IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

INDIGO WILLIAMS, *ET AL.*	**PLAINTIFFS**
V.	**CAUSE NO. 3:17-cv-404-WHB-LRA**
PHIL BRYANT, *ET AL.*	**DEFENDANTS**

MEMORANDUM IN SUPPORT OF RESPONSE TO MOTION TO DISMISS

Despite its unusual context, this case presents a familiar claim: a request for declaratory relief to resolve a conflict between state law and federal law. When such a conflict exists, state law must yield.[1]

In the years following the Civil War, Congress sought to chart a new course for the South. Crucial to that new course, Congress recognized, was the right of Mississippi's new black citizens to a free and equal system of public education. That right would safeguard the war's hard-fought gains and ultimately be vital to securing a lasting peace. Congress understood that the key to establishing genuinely republican governments in the South was the political empowerment of the newly freed slaves. And the Freedmen's exercise of full citizenship (including the right to vote) depended on universal access to public education.

To further these goals, Congress placed conditions on Mississippi's readmission to full statehood after the Civil War. Pursuant to its authority under the Constitution's Guarantee Clause (among other provisions), Congress required "[t]hat the constitution of Mississippi shall never be so amended or changed as to deprive any citizen or class of citizens of the United States of the

[1] For the sake of simplicity, this Memorandum refers to the Defendants collectively as "the State." The State's repeated references to the Plaintiffs as "SPLC" are inaccurate and misleading. The Plaintiffs in this case are Indigo Williams, Dorothy Haymer, Precious Hughes, and Sarde Graham.

school rights and privileges secured" in Mississippi's 1868 Constitution.[2] Although nothing prevented Mississippi from *expanding* its citizens' rights, Congress plainly mandated that Mississippi "never" *weaken* its constitutionally provided education rights.

Yet Mississippi has done just that. The Mississippi Constitution's education clause now provides fewer rights than were provided in the Constitution of 1868. This retrogression has resulted in a woefully disuniform school system where a child's likelihood of receiving a quality education is determined by whether her school is mostly white or mostly black. Such retrogression blatantly violates the Readmission Act.

Rather than defend this system, the State conjures a variety of arguments for why this Court supposedly lacks the power to do anything about it. The State first argues that the political question doctrine bars judicial review of its compliance with the Readmission Act. But the political question doctrine categorically does not apply to statutory claims because the Constitution commits the construction of federal statutes to the judiciary – and the judiciary alone. In any event, the Plaintiffs' claims present the type of legal issue that courts address every day: the Plaintiffs allege that the current version of the Mississippi Constitution violates the Readmission Act because it secures fewer rights than the 1868 Mississippi Constitution. All the Court must do to decide the claim is to compare the current constitution to the 1868 version and determine whether Mississippi is now "depriv[ing]" its school children of what they previously had. Interpreting statutes and constitutions is a familiar judicial task.

The State's second argument, that the Readmission Act is not privately enforceable, is equally meritless. The test for whether a statute is privately enforceable requires a close examination of the statute's text. But the State does not address the Readmission Act's text at all.

[2] 16 Stat. 67 (1870).

That is likely because the statute speaks in quintessential rights-conferring language: the Act expressly protects the "school rights and privileges" of "any citizen or class of citizens," and is particularly intended to benefit African Americans like the Plaintiffs here.

The State's remaining arguments fare no better. The Plaintiffs have standing to assert that they are being harmed by the State's provision of a disuniform system of education. They attend inferior, mostly black schools that place them at a competitive disadvantage to similarly-situated students in mostly white schools. This injury would be remedied by a declaratory judgment affirming the State's obligation to comply with

concerns is meritless – the Reconstruction Congress determined that Mississippi should "never" be allowed to retrogress. Never means never.

The State's repeated claim that the Plaintiffs seek to unseat Mississippi's congressional representatives is equally inaccurate. The Plaintiffs seek no such thing. That is not the relief requested in the Complaint, nor is it the relief contemplated by Congress. Indeed, the unseating of Mississippi's representatives would not remedy the injury caused by the State. The only appropriate remedy is to declare the State in violation of the Readmission Act's education guarantee, which is precisely what the Plaintiffs seek. The State's motion to dismiss should therefore be denied.

> Constitution, can be created for a republican form of government in that State than to secure the general education of the people?[19]

Congress reasoned that this goal could only be achieved if Mississippi was prohibited from ever retrogressing.[20] That much is explicit in the statute itself: it required that Mississippi "shall never . . . deprive any citizen or class of citizens" of their education rights. That understanding is also explicit in the historical record. Senator George F. Edmunds of Vermont, for instance, understood Virginia's identical clause as ensuring "that she shall not turn her back upon us this year or next year or fifty years hence, and undertake to make progress in a *retrogressive* direction."[21] Indeed, some Senators who opposed the Readmission Act did so precisely because it prevented Mississippi from ever retrogressing beneath the 1868 Constitution's guarantees. As Senator Thomas Bayard of Delaware colorfully described it, the Act "fasten[ed] forever upon the people of this so-called State" the 1868 Constitution's education clause.[22]

III. MISSISSIPPI'S CURRENT VIOLATION.

[19] Cong. Globe, 41st Cong., 2nd Sess. 1254 (Feb. 14, 1870), available at https://memory.loc.gov/cgi-bin/ampage?collId=llcg&fileName=090/llcg090.db&recNum=313 (last viewed Sept. 15, 2017).

[20] Congress was not alone in its belief that the Readmission Act forbade Mississippi from retrogressing on certain constitutional rights. At the Mississippi Constitutional Convention of 1890, the delegates' foremost goal was to strip African Americans of their voting rights. *See* Complaint [Docket No. 1] at ¶¶5.1-5.26. But before they could begin that business, they sought a special report "upon the effect of the act of Congress re-admitting Mississippi into the Union, limiting the right of the State of Mississippi to impose certain restrictions upon the right of franchise and otherwise prohibiting the State from changing the Constitution of the State of Mississippi, adopted in 1869, so far as the said act shall affect the work of this Convention[.]" *Journal of the Constitutional Convention of the State of Mississippi* (1890) at 83-84, available at https://archive.org/stream/journalproceedi01convgoog#page/n85/mode/2up (last viewed Sept. 15, 2017). As future Secretary of State Eric Clark observed in his master's thesis on the Convention, this episode demonstrated the delegates' understanding that the Readmission Act "declared that the state could not put stronger restrictions on the franchise than those adopted in the 1868 constitutional convention."

When Congress passed the Readmission Act in 1870, Mississippi's constitution contained a robust education clause. If that clause remained in effect today, it would stand as one of the strongest guarantees of public education in America. But beginning in 1890, and continuing today, Mississippi eroded its constitution's education clause until it was nothing more than a shell of its former self.

The Reconstruction-era education clause contained a number of rights absent from the modern-day version, and chief among them was the right to a "uniform" system of free public schools.[23] The 1868 Constitution's education clause also began with a preamble explaining its important purpose, emphasized the Legislature's mandatory "duty" to establish a system of uniform schools, and required that the uniform system be "encourage[d], by all suitable means."

When comparing the 1868 education clause and its modern-day counterpart, it is helpful to understand how legal scholars analyze education clauses. Modern education-law scholars classify states' education clauses into four broad categories, with "Category I" clauses being the

[23] *See, e.g.*, *Leandro v. State*, 346 N.C. 336, 348 (1997) (state constitution's guarantee of "uniform" schools requires "that every child have a fundamental right to a sound basic education which would prepare the child to participate fully in society as it existed in his or her lifetime"). *See also* 67B Am. Jur. 2d Schools § 10 (Provisions Requiring Uniform School System) ("State constitutions and statutes usually provide for a general and uniform system of common schools. 'Uniform,' under such a provision, means that every child shall have the same advantages and be subject to the same discipline as every other child."); Burton Declaration at 15 (1868 Constitution's uniformity requirement "demonstrated that broader education rights were an important ef

weakest and "Category IV" clauses being the strongest. Today, Section 201 of the Mississippi Constitution is universally viewed as a Category I clause[24] – that is, it "merely mandate[s] a system of free public schools."[25] In contrast, clauses requiring "uniform" systems of public schools are generally viewed as Category II education clauses,[26] and clauses with both an "all means" component and a "purposive preamble" are generally viewed as Category III clauses.[27] The education clause in Mississippi's 1868 Constitution was a Category III clause because it included a purposive preamble – "as the stability of a republican form of government depends mainly on the intelligence and virtue of the people" – and required that the Legislature's "duty" to establish a uniform system of schools be accomplished "by all suitable means."

Mississippi's retrogression from a Category III clause to a Category I clause is no mere academic triviality. It has resulted in a disuniform system of schools that is far more likely to injure African-American students (like the Plaintiffs' children) than white students: predominantly white school districts are substantially more likely to offer a high-quality education than predominantly black school districts.[28] The Mississippi Department of Education currently gives 14 school districts "A" ratings. All but one of those districts is majority white, and nine of them have enrollments of at least 66 percent white students. Predominantly black districts tell the opposite story: of the 19 districts currently rated "F," all have more than 80 percent black students.[29]

A system of schools that provides opportunity so blatantly based on whether the student body is mostly white or mostly black falls far short of the "uniform system" that Congress required Mississippi to preserve.

ARGUMENT

I. THE POLITICAL QUESTION DOCTRINE DOES NOT BAR THIS COURT'S REVIEW.

A. The Political Question Doctrine is Ca

turns – will *never* be satisfied in a case involving a statutory claim. The first factor looks for a textually demonstrable *constitutional* commitment of the issue to a coordinate political branch. Congress, in passing a statute, makes a political choice (as it did in passing the Readmission Act), but once that choice is made, the Constitution commits the construction and interpretation of the statute *solely* to the judiciary. "[I]t goes without saying that interpreting congressional legislation is a recurring and accepted task for the federal courts."[34] The second *Baker* factor asks whether there are judicially discoverable and manageable standards for resolving the question. Legislation, by definition, provides discoverable and manageable standards for courts to apply.[35]

The other *Baker* factors confirm this point. The political question doctrine concerns itself with "the respect due coordinate branches of government,"[36] and declining to enforce a congressional enactment – especially one that, as shown *infra,* creates privately enforceable rights – would show a decided lack of respect for a coordinate branch.[37] The political question doctrine likewise focuses on "adherence to a political decision already made,"[38] which is all a plaintiff in a statutory case is asking for. When Congress enacts a statute, it makes a policy judgment embodied in the law. Adherence to that policy judgment *requires* judicial enforcement. Refusing to enforce (or even hear) a case asserting a congressionally created right, by contrast,

[34] *Japan Whaling Ass'n v. Am. Cetacean Soc'y*, 478 U.S. 221, 230 (1986).
[35] *Zivotofsky v. Clinton*, 566 U.S. 189,196 (2012) ("To resolve his claim, the Judiciary must decide if Zivotofsky's interpretation of the statute is correct, and whether the statute is constitutional. That is a familiar judicial exercise."). *See also*

would lead to "multifarious pronouncements by various departments on one question,"[39] and embarrassment to the political branches that enacted it.

The Supreme Court's decision in *Zivotofsky v. Clinton* makes clear that the political question doctrine does not apply to statutory claims. *Zivotofsky* involved a claim of executive non-compliance with a politically-tinged statute: a statute providing citizens born in Jerusalem a right to list Israel as their country of birth. Zivotofsky's parents sued to enforce that right when the State Department refused to comply with the statute. The State Department argued that the plaintiffs' claim raised a nonjusticiable political question. He

and the rights created under it.[42] That, *Zivotofsky* holds, "is what courts do."[43] The political question doctrine is thus categorically inapplicable to the Plaintiffs' claims.[44]

B. None of the *Baker* Factors Supports the Application of the Political Question Doctrine.

Even if the political question doctrine could ever apply to statutory claims, it still would not bar this suit. *Baker* set forth six tests for determining whether a claim implicates a nonjusticiable political question. A claim presents a political question if: (i) there is a textually demonstrable commitment of the issue to a coordinate branch; (ii) it lacks judicially discoverable or manageable standards; (iii) it is impossible to decide the issue without making a political judgment; (iv) it is impossible to review without expressing a lack of respect for a coordinate branch; (v) there is an unusual need for unquestioning adherence to a political decision already made; or (vi) there is the potential for embarrassment from multiple pronouncements on an issue by different departments. None of those factors supports the doctrine's application here.

1. *The Constitution Commits the Question of the Readmission Act's Meaning Squarely to the Judiciary.*

Not every case with "significant political overtones" presents a nonjusticiable political question.[45] Rather, the first and surest sign of a political question is "a textually demonstrable

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[42] *Id.* at 201.
[43] *Id.*
[44] Even if statutory claims could raise nonjusticiable political questions, to the extent the State suggests that its conduct is unreviewable because education in Mississippi is solely the prerogative of the State's political branches, the State is incorrect. The political question doctrine only affects the federal judiciary's relationship with the other branches of the *federal* government. *See Baker*, 369 U.S. at 201. The political question doctrine does not limit a federal court's power to review the political choices of *state* officials, especially when those choices implicate (and violate) federal rights.
[45] *INS v. Chadha*, 462 U.S. 919, 942-43 (1983).

constitutional commitment of the issue to a coordinate political department."[46] The State identifies no constitutional text committing the question in this case – whether Mississippi is violating the Readmission Act – to a coordinate political branch. That is because no such text exists. Rather, this case calls only for an interpretation of a federal statute, a review of state law, and a determination as to whether the former conflicts with the latter. Resolution of such questions of law is for the judiciary, and the judiciary alone: "the proper construction of a congressional statute [is] a question eminently suitable to resolution in federal court."[47]

The State's contrary argument rests on two fundamental mischaracterizations. The State first observes that the Constitution "[i]n general" entrusts "the political branches to make war and set the conditions of peace."[48] No one disagrees, but the Plaintiffs are not asking this Court to make war or set the conditions of peace. Here, Congress made many relevant political judgments in *passing* the Readmission Act, and it determined, among other things, that

years ago and there is nothing on that score for this Court to review. The only question here is whether the State should be brought into compliance with the Readmission Act's retrogression ban, and that question is uniquely suited for judicial review and enforcement.

The State's primary support is *dicta* from a single, shameful case. *Butler v. Thompson*[50] is a Jim Crow-era district court decision from another district, in another state, in another circuit, that upheld the constitutionality of Virginia's poll tax.[51] Not only is that decision non-binding, but history also has shown that its holding is wrong: poll taxes are unconstitutional.[52] And the *Butler* court's specific treatment of Virginia's Readmission Act in *dicta* is unpersuasive. Although the court "doubt[ed]" that the Virginia Readmission Act's prohibition on voting restrictions was judicially enforceable, it labored under the same false premises as the State does here: the Act's condition was part and parcel of the seating of the State's representatives and thus could be enforced only by Congress. But that is simply not true. Congress seated the southern states' representatives *and* determined that those states should be proscribed forever from depriving their citizens of certain rights necessary to maintain functional, republican governments. The protection of those rights is perpetual – hence, the Readmission Act's use of the phrase "shall never" – and has nothing to do with the seating of congressional representatives.

[50] *Butler v. Thompson*, 97 F. Supp. 17 (E.D. Va. 1951).
[51] Eleven years later, in 1962, the decision was cited by a Mississippi district court in support of the shameful notion that "the Constitution of the United States . . . does not prohibit a municipality from permitting, authorizing or encouraging voluntary segregation." *Clark v. Thompson*, 206 F. Supp. 539, 542 (S.D. Miss. 1962) (Mize, C.J.).
[52] *See Harper v. Virginia State Bd. of Elections*, 383 U.S. 663 (1966) (holding that poll taxes violate the Equal Protection Clause).

passage.[60] In other words, the Court must review the education clause in the 1868 Constitution, review the education clause in the current Constitution, and determine if the current Constitution provides weaker school rights than were provided in 1870. That sort of "careful examination of the textual, structural, and historical evidence put forward by the parties regarding the nature of a statute" and constitutional provision "is what courts do."[61]

The State's related argument that the 1868 Constitution did not impose any meaningful educational obligations is simply not accurate. It was "the duty of the Legislature," the 1868 Constitution made clear, to "establish[] a uniform system of free public schools."[62] The purpose of that mandate was to promote "intellectual,

establishing uniform systems of public education, further belying the State's contention that the 1868 Constitution imposed no judicially cognizable standards.[67]

It is irrelevant that the 1868 Constitution did not integrate Mississippi's schools or guaranteed only four months of schooling. The Readmission Act did not preclude Mississippi from expanding the 1868 Constitution's education rights; it only prohibited retrogression. Whether the Mississippi Constitution *today* provides fewer education rights than it did in 1868 is undoubtedly a question fit for judicial review.

The State's remaining miscellaneous arguments are even less persuasive. The general thrust of their assertions appears to be that because Mississippi first violated the Readmission Act 127 years ago, the political question doctrine prevents the Plaintiffs from challenging it today. But courts routinely review questions of law with roots stretching hundreds of years into the past.[68] The mere vintage of a question does not shield an otherwise cognizable question from review,[69] and there is ample authority (discussed above) to determine what the 1868 education clause means.[70]

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[67] *See, e.g.*, *Campbell Cty. Sch. Dist.*, 907 P.2d at 1259 ("We can ascertain the further intent of these words by considering the purpose which the framers believed education served. . . . [I]n 1889, similar education provisions were found in every state constitution, reflecting the contemporary sentiment that education was a vital and legitimate state concern, not as an end in itself, but because an educated populace was viewed as a means of survival for the democratic principles of the state."); *id.* (state constitution's education article was "a mandate to the state legislature to provide an education system of a character which provides Wyoming students with a uniform opportunity to become equipped for their future roles as citizens, participants in the political system, and competitors both economically and intellectually"); s*ee also Lobato v. Colorado*, 304 P.3d 1132 (Colo. 2013) (construing and applying similar education clause); *Fed. Way Sch. Dist. No. 210 v. Washington*, 219 P.3d 941 (Wash. 2009) (same); *Roosevelt Elementary Sch. Dist. No. 66 v. Bishop*, 877 P.2d 806 (Ariz. 1994) (same); *Idaho Sch. for Equal Educ. Opportunity v. Evans*, 850 P.2d 724 (Idaho 1993) (same); *Rose v. Council for Better Educ. Inc.*, 790 S.W. 2d 186 (Ky. 1989) (same).

[68] *See, e.g.*, *Kerry v. Din*, 135 S.Ct. 2128, 2132 (2015) (tracking Due Process Clause's origins to Magna Carta).

[69] *See, e.g.*, *Noel Canning v. NLRB*, 705 F.3d 490, 499 (D.C. Cir. 2013) (hearing and resolving question of first impression under the Constitution's Appointments Clause).

[70] The State's reliance on *San Antonio Independent School District. v. Rodriguez*, 411 U.S. 1 (1973), is misguided and confusing. First, *Rodriguez* was a Fourteenth Amendment Equal Protection Clause challenge, not a challenge under the Readmission Act. Second, the State cites language from *Rodriguez* warning courts -6(.8263 0e8.1(r g c)80 Tg)5.3(8uest2tutii

Court has held that when Congress passes laws under the Guarantee Clause, those decisions cannot be challenged in court.[74] That holding applies to the Readmission Act, whose validity the State cannot challenge in court. In contrast, the Plaintiffs seek not to overturn the Act, but to enforce it.

II. THE READMISSION ACT IS PRIVATELY ENFORCEABLE.

The State's argument that the Readmission Act does not provide a private right of action is also unpersuasive. One of the "principal purpose[s]" of allowing enforcement of federal statutes through Section 1983 "was to ensure that federal legislation providing specifically for equality of rights would be brought within the ambit of the civil action authorized by that statute."[75]

When determining whether Section 1983 allows private enforcement of a federal statute, courts ask whether the statute in question (in this case, the Readmission Act) is "phrased in terms of the persons benefitted."[76] This review requires "looking to the language of the statute itself."[77] A statute "which expressly identifies the class Congress intended to benefit"[78] creates a privately enforceable federal right. The Readmission Act satisfies that standard.

While the State agrees that the analysis of whether there is a private right of action must focus on the Readmission Act's text, it does not analyze the statute's text in its brief *at all*. It simply states that the private right does not exist. The problem for the State is that the

[74] *Baker*, 369 U.S. at 224 ("Just as the Court hae

Readmission Act *does* use precisely the type of rights-creating language that courts have found to be judicially enforceable. It speaks in distinctly "individually focused terminology."[79] The Act, in unmistakable terms, protects the "school rights and privileges" of "any citizen or class of citizens,"[80] and those school rights, in turn, were meant to benefit Mississippi's school-age "children."[81]

Courts routinely find similar language meant to benefit individuals – here, those eligible to attend school in Mississippi – to be privately enforceable. The cases are legion.[82] For example, in *Cannon v. University of Chicago,* the Court held that Title IX of the Education Amendments of 1972 – which provides that "[n]o person in the United States shall, on the basis of sex, be excluded from participation in . . . any education program or activity receiving Federal financial assistance" – was privately enforceable, because it "expressly identifies the class Congress intended to benefit."[83] Likewise, in *S.D. ex rel. Dickson v. Hood,* the Fifth Circuit held that a provision in the Medicaid Act requiring states to "provide for making medical assistance

available . . . *to all individuals*" who meet certain eligibility criteria, is privately enforceable because the statute's text focused on the class of individuals benefitted.[84] Indeed, the Readmission Act includes precisely the same language that the Supreme Court has found creates individual rights,[85] leaving no room for doubt about the statute's enforceability.

The Readmission Act's history bolsters this conclusion.[86] The purpose of the Readmission Act's education guarantee was to ensure that Mississippi's population – specifically, its African-American population – would be sufficiently educated to exercise their right to vote meaningfully and to ensure an enduring republican form of government. *See supra* at 4-6. The education guarantee was thus aimed at protecting the individual rights of an identified class of beneficiaries.[87]

The Readmission Act's text is therefore unlike statutory text that courts have held is not privately enforceable. "Statutes that focus on the person regulated rather than the individuals protected create no implication of an intent to confer rights on a particular class of persons."[88] The Readmission Act features no such framing. "It does not speak only in terms of institutional policy and practice, nor does it have an aggregate focus."[89] That is, the statute is not directed at Executive Branch administration;[90] rather, it creates rights "personal to the beneficiaries . . .

[84] *S.D. ex rel. Dickson v. Hood*, 391 F.3d 581, 602-03 (5th Cir. 2004).
[85] *Compare* 18 Stat. 67, 68 (no "citizen or class of citizens" "shall" ever be "deprived" of their "school rights" by an amendment to the State constitution), *with Gonzaga*, 536 U.S. at 284 n.3 (statutes are privately enforceable when phrased "no person . . . shall" be deprived of the right the statute protects).
[86] *See, e.g.*, *Poole v. Hous. Auth. for the Town of Vinton*

which, by design, are intended to promote the equal treatment of and equal opportunity for the beneficiaries"[91] In fact, the only Fifth Circuit case the State cites on this point found that a provision requiring state assistance to "any individual eligible" *did* create a privately enforceable right.[92] This holding confirms that the Readmission Act's protection of education rights of those eligible to attend school in Mississippi is privately enforceable.

The State nevertheless contends that the Act is not privately enforceable because Congress could not have intended the remedy in an individual action to be the unseating of Mississippi's representatives.[93] But the State again misses the point. "[T]he question whether a litigant has a 'cause of action' is analytically distinct and prior to the question of what relief, if any, a litigant may be entitled to receive."[94] And for all the reasons described above, the text of the Readmission Act creates privately enforceable rights.

In any event, unseating Mississippi's congressional representatives is not the appropriate riaters
remedy for a violation of the Act's education provision.[95] First, stripping Mississippi of its representatives *would not* do anything to remedy the State's deprivation of school rights guaranteed to its citizens under the Readmission Act and 1868 Constitution. Second, the relief contemplated by the State is inconsistent with the Readmission Act's purpose. Congress included the education provision in the Readmission Act to ensure that the country would never again be an's congpopuTc-.001 T5e country woulcontem

meaningfully exercise its right to vote and ensure a republican form of government. *See supra* at 6-9. Stripping Mississippi of its representatives for non-compliance with the Act's education provision would do nothing to further that purpose. A judicial declaration requiring Mississippi to comply with that federal mandate, by contrast, unquestionably would.[96]

Congress often imposes conditions on state participation, and the remedy for non-compliance is never ejectment from the program or Union – it is enforcement. The Medicaid Act, for example, provides federal funding to states on the condition that states offer Medicaid services. When a state violates the Medicaid Act, the remedy is not expulsion from either the Medicaid program or from the Union. The solution is simply to order compliance with the law.[97] The State offers no reason why Congress would have intended to remedy a Readmission Act violation differently.

III. THE PLAINTIFFS HAVE STANDING.

Surviving a standing challenge at the mo

lowest-performing elementary schools.[99] These children are *exactly* whom Congress intended to protect with the Readmission Act.

A. The Plaintiffs Have Suffered an Injury in Fact.

First, the Plaintiffs have alleged an injury in fact. The Complaint alleges that the Plaintiffs in this case are currently receiving an inferior education that is not uniform with that provided to other students in Mississippi, particularly those who attend predominantly white schools.[100] Providing a disuniform and inferior education is a "concrete and particularized" injury unto itself,[101] and "has caused, is causing, and will cause" myriad other concrete injuries, including: a diminished ability to exercise the right to vote meaningfully; illiteracy; economic injuries, such as diminished lifetime earnings potential and increased likelihood of poverty; and non-economic injuries, such as diminished likelihood of attending and/or graduating college.[102]

The State contends that the Plaintiffs are alleging only a generalized grievance because they are injured alongside others who attend Mississippi's woefully disuniform schools.[103] This argument is meritless. Mississippi's provision of a disuniform system of education is concretely and directly harming the *Plaintiffs*. That it may also harm others – in particular, other students in failing school districts – does not convert an individualized injury into a non-cognizable generalized grievance.[104] As the Supreme Court explained in *FEC v. Akins*: "where a harm is concrete, though widely shared, the Court has found 'injury in fact.'"[105] Or, as the Fifth Circuit *en banc* stated: "the fact that many persons suffer an injury does not mean that no person has

[99] Complaint at ¶¶3.1-3.4.
[100] Complaint at ¶¶ 5.48-5.76.
[101] *See, e.g., C.M. ex rel. Marshall v. Bentley*, 13 F. Supp. 3d 1188, 1201 (M.D. Ala. 2014); *Leslie v. Bd. of Educ. for Ill. Sch. Dist. U-46*, 379 F. Supp. 2d 952, 958-59 (N.D. Ill. 2005).
[102] *See* Complaint at ¶ 6.9.
[103] State's Brief at 20.
[104] Taken to its logical conclusion, the State suggests that it can avoid consequences for violating federal law so long

suffered the requisite injury."[106] "Such a claim of standing is even stronger," in fact, "when the plaintiffs are students and parents of students attending public schools. Students and their parents enjoy a cluster of rights vis-a-vis their schools – a relationship which removes them from the sphere of 'concerned bystanders.'" [107] Thus, plaintiffs like those in this case "have often been found to have suffered an injury, albeit along with many other students and parents."[108]

B. The Plaintiffs' Injuries are Tra

Mississippi provided a uniform system of public schools, the Plaintiffs would not be set at a lifelong competitive disadvantage relative to students in predominantly white schools.

C. The Plaintiffs' Injuries Will Be Redressed by a Favorable Ruling.

As with the issue of traceability, a motion to dismiss challenging redressability presents a plaintiff with a "relatively modest" hurdle.[115] Here, a judicial declaration that Mississippi is required to provide a uniform system of public schools will unquestionably remedy the Plaintiffs' injuries, at least in part. If a declaration issues, the Plaintiffs presume that the State will begin upgrading Mississippi's public school system to a uniform system, as required by the Readmission Act.[116] Compliance with the declaration will require the State to provide better and badly-needed services in the Plaintiffs' schools. At a minimum, this will even the playing field between the Plaintiffs' schools and higher-rated white schools across the state.

The State does not argue otherwise. Instead, it incorrectly repeats that the relief contemplated by the Readmission Act would be the unseating of Mississippi's congressional representatives. But for all the reasons described above, that argument is simply incorrect. The State also repeats its claim that this Court cannot provide the Plaintiffs "meaningful" relief because their injuries *might* be caused in part by "socioeconomic, intellectual, and personal factors."[117] Even if that were proven as a *factual* matter after discovery, a plaintiff "need not show that a favorable decision will relieve his *every* injury," much less at the pleading stage.[118] Partial redress also supports standing.[119] Here, the Plaintiffs' requested relief would even the

playing field for the Plaintiffs compared to similarly situated students at predominantly white schools. The State's suggestions to the contrary must be rejected.

IV. NEITHER THE ELEVENTH AM

and the current Mississippi constitution deprives schoolchildren of those rights, because it does not provide the right to a uniform system of public schools. This is allowable under *Ex parte Young*.

The claim held barred by the Eleventh Amendment in *A-1 v. Molpus*, the principal case cited by the State, is inapposite because the plaintiff was seeking *retrospective* relief – not the prospective relief that the Plaintiffs seek.[125] *A-1* was a *pro se* suit, in which the plaintiffs "claim[ed] that the State of Mississippi violated federal law when the Mississippi Constitution of *1890* was adopted."[126] The court understood the plaintiffs to be seeking retrospective relief to remedy a course of conduct already completed and superseded by later constitutional amendments (and the claim was also likely moot). For that reason, the *A-1* court never addressed *Ex parte Young*.

To the extent *A-1* is read to include a claim for prospective relief (as the Plaintiffs here are seeking), the decision is wrong: *Ex parte Young* unequivocally allows suits for prospective,

injury.[129] In this case, the Plaintiffs' children were injured no earlier than their fifth birthdays, when their children became eligible to attend public school.

comparison between" the education rights provided by Article VIII, Section 1 of the 1868 Constitution and those provided today by Section 201.[136] This is merely a restatement of the argument that the case lacks manageable standards and, therefore, presents a nonjusticiable political question.[137] For all the reasons discussed above, *see supra* at 17-20, the State is incorrect.

Second, the State argues that amendments to the State constitution have not violated the Readmission Act. But the State is again incorrect. When Congress passed the Readmission Act in 1870, the Mississippi Constitution's education clause required, among other things, a "uniform" system of public schools to be "encourage[d], by all suitable means."[138] It also included a preamble explaining its purpose and framed Mississippi's obligations as a mandatory "duty."[139] Today's education clause includes none of these requirements. This is precisely what the Readmission Act forbade.

CONCLUSION

The Readmission Act explicitly required that

continue providing Mississippi's children the education rights provided in 1870. The State's motion to dismiss should be denied.

RESPECTFULLY SUBMITTED this Fifteenth day of September 2017.

/s/ *Will Bardwell*
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CERTIFICATE OF SERVICE

I, Will Bardwell, hereby certify that, simultaneous with this Memorandum's filing, I have served true and correct copies of the same on all counsel of record via the Court's electronic filing system.

SO CERTIFIED this Fifteenth day of September 2017.

/s/