress' instructions," so Congress cannot directly command "the States to promulgate and enforce laws and regulations" of Congress's choosing. *New York*, 505 U.S. at 161–62 (internal quotation marks omitted). In fact, federal commandeering of state government is so contrary to our federalist system of government that it is "categorically" unconstitutional. *Printz v. United States*, 521 U.S. 898, 932–33 (1997).

If Congress, vested with "[a]ll legislative Powers" of the federal government, U.S. Const., art. I, § 1, lacks such authority, much more so do the federal courts,

which "possess neither the expertise nor the prerogative to make policy judgments" like the legislature, *see Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 538 (2012). Yet quite overtly, the sort of far-reaching structural injunction sought in this case would allow "[f]ederal judges" to bypass the Tenth Amendment—which reserves to the states powers not delegated to "the United States" in general, not just Congress, and thus logically constrains commandeering by federal courts as well as Congress—to "make the fundamentally political decisions" that the Constitution leaves to the states, free from federal commandeering. *See Jenkins*, 515 U.S. at 133; *see also Brown v. Plata*, 563 U.S. 493, 555 (2011) (Scalia, J., dissenting) ("Structural injunctions . . . turn[] judges into long-term administrators of complex social institutions . . . . [and] require judges to play a role essentially indistinguishable from the role ordinarily played by executive officials.").

Second, the Guarantee Clause commits the federal government to ensuring to "every State in this Union a Republican Form of Government." U.S. Const., art. IV, § 4; *see also* Deborah Jones Merritt, *The Guarantee Clause and State Autonomy: Federalism for a Third Century*, 88 Colum. L. Rev. 1, 2 (1988) (discussing the "federalism principle rooted in the guarantee clause" that restrains "federal power to interfere with state autonomy"). Two fundamental principles constitute this guarantee: "[t]he elective mode of obtaining rulers," The Federalist No. 57, at 350–51 (James Madison) (Clinton Rossiter ed., 1961); and majority rule in elections, *see*

The Federalist No. 22, at 146 (Alexander Hamilton) (Clinton Rossiter ed., 1961); *accord* President Thomas Jefferson, *First Inaugural Address* (Mar. 4, 1801), *reprinted in* 1 The Founders' Constitution 141 (Philip B. Kurland & Ralph Lerner eds., 1987).

That is, a "republican form of government" is one in which the people have the right "to choose their own officers for governmental administration, and pass their own laws in virtue of the legislative power reposed in representative bodies." *Duncan v. McCall*, 139 U.S. 449, 461 (1891); *see also* Merritt, *supra*, at 22 ("[I]n the guarantee clause the United States promises to secure each of the states the autonomy necessary to maintain a republican form of government."). To this end, the core purpose of the Guarantee Clause is to protect the people in each state against "aristocratic or monarchical innovations" to state government. The Federalist No. 43, at 274 (James Madison) (Clinton Rossiter ed., 1961).

Far-reaching structural injunctions from unelected federal judges, like the one requested in this case, effectively eliminate this guarantee. Accruing to the judiciary the "unbounded" power of "correcting, controlling, moderating, and even superceding the law, and of enforcing all the rights . . . arising from natural law and justice" would vest in the courts "despotic and sovereign authority" by which the people would be ruled by the judge's "own notions and conscience" rather than their elected representatives. *Grupo Mexicano de Desarrollo*, 527 U.S. at 332 (quoting 1

Joseph Story, *Commentaries on Equity Jurisprudence* § 19, at 21 (1836)). Such authority would permit a federal judge to wield remedial power "as a substitute for self-government" at the heart of the Guarantee Clause. *See* Robert F. Nagel, *Controlling the Structural Injunction*, 7 Harv. J.L. & Pub. Pol'y 395, 401 (1984).

Courts wielding such power invariably "come[] perilously close to violating the constitutional obligations of the Federal Government" enshrined in the Guarantee Clause by making "state officers responsible not to the people of the State but instead to federal judges" in the adoption and implementation of policy. *Lance v. Plummer*, 384 U.S. 929, 931 (1966) (Black, J., joined by Harlan, J., dissenting from denial of certiorari) (discussing a federal-court injunction ordering a Florida deputy sheriff to surrender his badge and resign from office). And the district court correctly intuited that the far-reaching structural-injunctive relief that Plaintiffs-Appellants seek would cross that line.

Of course, injunctive remedies of any kind against state officials could, in the abstract, be framed as "commandeering" a state (for example, when a federal court enjoins a state official from taking certain actions in violation of federal law) or as encroaching on state self-government (for instance, when a federal court enjoins the enforcement of a state law, duly enacted by the state legislature, as unconstitutional federally). But these sorts of discrete, "'single act' mandates" are part of the historic equity power. *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821,

841–42 (1994) (Scalia, J., concurring). Thus, they neither encroach on states' Tenth Amendment prerogatives (since such power *was* "delegated to the United States by the Constitution" in Article III, *see* U.S. Const., Amend. X) nor offend the Guarantee Clause (which permits unelected officials to lawfully exercise power delegated to them by the people, *see* The Federalist No. 39, at 241 (James Madison) (Clinton Rossiter ed., 1961)). But that historic equity power is exceeded when a court engages in the sort of "ongoing supervision of," and continual "coercive power over," state officials' conduct that the structural-injunctive relief requested in this case would entail. *See Int'l Union, United Mine Workers of Am.*, 512 U.S. at 842.

* * *

Everyone agrees that West Virginia's foster children matter—greatly. *See* Br. of Defs.-Appellees/Cross-Appellants at 1. This case is not about whether something should be done to ensure their well-being, but about which governmental entities may properly take the necessary steps to protect them. *E.g.*, *Bell*, 441 U.S. at 562. The weighty considerations about their well-being do not authorize the federal judiciary to transgress the bounds on its remedial power. And given the liberty-promoting and rights-protecting reasons for those constraints, such transgression would be counterproductive to all, in the end. Attuned to these points, the district court rightly recognized that it could not grant the relief that Plaintiffs-Appellants requested of it.

CONCLUSION

The Court should affirm the district court's order dismissing the case for lack of standing.

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CERTIFICATE OF COMPLIANCE

I hereby certify, on June 20, 2025, that:

1. This brief complies with the word limit under Federal Rule of Appellate Procedure 29(a)(5) because, excluding the parts of the document exempted by Federal Rule of Appellate Procedure 32(f), this brief contains 4,182 words.

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 MSO in a fourteen-point Times New Roman font.

June 20, 2025

/s/ Joel S. Nolette
Joel S. Nolette

CERTIFICATE OF SERVICE

I certify that on June 20, 2025, a true and correct copy of this brief was filed and served electronically on all counsel of record through the Court's CM/ECF system.

June 20, 2025

/s/ Joel S. Nolette
Joel S. Nolette