


No. 19-60069

United States Court of Appeals
for the
Fifth Circuit



INDIGO WILLIAMS, on behalf of her minor child J.l6O nor .0wr .08wr LY70W 597. 01 (S)1 (,)-r30wr

JASON ZARROW
O'MELVENY & MYERS LLP
1625 Eye Street, N.W.
Washington, DC 20006
(202) 383-5300

ANTON METLITSKY
BRAD ELIAS

O'MELVENY & MYERS LLP
Times Square Tower
7 Times Square
New York, New York 10036
(212) 326-2000

OVERTY LAW CENTER
111 East Capitol Street, Suite 280
Jackson, Mississippi 39201
(601) 948-8882

WILLIAM J. BENDER
RITA L. BENDER
SKELLENGER BENDER, P.S.
Rainier Tower
1301 Fifth Avenue, Suite 3401
Seattle, Washington 98101
(206) 623-6501



DELBERT HOSEMANN, in his official capacity as Secretary of State of Mississippi; CAREY M. WRIGHT, in her official capacity as State Superintendent of Education and Executive Secretary of MS State Board of Education; ROSEMARY AULTMAN, in her official capacity as Chair of the Mississippi State Board of Education; JASON DEAN, in his official capacity as Member of the Mississippi State Board of Education; BUDDY BAILEY, in his official capacity as Member of the Mississippi State Board of Education; KAMI BUMGARNER, in her official capacity as Member of the Mississippi State Board of Education; KAREN ELAM, in her official capacity as Member of the Mississippi State Board of Education; JOHNNY FRANKLIN, in his official capacity as Member of the Mississippi State Board of Education; WILLIAM HAROLD JONES, in his official capacity as Member of the Mississippi State Board of Education; JOHN KELLY, in his official capacity as Member of the Mississippi State Board of Education; CHARLES MCCLELLAND, in his official capacity as Member of the Mississippi State Board of Education,

CERTIFICATE OF INTERESTED PERSONS

Undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Buddy Bailey
Kami Bumgarner
Dr. Karen Elam
Johnny Franklin
William Harold Jones
Dr. John Kelly
Charles McClelland

Attorneys for Defendants-Appellees

STATEMENT REGARDING ORAL ARGUMENT

Appellants respectfully request oral argument. This appeal raises an important question of federal law concerning the requirements for, and applicability of, the exception to state sovereign immunity set forth in *Ex parte Young*, 209 U.S. 123 (1908). The Court's decision in this case will likely have significant consequences for the states within this circuit as well

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INTRODUCTION

privileges secured by the constitution of said State.” . At the time, Mississippi had a robust education guarantee, which it adopted following the Civil War to ensure the uniform provision of public education to all the State’s citizens, including newly freed African Americans. Specifically, Mississippi’s Constitution required its legislature to “establish[] a uniform system of free public schools.” Miss. Const. of 1868, art. VIII § 1.

Mississippi has since amended its Constitution to remove the uniformity requirement and has established a shockingly disuniform public school system that greatly disadvantages African-American students. Miss. Const., art. VIII, § 201. Appellants, the parents of four African-American children in the Mississippi public school system (“Parents”), thus allege that Mississippi is violating the Readmission Act to their children’s detriment. They seek a declaration that § 201 of the current Mississippi Constitution is invalid and that State officials remain bound by the 1868 Constitution’s uniformity guarantee.

The district court, however, never reached the merits of this suit, but instead dismissed it on sovereign-immunity grounds as an impermissible case against the State. That decision is irreconcilable with and its progeny. A suit under must satisfy (as relevant here) three basic conditions: (i) the suit must be brought against state officials acting in their official capacities, not the state itself; (ii) the suit must seek equitable relief, not damages; and (iii) the

requested

STATEMENT OF JURISDICTION

The district court had jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3) and (4). This Court has jurisdiction over Parents' appeal of the district court's final judgment pursuant to 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

Whether the district court erred in holding that Parents' suit—which seeks a declaration that Mississippi law conflicts with federal law—does not satisfy the exception to sovereign immunity.

STATEMENT OF THE CASE

It is a bedrock principle of our legal system that when state law conflicts with federal law, state law must yield. The

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, Congress found that “no legal State government[] or adequate protection for life or property” existed in Mississippi. 14 Stat. 428 (1867). To secure a “loyal and republican State government[],” Congress required Mississippi (among other things) to adopt a new constitution and submit it to

This last proviso was integral to Congress's goals of guaranteeing a republican form of government, creating a lasting peace, and breathing life into the Civil War Amendments (i.e., the 13th, 14th, and 15th Amendments). U.S. Const. art IV, § 4; U.S. Const. amends. XIII, XIV, XV; _____, Cong. Globe, 41st Cong., 2nd Sess. 1253 (Feb. 14, 1870) (Statement of Senator Howard), _____ at 1255 (Statement of Senator Morton). If the former confederate states had republican governments, Congress reasoned, they would never again secede. Congress deemed uniform access to education to be a necessary foundation of that effort. _____, Derek W. Black,

Congress thus considered itself “bound” to ensure “that equality, that course of education, that course of social progress which shall gradually and slowly, but

The education clause was amended again in 1987. In its current form, it provides: “The legislature shall, by general law, provide for the establishment, maintenance and support of free public schools upon such conditions and limitations as the Legislature may prescribe.” Miss. Const., art. VIII, § 201. A side-by-side review of the 1868 constitution and its current counterpart starkly illustrates the difference between the education rights that federal law protected and those that the State Constitution currently protects:

Mississippi Constitution’s Education Clause, 1868 and Present

As the stability of a republican form of government depends mainly upon the intelligence and virtue of the people, it shall be the duty of the Legislature to encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvements, by establishing a uniform system of free public schools, by taxation, or otherwise, for all children between the ages of five and twenty-one years, and shall, as soon as practicable, establish schools of higher grade.

The Legislature shall, by general law, provide for the establishment, maintenance and support of free public schools upon such conditions and limitations as the Legislature may prescribe.

1868	Present
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B. Procedural Background

Appellants are parents of African-American children in Mississippi who attend some of the State’s worst public schools in the State’s worst public school districts. Indigo Williams is the mother of J.E., a student at Raines Elementary

School in Jackson which, at the time the Complaint was filed, was a “D”-grade school as rated by the Mississippi Department of Education (“MDE”). ROA.18, ¶ 3.1. Precious Hughes is the mother of A.H, who is also a student at Raines. ROA.19, ¶ 3.3. Raines Elementary School is part of the Jackson Public School District, which was rated by MDE as an “F.” ROA.18, ¶ 3.1. Dorothy Haymer is the mother of D.S., a student at Webster Street Elementary School which, at the time the Complaint was filed, was also rated a “D.” ROA.19, ¶ 3.2. Sarde Graham is the mother of S.T., who is also a student at Webster. . ¶ 3.4. Webster Street Elementary School is part of Yazoo City Municipal School District, which was also rated an “F.” . ¶ 3.2. Appel

predominantly white. Parents thus allege that the State has injured them and their children by

amendments to the Mississippi Constitution are void , and that Section 1 of Article VIII of the Mississippi Constitution of 1868 is once more the law of this land”—“would result in the issuing of an order that would, and could, operate only against the State of Mississippi.” ROA.280.

The district court also held that —which authorizes federal courts to issue prospective equitable relief in official-capacity suits, state sovereign immunity notwithstanding—was inapplicable for two reasons. First, the court noted that Parents had not “requested any injunctive relief.” ROA.280. Second, the court believed that “the relief requested by Plaintiffs does not seek to dictate future conduct on the part of any of the named Mississippi officials but, instead, only seeks to rectify prior violations of the Mississippi Readmission Act by the State of Mississippi itself.” The court then dismissed Parents’ claims with prejudice. ROA.282.

Parents promptly moved to alter or amend. ROA.285-287, DE35.³ Parents asserted that the district court plainly erred in its application of

. In the alternative, Parents contended that the court’s jurisdictional dismissal should have been without prejudice and requested that the court grant leave to file an amended complaint. In support of that latter request, Parents

³ “DE” refers to district court docket entries that are not part of Parents’ Record Excerpts.

attached a Proposed Amended Complaint which, among other things, removed the request for a declaration that certain inoperative amendments to the Mississippi Constitution were void, and reiterated that Parents seek a prospective declaratory judgment that current § 201 of the Mississippi Constitution violates the Readmission Act and that Appellees remain obligated to provide a uniform system of public schools. ROA.325, ¶ 7.1.

The district court granted in part and denied in part Parents’ motion. As relevant to this appeal, the court restated its conclusion that Parents’ claims were barred by sovereign immunity because the relief they seek would require the court to “declare that the education provision contained in the Mississippi Constitution when it was ratified in 1868 was still the law of this land to which the Mississippi governor (and each of his successors) and other elected officials (and each of their successors) were still bound.” ROA.360. In a footnote, the court rejected Parents’ argument that they properly seek to require Mississippi officials to abide by the 1868 Constitution’s uniformity guarantee, as the Readmission Act requires. . According to the court, “[m]erely requiring the named defendants to abide by the 1868 version of the education clause . . . would not end the alleged violation of the Readmission Act . . . because the amendments to the constitution would still remain in place, and would control the actions of, and the decisions made by, any elected or public official who is not named as a defendant in this case.” .

The court did agree with Parents, however, that it had erred in dismissing their Complaint with prejudice. ROA.361. But it then denied Parents leave to amend on the ground that their Proposed Amended Complaint would also be barred by sovereign immunity. . On January 4, 2019, the Court issued its final judgment, dismissing the case without prejudice. ROA.363.

This appeal followed.

SUMMARY OF THE ARGUMENT

This case calls for nothing more than a straightforward application of settled sovereign immunity principles.

State sovereign immunity, as reflected in the Eleventh Amendment, is the privilege of the states not to be sued without their consent. This immunity is important, but it is also not unlimited. sets forth an exception to sovereign immunity for suits seeking to invalidate state laws that conflict with federal authority. This doctrine is critical because it ensures the supremacy of federal law.

To determine whether a suit satisfies , a “court need only conduct a straightforward inquiry,” , 535 U.S. 635, 645 (2002) (quotations omitted), to see whether the plaintiff’s complaint satisfies three basic conditions. First, the plaintiff must sue state officials in their official capacities, not the state itself. There is no dispute that

ARGUMENT

This Court reviews the district court’s order dismissing Parents’ Complaint on sovereign immunity grounds, , 410 F.3d 236, 240 (5th Cir. 2005), using the same standards applicable to dismissal orders under Rule 12(b)(6), , 960 F.2d 19, 21 (5th Cir. 1992). The Court must accept all well-pleaded factual allegations as true and indulge all reasonable inferences in Parents’ favor. , 911 F.3d 260, 264 (5th Cir. 2018). Under these standards, the judgment below should

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of state sovereignty and

Eleventh Amendment with the effective supremacy of rights and powers secured elsewhere in the Constitution.” (quotations omitted)).

B. To Satisfy *Ex parte Young*, A Plaintiff Must Only Seek Prospective Equitable Relief from State Officials

’s requirements are simple. The first, and most basic, requirement of is that the suit must be brought against state officials acting in their official capacities, not the state itself. ,

, 804 F.3d 389, 394 (5th Cir. 2015);

, 976 F.2d 966, 968 (5th Cir. 1992). There is no dispute that this requirement is satisfied here. Appellees are all state officials responsible for administering Mississippi’s public schools, and they are all named in their official capacities. Appellees have never argued otherwise.

Beyond that, the “court need only conduct a straightforward inquiry into whether the complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective.” , 535 U.S. at 645 (quotations omitted). Relief is prospective where it seeks to have state officials conform their conduct to the law. , 478 U.S. 265, 282 (1986);

, 433 U.S. 267, 289 (1977). In other words, “a complaint must allege that the defendant federal law, not simply that the defendant has done so” in the past. , 804 F.3d at 394. In contrast, relief is retrospective

when it seeks only to remedy a past wrong that would have no future effects.

, , 478 U.S. at 278;

C. Parents Satisfy *Ex parte Young*

Parents plainly satisfy the requirements of . The Readmission Act prohibits Mississippi from amending its Constitution so as to diminish the school rights and privileges protected in the State's 1868 Constitution, including the right to a uniform system of public education. But the Mississippi

The Supreme Court's decision in _____ is instructive. There, the plaintiffs alleged that, beginning in the 1850s, Mississippi imprudently sold and invested the proceeds from the sale of public lands designated for the support of public schools, which resulted in disparate funding for schools in the State's northern 23 counties. 478 U.S. at 271-75. Plaintiffs thus alleged that Mississippi

First, _____ confirms that _____ applies even when the harm resulted from “actions in the past,” so long as the complaint seeks to remedy an ongoing violation. . . Appellees’ argument that Parents seek relief “directed at the State’s past conduct . . . as far back as 1890,” DE24 at 24, is therefore irrelevant, so long as Parents seek prospective relief.

Second, _____ confirms that Parents are indeed seeking proper prospective relief. Parents seek a declaration that _____ § 201 of the Mississippi Constitution violates the Readmission Act and that State officials remain obligated to provide a uniform system of public schools. As in _____, this is a prospective “remedy to eliminate th[e] current disparity” in the State’s public school system. 478 U.S at 282.

Finally, Appellees’ erroneous claim that Parents also seek impermissible relief, _____ at 31 n.6, is irrelevant. Just as the Supreme Court in _____ allowed the equal protection claim to proceed while affirming dismissal of the breach-of-trust claim, this Court also must allow Parents’ prospective claims to move forward.

In short, there is no dispute that Parents satisfied the straightforward inquiry that _____ requires. Parents’ Complaint seeks a textbook example of relief permissible under _____, and their suit should be allowed to proceed.

II. THE DISTRICT COURT ERRED IN HOLDING THAT *EX PARTE YOUNG* DOES NOT APPLY

Despite clear law to the contrary, the district court held that
was inapplicable and thus dismissed Parents' suit on sovereign immunity grounds.

The court offered three justifications for its interpretation of 28 U.S.C. § 1636(a)(1) and § 1636(a)(2). It first

2002) (“The fact that only declaratory, rather than injunctive, relief may be available does not alter [the] conclusion” that “[u]nder the principle of

, private individuals may sue state officials for prospective relief against ongoing violations of federal law.”) (collecting cases);

, 297 F.3d 582, 587 (7th Cir. 2002).⁵

Alternatively, if the Court’s holding rested on its belief that Parents “request a declaration from this Court that the amendments to the Mississippi Constitution are void,” ROA.280 (emphasis added), it was equally incorrect.

Parents sought a declaration that, under the Readmission Act, State officials remain bound by the 1868 Constitution’s uniformity guarantee. ROA.51,

¶ 7.1(a). Moreover, as explained immediately below, even the district court’s incorrect observation is irrelevant, because a declaration that § 201 of the current

3 Mississippi Constitution is invalid is itself a form of ¶

, 535 U.S. at 646 (declaration of future ineffectiveness of state action was prospective). Second, declaratory relief will support an injunction in the event state officials do not comply with their obligations, as this Court recognized in

. 269 F.3d at 500-01 (“declaration that voiding [certain] leases would violate the Contract Clause” is effectively “indistinguishable from a suit to enjoin the [state official] from declining to abide the challenged lease terms” and is therefore permissible under);

ROA.361; ROA.360 (sovereign immunity applied because of “the changes sought to be made to the Mississippi Constitution”). Here, too, the district court erred.

Nowhere did Parents suggest that they were asking the district court to amend the State Constitution, nor would that be the consequence of any federal decree. Parents instead request a declaration that (i) the current version of § 201 of the Mississippi Constitution violates the Readmission Act and (ii) State officials remain obligated to comply with the 1868 Constitution’s uniformity guarantee, which the Readmission Act made binding on State officials.

There is nothing unusual about this request. Federal courts routinely strike down state laws and constitutional provisions that conflict with federal law without issuing orders to amend or abolish state statutory or constitutional provisions.

Sovereign immunity

unenforceable to the extent it is inconsistent with federal law. Indeed, this is the foundation for a wide swath of civil constitutional and preemption litigation.

Consider cases under the First Amendment. That Amendment provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the

[Mississippi] constitution would still remain in place, and would control the actions of . . . any elected or public official who is not named as a defendant in this case.” ROA.360. It is unclear what exactly the district court meant by that statement, but whatever it meant was incorrect.

An order holding that § 201 of the current Mississippi Constitution violates the Readmission Act and requiring State officials to abide by the 1868 Constitution’s uniformity guarantee end the violation because State officials (i) could not enforce a State law (§ 201) that conflicts with the Readmission Act, and, conversely, (ii) would have to comply with the Readmission Act’s uniformity guarantee. at 26-27; , , 269 F.3d at 499-502 (holding permissible under a request for declaratory relief seeking to invalidate state action under state constitutional provision that conflicted with Mississippi officials’ obligations under the Contract Clause). In other words, while § 201 might remain on the books in the sense that a federal court cannot delete the text of state law, the would render it inoperative to the extent it conflicts with the Readmission Act. That is what federal orders invalidating state laws .

Nor is it true as a matter of Mississippi law that subsequent “amendments to the constitution would still remain in place.” ROA.360. “It is a general rule of application that, where an act purporting to amend and re-enact an existing statute

is void, the original statute remains in force.”

, 351 F. Supp. 949, 954

(D. Haw. 1972). This is unquestionably

remand the case so that the State's other arguments may be considered by that court in the first instance.

CONCLUSION

For all the foregoing reasons, the judgment of the district court should be reversed.

Respectfully submitted,

William B. Bardwell
Jody E. Owens, II
Christine Bischoff
Southern Poverty Law Center
111 E. Capitol Street, Suite 280
Jackson, MS 39201
Tel.: (601) 948-8882

s Jason Zarrow
Jason Zarrow
O'Melveny & Myers LLP
1625 Eye Street, N.W.
Washington, DC 20004
Tel.: (202) 462-1000
Fax: (202) 462-1001
E-mail: jzarrow@omelveny.com

Rita Bender
William Bender
Skellenger Bender, P.S.
1301 5th Avenue, Suite 3401
Seattle, WA 98101
Tel.: (206) 623-6501

CERTIFICATE OF SERVICE

I hereby certify that, on March 25, 2019, an electronic copy of the foregoing document was filed with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit and served on counsel for Defendants-Appellees using the appellate CM/ECF system.

s/ Jason Zarrow
Jason Zarrow

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 7,364 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f) and Fifth Circuit Rule 32.2.

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 2016 in 14-point Times New Roman font.

s/ Jason Zarrow
Jason Zarrow