No. 23-191

IN THE
Supreme Court of the United States

NANCY WILLIAMS, ET AL.,

Petitioners,

v.

FITZGERALD WASHINGTON,
ALABAMA SECRETARY OF LABOR

Respondent.

ON WRIT OF CERTIORARI TO THE
ALABAMA SUPREME COURT

BRIEF FOR THE STATES OF TENNESSEE, IDAHO, INDIANA, IOWA, KANSAS, LOUISIANA, MISSISSIPPI, NEBRASKA, NORTH DAKOTA, OHIO, SOUTH CAROLINA, SOUTH DAKOTA, TEXAS, UTAH, AND WEST VIRGINIA, AND THE COMMONWEALTH OF PENNSYLVANIA AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

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INTEREST OF *AMICI CURIAE*

The State of Alabama is not a "mere province[] or political corporation[]." *Alden v. Maine*, 527 U.S. 706, 715 (1999). It is "a sovereign entity," *Seminole Tribe v. Florida*, 517 U.S. 44, 54 (1996), "with the dignity and essential attributes inher[ent]" to sovereignty, *Alden*, 527 U.S. at 714. Our legal traditions recognize "judicial power" as one of those attributes, with each sovereign State having purview to distribute its own judicial power at its discretion.

In the order under review, the Alabama Supreme Court affirmed dismissal because Alabama's judges "have no power" under state law to render a binding judgment on the claims at bar. Pet. App. 12a; *Johnson v. Ala. Sec'y of Labor*, --- So. 3d ---, 2023 WL 4281620, at *4 (Ala. 2023). The Question Presented asks only whether such claims can be brought prior to administrative exhaustion. But in answering that question, this Court will also necessarily decide whether the liability-imposing terms of the Civil Rights Act somehow "tamper with or alter [the] jurisdiction of [Alabama's] courts." *Tenn. Downs, Inc. v. Gibbons*, 15 S.W.3d 843, 846 (Tenn. Ct. App. 1999).

The States of Tennessee, Idaho, Indiana, Iowa, Kansas, Louisiana, Mississippi, Nebraska, North Dakota, Ohio, South Carolina, South Dakota, Texas, Utah, and West Virginia, and the Commonwealth of Pennsylvania all have a self-evident and significant interest in protecting their sovereign prerogative to dictate their own courts' jurisdiction, notwithstanding any act of Congress.

SUMMARY OF THE ARGUMENT

I. The Alabama Supreme Court decision under review interprets an Alabama law through which the Alabama legislature has distributed "the judicial power of [Alabama]" among Alabama's state courts. Ala. Const. art. VI, § 139(a). This Court must take the Alabama Supreme Court's jurisdictional analysis as a "binding" determination of state law. *Wainwright v. Goode*, 464 U.S. 78, 84 (1983); *see Johnson v. Fankell*, 520 U.S. 911, 916 (1997); *Grubb v. Pub. Utils. Comm'n*, 281 U.S. 470, 477 (1930). The question before this Court thus cannot simply be whether the Civil Rights Act "require[s]" the "exhaustion of state administrative remedies." Pet. Br. i. The question must be whether the Civil Rights Act confers judicial power, or compels Alabama's state courts to exercise (unpossessed) judicial power, over the claims at issue.

II. The answer to that question must be no, because the U.S. Constitution neither confers state judicial power nor empowers Congress to do the same. *See* U.S. Const. art. I, § 8, cl. 9; *id.* art. III, § 1; *Houston v. Moore*, 18 U.S. (5 Wheat.) 1, 67 (1820) (Story, J., dissenting). This Court has said so repeatedly for over two centuries, *see, e.g.*, *Houston*, 18 U.S. (5 Wheat.) at 27–28 (majority opinion); *Claflin v. Houseman*, 93 U.S. 130, 136 (1876), and nothing in the text of, or jurisprudence on, the Supremacy Clause could justify a contradictory holding here, *see infra* at 11–16; *cf. Haywood v. Drown*, 556 U.S. 729, 742–77 (2009) (Thomas, J., dissenting) (tracing the text and precedent).

III. Even if Congress could control state courts' jurisdiction, it has not done so in the Civil Rights Act. This Court's precedents construe only the most "unmistakably clear [statutory] language" to impose on the traditional spheres of state sovereignty. *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991) (quoting *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 65 (1989)). The Civil Rights Act's substantive right-of-action provision, 42 U.S.C. § 1983, contains no language regarding jurisdiction, much less clear language dictating the distribution of state judicial power.

ARGUMENT

I. This case concerns the extent of an Alabama court's judicial power under Alabama law.

This Court has granted review to decide "[w]hether exhaustion of state administrative remedies is required to bring claims under [the Civil Rights Act] in state court." Pet. Br. i. But the Court should not lose sight of the reason that question arose: The Alabama courts have definitively determined they lack jurisdiction to render judgment in this case.

This case was brought by a group of Alabamians who "appli[ed] for unemployment benefits" but "experienced delays in the handling of their applications." Pet. App. 2a. Before the State could fully process all their applications, the Applicants went to court seeking an order "compel[ling] the Alabama Secretary of Labor . . . to improve the speed and manner" of the benefits-claim process. *Id.* And to justify such relief, the Applicants asserted claims under the federal Civil

Rights Act, 42 U.S.C. § 1983. *See* JA42; *Ex parte Young*, 209 U.S. 123, 159–60 (1908).

Yet despite asserting federal rights of action within the federal courts' subject-matter jurisdiction, *see Will*, 491 U.S. at 66, the Applicants chose to sue in the Circuit Court of Montgomery County, Alabama, *see* JA14. They need not disclose (or have) a reason for that decision. But they must accept its consequences—including those that flow from the limits Alabama has placed on its courts' judicial power.

Those limits, and those limits alone, proved dispositive below. The Alabama Supreme Court held that "the [Alabama] Legislature ha[d] prohibited [Alabama's] courts from exercising jurisdiction over [the] claims" the Applicants were pursuing. Pet. App. 6a.

The court explained that conclusion clearly and in detail. To begin, the Applicants had no "traditional private right" to unemployment compensation. *Id.* at 7a. Instead, the benefits they sought through an expedited executive process were "'creature[s] of statute' alone," which the Alabama Legislature created and "'completely governed.'" *Id.* (quoting *Quick v. Utotem of Ala., Inc.*, 365 So. 2d 1245, 1247 (Ala. Civ. App. 1979)). Under Alabama law, "when a statutory scheme gives rise to entitlements or other franchises unknown at common law, the ordinary presumption in favor of judicial review for claims related to those benefits does not apply." *Id.* at 8a (citing *Birmingham Elec. Co. v. Ala. Pub. Serv. Comm'n*, 47 So. 2d 449, 452 (Ala. 1950)). Instead, Alabama law effectively flips

that presumption, causing Alabama courts to "construe [their] jurisdictional grants narrowly and jurisdictional limitations broadly." *Id.* (citing *Birmingham Elec.*, 47 So. 2d at 452).

Applying that standard to the Alabama unemployment-benefits statute, the court concluded that the Applicants' claims fell outside of the Alabama courts' jurisdiction, at least until the benefits applications had percolated through the State's Department of Labor. *See id.* at 8a–9a, 12a. This jurisdictional limitation did not apply specifically to federal Civil Rights Act claims; it applied to "*all* 'disputed claims and other due process cases' involving the . . . administration of unemployment benefits." *Id.* at 8a (emphasis added) (quoting Ala. Code § 25-4-92(a)–(b)). And it did not bar such claims outright; it merely channeled them through the Department's claim "examiner[s]" and "appeals tribunals" as a prerequisite to any state court adjudication. *Id.* (quoting Ala. Code §§ 25-4-91, 25-4-92(b)) (citing Ala. Code § 25-4-95). That Alabama courts can hear and decide most federal Civil Rights Act claims therefore did not matter. *See Terrell v. City of Bessemer*, 406 So. 2d 337, 340 (Ala. 1981). Because the claims asserted in this case fell into a universally applicable exhaustion exception to jurisdiction, they could not yet proceed in the Alabama courts under Alabama law.

This Court has no basis to review the Alabama Supreme Court's reading of Alabama law, *see Montana v. Wyoming*, 563 U.S. 368, 377 n.5 (2011) (citing *West v. Am. Tel. & Tel. Co.*, 311 U.S. 223, 236–37 (1940)), regardless of what this Court may wish to say about the

Civil Rights Act. Instead, this Court must take the Alabama Supreme Court's jurisdictional analysis as a "binding" determination. *Wainwright*, 464 U.S. at 84; *see Johnson*, 520 U.S. at 916; *Grubb*, 281 U.S. at 477.

That means the question before this Court cannot merely be whether the Civil Rights Act "require[s]" the "exhaustion of state administrative remedies." Pet. Br. i. Rather, the question must be whether the Civil Rights Act allows—or more precisely, compels—Alabama's state courts to ignore the state-law limits imposed on their judicial power.

II. Congress cannot dictate a state court's jurisdiction to adjudicate a federal claim.

The answer to this question must be no, because the U.S. Constitution neither confers, nor empowers Congress to confer, jurisdiction on any state court.

A "court" is one or more government officers (judges) imbued with at least some portion of a sovereign's "judicial power." *See, e.g.*, U.S. Const. art. III, § 1; *Todd v. United States*, 158 U.S. 278, 284 (1895). And "judicial power" is a very specific thing: It is the power to merge "claims" into "judgments." *See Jones v. Hendrix*, 599 U.S. 465, 487 (2023); *Stern v. Marshall*, 564 U.S. 462, 494 (2011); *Swisher v. Brady*, 438 U.S. 204, 209 (1978). A "claim" is the assertion of a right to some individualized form of government coercion. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 554 (2007); *see also Hollingsworth v. Perry*, 570 U.S. 693, 708 (2013) (citing *Powers v. Ohio*, 499 U.S. 400, 410 (1991)). And a "judgment" is the manifestation of sov-

ereign power that legitimizes and authorizes the coercive relief sought in the claim. *See Hanson v. Denckla*, 357 U.S. 235, 246 & n.12 (1958).

It follows that when courts talk about "jurisdiction," they are referring to the existence and scope of judicial power, outside of which a given court's "decision[s] amount[] to nothing." *Williamson v. Berry*, 49 U.S. 495, 543 (1850). That is, jurisdiction identifies the set of claims that a court can merge into binding judgment. *See Ex parte Reed*, 100 U.S. 13, 23 (1879), *abrogation on other grounds recognized in Brown v. Davenport*, 596 U.S. 118, 129 n.1 (2022). But whereas claims and the rights beneath them can spring from any source of law, *see Missouri ex rel. St. Louis, B. & M. Ry. v. Taylor*, 266 U.S. 200, 208–09 (1924); *Ex parte McNiel*, 80 U.S. 236, 243 (1871), a court's jurisdiction must derive from the sovereign whose judicial power that court exercises, *see Claflin*, 93 U.S. at 136; *Houston*, 18 U.S. (5 Wheat.) at 27–28; *Ex parte Knowles*, 5 Cal. 300, 302 (1855).

Each of the States is its own "sovereign[] . . . participant[] in the governance of the Nation," *Alden*, 527 U.S. at 748, with its own courts wielding its own state judicial power, *see, e.g.*, Tenn. Const. art. VI, § 1; Ariz. Const. art. VI, § 1; Colo. Const. art. VI, § 1; Mich. Const. art. VI, § 1; Or. Const. art. VII, § 1; S.C. Const. art. V, § 1. And just like the national government, *see* 28 U.S.C. chs. 83, 85, each State can and does distribute that power among its courts by "parcel[ing] out the[ir] jurisdiction . . . at its discretion," *Missouri v. Lewis*, 101 U.S. 22, 30 (1879); *see, e.g.*, *Herb v. Pitcairn*, 324 U.S. 117, 120–21 (1945); *In re Fordiani*, 120

A. 338, 339 (Conn. 1923); *see also, e.g.*, Tenn. Code Ann. §§ 16-10-101 to 113 (Circuit and Criminal Courts); *id.* §§ 16-11-101 to 115 (Chancery Courts); *id.* §§ 16-15-501 to 505 (General Sessions Courts); *id.* §§ 16-16-102, 107, 108 (County Courts).

For some state courts, that jurisdiction includes a presumptive power to adjudicate claims derived from the national Constitution and the laws of Congress. *See Poling v. Goins*, 713 S.W.2d 305, 307 (Tenn. 1986). But that does not mean all state courts have the power to adjudicate any federal claim, under the Civil Rights Act or otherwise. *See, e.g.*, *Danford v. State*, 197 A.D.3d 913, 914 (N.Y. App. Div. 2021). And to the extent any state court lacks such adjudicatory power, there is nothing Congress can do about it. *See Haywood*, 556 U.S. at 742, 747 (Thomas, J., dissenting). Indeed, "[i]f Congress could displace a State's allocation of [judicial] power . . . , the judicial branch of the State, whose legitimacy derives from fidelity to the law, would be compelled to assume a role not only foreign to its experience but beyond its competence as defined by the very [state] Constitution from which its existence derives." *Alden*, 527 U.S. at 752.

That is not our system of government.

Instead, when Congress confers jurisdiction, it distributes "[t]he judicial Power of the United States." U.S. Const. art. III, § 1. And state judges cannot exercise that power for a host of fundamental reasons. Their "Courts" are not "ordain[ed]" or "establish[ed]" by Congress. *Id.* They are not "nominate[d]" by the

President "with the Advice and Consent of the Senate." *Id.* art. II, § 2, cl. 2. They may, and often do, lack life tenure or salary protection. *Compare id.* art. III, § 1, *with* Tenn. Const. art VI, § 3. And most fundamentally, *this* Court has deemed it "perfectly clear"—for over two centuries—that Congress has no power to "confer jurisdiction upon" state courts because they do not "exist under the constitution and laws of the United States." *Houston*, 18 U.S. (5 Wheat) at 27. "The Constitution having thus fixed where the judicial power shall be vested, it cannot be vested elsewhere" by congressional act (or judicial say-so). *Knowles*, 5 Cal. at 301.

Put differently, "the right to create courts for the [S]tates does not exist in Congress," *Holmgren v. United States*, 217 U.S. 509, 517 (1910), and the "authority" to "compel a [state court] to convene and sit in judgment on" a federal claim "is no where confided to [Congress] by the constitution" either, *Houston*, 18 U.S. (5 Wheat) at 67 (Story, J., dissenting). Instead, "[t]he [federal government] may organize its *own* tribunals" to adjudicate federal claims. *Id.* (emphasis added). And "[i]f" Congress "do[es] not choose to organize such tribunals, [that] is its own fault." *Id.*

This Court has never wavered from that position, and the courts of each State have taken it to heart. Courts throughout our federal system have recognized that, although Congress can supersede state-court jurisdiction over some federal subject matter, *see Robb v. Connolly*, 111 U.S. 624, 636 (1884), and delineate "substantive" federal rights as "enforceable only in a

federal court," *Taylor*, 266 U.S. at 208, or only as limited by certain procedural rules, *see Felder v. Casey*, 487 U.S. 131, 138 (1988); *Atl. Coast Line R.R. v. Burnette*, 239 U.S. 199, 201 (1915), Congress "can not" do the obverse and "compel [state courts] to entertain jurisdiction" over federal claims, *Morgan v. Dudley*, 57 Ky. (18 B. Mon.) 693, 715 (1857); *see United States v. Jones*, 109 U.S. 513, 520 (1883); *Houston*, 18 U.S. (5 Wheat.) at 27; *McConnell v. Thomson*, 8 N.E.2d 986, 991 (Ind. 1937). Instead, a "federal right is enforceable in a state court" only when the state court's "jurisdiction [a]s prescribed by local laws is appropriate to the occasion and is invoked in conformity with those laws." *Taylor*, 266 U.S. at 208; *see Tafflin v. Levitt*, 493 U.S. 455, 459 (1990); *Douglas v. N.Y., N.H. & H.R. Co.*, 279 U.S. 377, 387–88 (1929).

In other words, the power to merge a federal claim into judgment must be "conferred upon [a] court[] by the authority, state or nation, creating [that court]." *Minneapolis & St. Louis R.R. v. Bombolis*, 241 U.S. 211, 221 (1916); *see Haywood*, 556 U.S. at 749 (Thomas, J., dissenting). And when a state court "exercise[s]" such power, it does so "not upon the ground of a judicial authority conferred . . . by a law of the United States, but" through its "ordinary jurisdiction" under state law, which may include the power to adjudicate "legal rights . . . created . . . by the legislation of congress." *Ward v. Jenkins*, 51 Mass. (10 Metcalf) 583, 589 (1846) (citing Justice Story's treatise and Chancellor Kent's commentaries).

The few cases cabining this principle do nothing to undercut its fundamental premises. Beginning with

Mondou v. New York, New Haven, & Hartford Railroad Co., 223 U.S. 1 (1912), this Court has held that state courts possessing jurisdiction to render judgment on federal claims *must* do so, regardless of how state and federal "policy" may seem to be in conflict, *id.* at 57; *see also Haywood*, 556 U.S. at 740; *McNett v. St. Louis & S.F. Ry.*, 292 U.S. 230, 233–34 (1934) (applying *Mondou*). And under *Testa v. Katt*, 330 U.S. 386 (1947), this Court has held that when a State grants a court jurisdiction over a class of state-law claims, the court is "not free to refuse" to adjudicate federal claims of "th[e] same type," *id.* at 394, even if a purportedly jurisdictional state law directs that result, *see Haywood*, 556 U.S. at 741–42; *see also Howlett ex rel. Howlett v. Rose*, 496 U.S. 356, 375 (1990) (applying the principle); *FERC v. Mississippi*, 456 U.S. 742, 760 (1982) (same). Yet both strains of jurisprudence should be read narrowly for several reasons.

First, neither *Mondou* nor *Testa* has much basis in constitutional text. *See Haywood*, 556 U.S. at 750–55 (Thomas, J., dissenting). Both decisions ostensibly flow from the Supremacy Clause, *see Howlett*, 496 U.S. at 373, which says "the Judges in every State shall be bound []by" federal law, "any Thing in the Constitution or Laws of any State to the Contrary notwithstanding," U.S. Const. art. VI, cl.2.

But to say state "Judges" must adjudicate federal claims under that language just begs the question. A "Judge" is a person exercising the judicial power of some specific sovereign. *See supra* at 6–7. A state "Judge" exercises judicial power conferred and delimited by state law. *See supra* at 7–8. This Court does

not exposit state law, *see Montana*, 563 U.S. at 377 n.5 (citing *West*, 311 U.S. at 236–37); *Wainwright*, 464 U.S. at 84; *Johnson*, 520 U.S. at 916; *Grubb*, 281 U.S. at 477, so this Court cannot deem a person to be a state "Judge . . . bound" to adjudicate federal claims, U.S. Const. art. VI, cl. 2, if under state law that person's "decision" on those claims would "amount[] to nothing," *Williamson*, 49 U.S. at 543.

Second, neither the language of the Supremacy Clause nor the analysis in *Mondou* or *Testa* establishes a federal power to confer jurisdiction on state courts. *See Johnson*, 520 U.S. at 922 & n.13. Unlike other portions of the Constitution, the Supremacy Clause does not speak of "Power[s]," U.S. Const. art. I, § 8, cl. 1, or "right[s]," *id.* amend VII. It pronounces "a rule of decision[for] Courts," telling them to disregard "state laws that conflict with federal laws." *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 324 (2015). Yet no case in the *Mondou-Testa* line ever explains how a Congress lacking the power to "confer jurisdiction upon [state] Courts" could pass a law that conflicts with any state law restricting the jurisdiction of state courts. *Houston*, 18 U.S. (5 Wheat.) at 27.

At the same time, these cases purport to carry forward and apply the basic precepts laid down in earlier precedent. In particular, the *Mondou-Testa* line of jurisprudence presupposes that the decision under review came from a state court possessing "jurisdiction adequate and appropriate under established local law to adjudicate" the federal claims at issue. *Testa*, 330 U.S. at 394; *see Haywood*, 556 U.S. at 739–40 & n.6; *Howlett*, 496 U.S. at 378–79; *FERC*, 456 U.S. at 760;

Mondou, 223 U.S. at 55–56. And while the Supremacy Clause may permit (and even require) this Court to snuff out substantive and procedural rules "hiding behind a jurisdictional label," *Haywood*, 556 U.S. at 771 (Thomas, J., dissenting); *see also id.* (discussing *Howlett*, 496 U.S. at 359, 381), the precedent never justifies a review of state law going any deeper than that. If a state supreme court construes a state statute as jurisdictional—not just in name, but in function—that "choice" must be respected as "one [this Court] ha[s no] authority to" contradict. *Johnson*, 520 U.S. at 918.

It is thus anyone's guess how this Court could deem a state-law jurisdictional grant "adequate and appropriate" for adjudicating a federal claim without contradicting a state court on matters of "local law." *Testa*, 330 U.S. at 394. But of course, "[n]either this Court nor any other federal tribunal has any authority to place a construction on a state statute different from the one rendered by the highest court of the State." *Johnson*, 520 U.S. at 916. In fact, to do so would exceed "the limitations of [this Court's] own jurisdiction," *Herb*, 324 U.S. at 125; *see* U.S. Const. art. III, § 2, cl. 1; *Missouri ex rel. S. Ry. v. Mayfield*, 340 U.S. 1, 4 (1950); *Douglas*, 279 U.S. at 387, rendering this Court's opinion on the issue highly suspect.

These cases also fail to explain, or even attempt to explain, their proffered solution to the preemption defect. That is, they never explain why this Court must prohibit the application of a state-law jurisdictional limit to federal claims, rather than negate the jurisdictional grant over "th[e] same type" of state-law

claims. *Testa*, 330 U.S. at 394. Answering that question would seem to require a "severability" analysis, *Barr v. Am. Ass'n of Pol. Consultants, Inc.*, 140 S. Ct. 2335, 2349 (2020), which would itself have to be grounded in state law, *see City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 772 (1988) (citing *Mayflower Farms, Inc. v. Ten Eyck*, 297 U.S. 266, 274 (1936)). And "if [a dismissal would still] be rendered by the state court after" conducting that state-law severability analysis, this Court's "review" of the Supremacy Clause question "could amount to nothing more than an advisory opinion." *Herb*, 324 U.S. at 126.

Yet even putting aside those lurking issues, one component of the *Mondou-Testa* cases remains clear: They merely require the exercise of jurisdiction (supposedly) already "conferred upon [a] court[] by the . . . [S]tate . . . [that] creat[ed it]." *Bombolis*, 241 U.S. at 221. They do not say the Supremacy Clause can grant state courts jurisdiction those courts would otherwise lack—nor could these cases have any textual basis for saying that.

Moreover, whatever *Mondou*, *Testa*, and their progeny say or mean, they do not apply here. The Alabama courts did not "decline cognizance" of this case because the Civil Rights Act "is not in harmony with [Alabama public] policy," *Mondou*, 223 U.S. at 55–57, or because Alabama deems these claims "frivolous and vexatious," *Haywood*, 556 U.S. at 742. Nor has anyone "conceded that this same type of claim arising under [Alabama] law would be enforced by [Alabama] courts" without exhaustion. *Testa*, 330 U.S. at 394. Put

simply, Alabama's administrative exhaustion requirement "does not target civil rights claims against the State." *Johnson*, 520 U.S. at 918 n.9; *see also id.* (deeming a similar rule "neutral").

On the contrary, the Alabama Supreme Court held that the Montgomery County Circuit Court lacked original subject-matter jurisdiction over "*all* 'disputed claims and other due process cases' involving the . . . administration of unemployment benefits," at least until administrative review was exhausted. Pet. App. 8a (emphasis added) (quoting Ala. Code § 25-4-92(a)–(b)) (citing Ala. Code §§ 25-4-91, 25-4-95). The Circuit Court's judicial power, "as prescribed by local laws," was thus *not* "appropriate to the occasion." *Mondou*, 233 U.S. at 57. And that being the law of Alabama, this Court has no "judicial Power" to override the Alabama Supreme Court on this issue. U.S. Const. art. III, § 2, cl. 1; *see Montana*, 563 U.S. at 377 n.5 (citing *West*, 311 U.S. at 236–37).

Of course, none of this in any way threatens the Applicants' ability to have their federal rights protected through binding judgment, even before their unemployment claims are fully processed. At most, it simply requires Congress "[t]o constitute [federal] Tribunals" for adjudicating the federal claims at issue. U.S. Const. art I, § 8, cl. 9; *see Houston*, 18 U.S. (5 Wheat) at 67 (Story, J., dissenting). And to no one's surprise, Congress has done exactly that, *see* 28 U.S.C. §§ 132(a), 1331, both in Alabama and in every other State, *see id.* §§ 81–131. This Court should thus re-

frain from any ruling that would reach beyond its legitimate purview and attempt to undermine the States' power to control their own courts.

III. Congress has not provided state courts jurisdiction to adjudicate the claims in this case.

Even setting aside the building blocks of "split[] . . . sovereignty" discussed above, *Alden*, 527 U.S. at 751 (quoting *Saenz v. Roe*, 526 U.S. 489, 504 n.17 (1999)), this Court still should not read the Civil Rights Act to compel the Alabama courts to adjudicate the Applicants' claims.

This Court has long presumed that Congress does not legislate with intent to upset "the constitutional balance [of power] between" the States and the federal government. *Bond v. United States* (*Bond II*), 572 U.S. 844, 862 (2014) (quoting *Bond v. United States* (*Bond I*), 564 U.S. 211, 222 (2011)). Precedent thus construes only the most "unmistakably clear [statutory] language" to impose on the traditional spheres of state sovereignty. *Gregory*, 501 U.S. at 460 (quoting *Will*, 491 U.S. at 65); *see U.S. Forest Serv. v. Cowpasture River Pres. Ass'n*, 590 U.S. 604, 621–22 (2020).

That precept applies across the full range of legislative subject matter. It applies to statutes that implicate property rights and natural resources. *See Cowpasture*, 590 U.S. at 621–22; *Solid Waste Agency of N. Cook Cnty. v. U.S. Army Corps of Eng'rs*, 531 U.S. 159, 174 (2001); *BFP v. Resol. Tr. Corp.*, 511 U.S. 531, 544 (1994). It applies to statutes governing transportation and labor relations. *See United Auto., Aircraft & Agric. Implement Workers of Am. v. Wisc. Emp. Rels.*

Bd., 351 U.S. 266, 274–75 (1956); *Apex Hosiery Co. v. Leader*, 310 U.S. 469, 513 (1940); *Palmer v. Massachusetts*, 308 U.S. 79, 84 (1939). It applies to statutes imposing criminal punishment. *Bond II*, 572 U.S. at 857–60; *Jones v. United States*, 529 U.S. 848, 858 (2000); *United States v. Bass*, 404 U.S. 336, 349–50 (1971). It applies to statutes empowering federal agencies. *See Ala. Ass'n of Realtors v. HHS*, 594 U.S. 758, 764 (2021) (per curiam); *United States v. Five Gambling Devices, Labeled in Part "Mills," & Bearing Serial Nos. 593-221*, 346 U.S. 441, 450 (1953); *FTC v. Bunte Bros.*, 312 U.S. 349, 351 (1941). And most pertinent for present purposes, it applies to the Civil Rights Act. *See Will*, 491 U.S. at 65.

Of course, few attributes of state sovereignty have a more robust pedigree than the prerogative to distribute state judicial power. *See supra* at 6–9. And were Congress to intend a displacement of that prerogative, the Civil Rights Act's substantive imposition of "liab[ility]," 42 U.S.C. § 1983, would be an odd and unnatural mechanism for "[s]uch [a] drastic inroad[] upon [state] authority," *Miles v. Ill. Cent. R.R.*, 315 U.S. 698, 713 (1942) (Frankfurter, J., dissenting).

That provision does not speak of jurisdiction *or* administrative exhaustion—much less in "unmistakably clear" terms. *Gregory*, 501 U.S. at 460 (quoting *Will*, 491 U.S. at 65). "The words are, 'shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress.'" *Giles v. Harris*, 189 U.S. 475, 486 (1903) (quoting Rev. Stat. § 1979).

"They allow suit . . . only when that is the proper proceeding for redress, and they refer to existing standards to determine what is a proper proceeding." *Id.*

To read this language as conferring judicial power, and not just granting a private right of action, would "blur[] accepted usages . . . in the English language in a way which would be quite inconsistent with the words Congress chose in [the Civil Rights Act]." *Rizzo v. Goode*, 423 U.S. 362, 376 (1976). And "[w]hen the frame of reference moves from a unitary court system . . . to a system of federal courts . . . subsisting side by side with [fifty] state judicial . . . branches, appropriate consideration must be given to principles of federalism in determining the availability and scope of" legal process. *Id.* It follows that "[b]y the enactment of" this substantive liability provision, "Congress did not intend nor attempt to tamper with or alter jurisdiction of state courts," whether "federalism would have prevented" that or not. *Tenn. Downs*, 15 S.W.3d at 846; *cf. Mayfield*, 340 U.S. at 5 (reaching a similar holding regarding the Federal Employers' Liability Act).

Nor does this language "clear[ly]" preempt state jurisdictional rules requiring administrative exhaustion. *Gregory*, 501 U.S. at 460 (quoting *Will*, 491 U.S. at 65). Even in "stat[ing] categorically that exhaustion is not a prerequisite to an action under" the Civil Rights Act, this Court has never based its interpretation in any clear text. *Patsy v. Bd. of Regents*, 457 U.S. 496, 500–01 (1982). Instead, it has considered the issue of exhaustion under the rubric of "defer[ring] the exercise of jurisdiction" actually possessed. *Id.* at 502.

And it has rejected such "prudential" abstention as inconsistent with the statute's legislative history. *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 125 (2014); *see Patsy*, 457 U.S. at 502. Yet whatever "the tenor of [congressional] debates" may have been, *Patsy*, 457 U.S. at 502, or what "recurring themes" they may have touched on, *id.* at 503, they yielded a statutory text that says nothing about exhaustion, not a word about jurisdiction, and certainly no clear statement attempting to preempt state jurisdictional laws.

* * *

For the Court to reverse, it must ignore several core tenants of federalism. It must invent legislative powers neither possessed nor wielded by Congress, and it must contradict some our Constitution's most celebrated expositors. *See Ward*, 51 Mass. (10 Metcalf) at 589 (citing Justice Story's treatise and Chancellor Kent's commentaries).

And for what? If the Applicants here have colorable claims under the Civil Rights Act, they can take those claims to their local federal courthouse. They do not need a ruling from this Court telling their State how to distribute its own sovereign judicial power.

CONCLUSION

The judgment of the Alabama Supreme Court should be affirmed.

Respectfully submitted,

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