

No. 26-297

In the Supreme Court of the United States

PATRICK MORRISEY, ET AL.,
Petitioners,
v.

JONATHAN R., MINOR,
BY NEXT FRIEND SARAH DIXON, ET AL.,
Respondents.

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

**MOTION FOR LEAVE TO FILE BRIEF AND BRIEF
OF AMICUS CURIAE AMERICAN CENTER FOR
LAW AND JUSTICE SUPPORTING PETITIONERS**

JAY ALAN SEKULOW
Counsel of Record
JORDAN A. SEKULOW
STUART J. ROTH
ANDREW J. EKONOMOU
BENJAMIN P. SISNEY
LINDSEY BACHMAN
NATHAN J. MOELKER
AMERICAN CENTER
FOR LAW & JUSTICE



Counsel for Amicus Curiae

**MOTION FOR WAIVER OF RULE 37.2 NOTICE
REQUIREMENT AND FOR LEAVE TO FILE
BRIEF OF AMICUS CURIAE**

The American Center for Law and Justice (“ACLJ”) respectfully moves under Rule 21.2(b) for waiver of Rule 37.2’s ten-day notice requirement and for leave to file the accompanying Brief of Amicus Curiae in Support of Petitioners.

The petition was placed on the Court’s docket on September 8, 2026, making October 8, 2026, the deadline for an amicus brief in support of Petitioners under Rule 37.2. Rule 37.2 requires an amicus to ensure that counsel of record for all parties receive notice of its intent to file at least ten days before the brief is due. The ACLJ provided notice to counsel of record for all parties on September 30, 2026. Because that notice was not provided at least ten days before the filing deadline, the ACLJ respectfully requests that the Court waive the ten-day notice requirement.

No party will be prejudiced by the requested waiver. Respondents waived their right to file a response on September 29, 2026, and, after receiving notice of the ACLJ’s intent to file the accompanying brief, advised that they take no position on this motion. Petitioners have advised that they consent to this motion.

The accompanying brief will assist the Court by explaining why Article III does not authorize federal courts to assume continuing managerial control over state institutions and why the Fourth Circuit’s contrary rule threatens federalism, the separation of

powers, and the States' authority to administer their own child-welfare systems.

The ACLJ is an organization dedicated to the defense of constitutional liberties secured by law, including federalism and the constitutional separation of powers. Its attorneys have frequently appeared before this Court both as counsel for parties and as amici curiae, and the ACLJ has a substantial interest in preserving the constitutional boundaries of federal judicial power and the authority reserved to the States over their own institutions.

For these reasons, the ACLJ respectfully requests that the Court waive Rule 37.2's ten-day notice requirement and grant leave to file the accompanying Brief of Amicus Curiae in Support of Petitioners.

Respectfully submitted,

JAY ALAN SEKULOW

Counsel of Record

JORDAN A. SEKULOW

STUART J. ROTH

ANDREW J. EKONOMOU

BENJAMIN P. SISNEY

LINDSEY BACHMAN

NATHAN J. MOELKER

AMERICAN CENTER

FOR LAW & JUSTICE



Counsel for Amicus Curiae

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INTEREST OF AMICUS¹

The American Center for Law and Justice (“ACLJ”) is an organization dedicated to the defense of constitutional liberties secured by law, including federalism and constitutional separation of powers. ACLJ attorneys have appeared often before this Court as counsel for parties, *e.g.*, *Trump v. Anderson*, 601 U.S. 100 (2024); *McConnell v. FEC*, 540 U.S. 93 (2003); *Lamb’s Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993); or as amici, *e.g.*, *Trump v. CASA, Inc.*, 606 U.S. 831 (2025); *McDonnell v. United States*, 579 U.S. 550 (2016). The ACLJ has a strong interest in preserving the constitutional boundaries of federal judicial power and the authority reserved to the States over their own institutions.

SUMMARY OF ARGUMENT

This case presents a fundamental question about the limits of federal judicial power—and the teaching of history in enforcing those limits. Respondents do not seek an injunction against a discrete unlawful act. They seek a decree restructuring West Virginia’s foster-care system from top to bottom, enforced through ongoing supervision by a federal court and a court-appointed monitor.

¹ Notice of amicus’s intent to file was provided fewer than 10 days before the brief’s due date prescribed by Rule 37.2. This brief is therefore preceded by a motion for leave to file. Pursuant to Rule 37.6, amicus states that no counsel for any party authored this brief in whole or in part and that no person or entity aside from amicus, its members, or its counsel made any monetary contribution to the preparation or submission of this brief.

The Fourth Circuit held that federal courts not only may impose such a regime, but “can and must” do so when systemic violations are alleged. *Jonathan R. v. Morrissey*, 178 F.4th 139, 155 (4th Cir. 2026) (“*Jonathan R. II*”). Its principal support was the modern history of structural injunctions. But *Trump v. CASA, Inc.*, 606 U.S. 831 (2025), makes clear that federal equitable power is not measured by how often lower courts have asserted it in recent decades. It is measured in light of history and tradition and against the remedies historically available in equity when the Judiciary Act was enacted. Judged by that controlling historical standard, the decree respondents seek lies beyond the judicial power.

I. History first identifies the authority at stake. The care, custody, and protection of dependent children were undertaken by the colonies and then the States long before ratification. Colonial poor laws, apprenticeship systems, houses of refuge, adoption statutes, orphan asylums, state boards of charities, juvenile courts, and ultimately modern foster-care agencies all developed through state law and state institutions. The federal government played no comparable regulatory role. That unbroken practice confirms what the constitutional text and this Court’s cases say: domestic relations—including the relationship between parent and child—belong preeminently to the States. Federal law unquestionably constrains state officials, and federal courts may remedy proven violations of federal rights. But history supplies the baseline from which any federal intervention must proceed. A remedy that displaces the State’s traditional control over child

welfare and transfers the design and administration of its system to a federal judge demands the most exacting justification and a clear basis in federal equitable authority.

II. *CASA* supplies the governing method as well as the governing rule. Because the Judiciary Act authorized suits “in equity,” federal courts possess only those remedial powers traditionally exercised by the English Court of Chancery at the founding. A modern remedy need not be an exact historical duplicate, but it must have a sufficiently analogous founding-era antecedent. Equity operates within that inherited tradition; it does not permit judges to create new forms of governmental control in response to modern problems. If no founding-era analogue exists, the remedy is unavailable. Modern appeals to equity’s flexibility, remedial necessity, or twentieth-century lower-court practice cannot create authority the Judiciary Act did not confer.

That history resolves this case. Founding-era equity acted on parties and their legal relations; it did not take charge of public institutions. Courts refused decrees requiring perpetual supervision of continuing duties, and they would not assume taxing, legislative, or administrative functions even when ordinary remedies proved inadequate. For more than a century and a half after 1789, federal courts did not purport to manage state agencies through continuing structural decrees. The rise of institutional-reform litigation therefore marks a break from historical practice, not evidence of it. And *CASA* forecloses the Fourth Circuit’s premise that repeated modern assertion of a remedial power can establish its

validity. Universal injunctions, too, had become familiar and frequently used. Yet because they lacked a founding-era analogue, this Court held that they exceeded federal equitable authority.

Respondents' forty-seven demands confirm how far their requested decree departs from that tradition. They would regulate virtually every component of West Virginia's system: assessments, case plans, services, placements, provider networks, caseloads, hiring, qualifications, training, foster-home recruitment, matching, permanency, and outcome targets. A comprehensive statewide reform plan would be subject to outside approval, and a monitor would review records, measure performance, receive reports, and police compliance. Every staffing shortage, missed deadline, disputed placement, service gap, or unmet target could become a matter for federal adjudication. That is not an injunction against unlawful conduct; it is continuing administration of state government by judicial decree—the very kind of novel remedy for which *CASA* requires historical authorization.

No such authorization exists. Respondents insist that only “systematic, structural change” can redress their injuries. But *CASA* teaches that complete relief is a ceiling, not a guarantee, and Article III does not empower a court to award a remedy that federal equity does not authorize. History establishes both propositions necessary to the decision here: child welfare has always been a responsibility of the States, and managerial decrees have never been part of the traditional equitable power of federal courts. Because respondents' theory depends on precisely that

historically unknown remedy, their alleged injuries are not redressable.

This Court should grant certiorari to resolve whether federal courts may impose managerial decrees with no basis in traditional equity and to enforce the limits *CASA* places on federal judicial power.

ARGUMENT

I. CHILD WELFARE IS A POWER RESERVED BY THE CONSTITUTION TO THE STATES.

Our constitutional system reserves authority to the States. The Constitution allocates power between two sovereigns; it does not grant the States their authority but reserves it. Article I enumerates congressional powers; Article III confers judicial power over specified cases and controversies; and most importantly for present purposes, the Tenth Amendment reserves undelegated powers “to the States respectively, or to the people.” U.S. CONST. AMEND. X. James Madison emphasized the limited role of the federal government, describing its delegated powers as “few and defined” and the States’ remaining powers as “numerous and indefinite.” THE FEDERALIST NO. 45 (J. Madison). Alexander Hamilton likewise assured the ratifying public that “[t]he regulation of the mere domestic police of a State” held “slender allurements to ambition” for the national government, and that matters “proper to be provided for by local legislation, can never be desirable cares of a general jurisdiction.” THE FEDERALIST NO. 17 (A. Hamilton). “In the compound republic of America, the power surrendered by the people is first divided

between two distinct governments Hence a double security arises to the rights of the people.” THE FEDERALIST NO. 51 (J. Madison).

A. The Constitutional Structure Preserves State Governing Authority.

As this Court has more recently emphasized, the States “possess sovereignty concurrent with that of the Federal Government, subject only to limitations imposed by the Supremacy Clause.” *Tafflin v. Levitt*, 493 U.S. 455, 458 (1990). In *Bond v. United States*, the Court explained that federalism protects individual liberty as well as the integrity and residual sovereignty of States. “The allocation of powers in our federal system preserves the integrity, dignity, and residual sovereignty of the States. The federal balance is, in part, an end in itself, to ensure that States function as political entities in their own right.” 564 U.S. 211, 221 (2011). The States are not creatures of federal law but independent sovereigns that “entered the federal system with their sovereignty intact.” *Blatchford v. Native Vill. of Noatak*, 501 U.S. 775, 779 (1991); see *Alden v. Maine*, 527 U.S. 706, 713 (1999).

Federalism preserves accountability. When federal actors direct how a State administers its own programs, citizens can no longer hold their own officials responsible for those choices. Cf. *New York v. United States*, 505 U.S. 144, 168–69 (1992). Decentralized government is also “more sensitive to the diverse needs of a heterogeneous society,” “increases opportunity for citizen involvement in democratic processes,” and “allows for more

innovation and experimentation in government.” *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991).

Few areas better illustrate the importance of federalism than child welfare, where States have long developed their own approaches to prevention, placement, and permanency. See Douglas R. Rendleman, *Parens Patriae: From Chancery to the Juvenile Court*, 23 S.C. L. REV. 205, 212 (1971) (describing how later States “copied their legislation from the experiences of the earlier states”). To be sure, the States’ reserved authority over child welfare does not negate the importance of the federal constitutional and statutory restrictions on state power, from the Fourteenth Amendment to Title II of the Americans with Disabilities Act. Those provisions were designed to limit state power, and courts are authorized to grant relief against state officials who violate them. See *Fitzpatrick v. Bitzer*, 427 U.S. 445, 456 (1976); *Ex parte Young*, 209 U.S. 123 (1908).

But when a federal court faces a potential violation, federalism limits the relief that the court may impose. Where state officials’ authority is challenged, courts must remain mindful of the “special delicacy of the adjustment” between federal equitable power and state administration, and “appropriate consideration must be given to principles of federalism in determining the availability and scope of equitable relief.” *Rizzo v. Goode*, 423 U.S. 362, 378–79 (1976) (first quoting *Stefanelli v. Minard*, 342 U.S. 117, 120 (1951); then citing *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 928 (1975)); see *Milliken v. Bradley*, 433 U.S. 267, 280–81 (1977).

The federalism principle is therefore not that state officials are immune from federal judicial review, but that the remedy must respect the constitutional allocation of governing authority. A federal court may enjoin identified officials from committing a proven violation of federal law. But it may not use that remedial authority to take over the continuing design and administration of a state program. That distinction between a limited injunction compelling lawful conduct and a managerial decree displacing state governance is decisive here.

**B. Child Welfare and Domestic Relations
Are Reserved to the States.**

The power to care for dependent and neglected children was exercised by the colonies, and then the States, long before ratification, and it historically remained a matter of state and local governance. The historical record bears this out. From the earliest periods of American history, the care of dependent children was administered under state and local law. States and private charities built the institutions that became modern child welfare. These included houses of refuge (beginning in New York in 1824 (Laws of N.Y., 47th Sess., ch. CXXVI (1824))), orphan asylums, Massachusetts's 1851 adoption statute, the placing-out system of New York's Children's Aid Society, and state boards of charities. *See* 1824 N.Y. Laws ch. 126; Rendleman, *supra*, at 216; Act of May 24, 1851, ch. 324, 1851 Mass. Acts 815; Rendleman, *supra*, at 229 & nn.124–25, 242. State courts sustained this system under the State's *parens patriae* authority. *See Ex parte Crouse*, 4 Whart. 9, 11 (Pa. 1839) (upholding commitment of a child to the Philadelphia House of

Refuge). The national government played no comparable regulatory role. Even historians supporting broad government oversight of child welfare acknowledge that it has been “long treated as a state prerogative.” Br. of Historians of Child Welfare as Amici Curiae in Support of Respondents at 2, *Fulton v. City of Philadelphia*, 593 U.S. 522 (2021) (No. 19-123).

Accordingly, “[t]he whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States, and not to the laws of the United States.” *In re Burrus*, 136 U.S. 586, 593–94 (1890). The Court has repeated that principle across more than a century, describing domestic relations as “an area that has long been regarded as a virtually exclusive province of the States.” *Sosna v. Iowa*, 419 U.S. 393, 404 (1975); *United States v. Windsor*, 570 U.S. 744, 766–67 (2013); *see also Mansell v. Mansell*, 490 U.S. 581, 587 (1989) (“[D]omestic relations are preeminently matters of state law”). For that reason, the Court has invoked “family law (including marriage, divorce, and child custody)” as a paradigm of what the Commerce Clause, and federal authority more generally, does not reach. *United States v. Lopez*, 514 U.S. 549, 564 (1995); *see United States v. Morrison*, 529 U.S. 598, 615–16 (2000).

That history matters because it identifies the governmental authority a federal remedial decree would displace. The longstanding assignment of family relations and child welfare to the States does not insulate state officials from federal law. It does, however, require federal courts to distinguish

between enjoining a violation and assuming responsibility for the underlying state function. The Court's consistent reluctance to intervene in family matters reflects that distinction and reinforces the need for particular caution before placing a State's child-welfare system under continuing federal supervision.

Since the mid-nineteenth century, federal courts have left family matters to the States. In *Barber v. Barber*, the Court declared that it “disclaim[ed] altogether any jurisdiction in the courts of the United States upon the subject of divorce, or for the allowance of alimony.” 62 U.S. (21 How.) 582, 584 (1859). The Court allowed only the enforcement of an alimony decree that a state court had already entered. *Id.* In *Burrus* itself, the Court held that a federal court lacked habeas jurisdiction to determine a child's custody because the subject belonged to the States. 136 U.S. at 593–97. *See also Ohio ex rel. Popovici v. Agler*, 280 U.S. 379, 383–84 (1930).

The Court has accordingly described domestic relations as “one of the principal areas in which this Court has customarily declined to intervene.” *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 12 (2004). That restraint extends to state child-welfare proceedings. In refusing to permit federal habeas review of a state judgment terminating parental rights, this Court explained that “federal courts consistently have shown special solicitude for state interests ‘in the field of family and family-property arrangements.’” *Lehman v. Lycoming Cnty. Children's Servs. Agency*, 458 U.S. 502, 511–12 (1982) (quoting *United States v. Yazell*, 382 U.S. 341, 352

(1966)). The Court has also declined to interfere with a State’s pending child-abuse proceedings because “[f]amily relations are a traditional area of state concern.” *Moore v. Sims*, 442 U.S. 415, 435 (1979). These decisions reflect “Our Federalism,” which requires “a proper respect for state functions.” *Younger v. Harris*, 401 U.S. 37, 44 (1971).

This history counsels particular caution when federal courts are asked to intervene in state child-welfare systems. Federal courts unquestionably may remedy violations of federal law, but they must do so with due regard for the States’ traditional authority over family relations and child welfare, the institutional proximity of state officials and courts to the relevant situations, and the limits of the federal judicial role. Those concerns are at their height where the requested relief would not resolve a discrete legal injury, but instead place the design and day-to-day administration of a State’s foster-care system under continuing federal supervision. Respondents insist that their alleged injuries “can only be remedied through systematic, structural change.” *Jonathan R. v. Justice*, 41 F.4th 316, 323 (4th Cir. 2022) (“*Jonathan R. I*”); see Pet. 22. The question, then, is not whether federal law constrains state child-welfare officials, but whether federal equity permits the Judiciary to assume ongoing control over this core state function. As the next section explains, the historical limits on federal equitable power supply the answer: no.

**II. A DECREE THAT MAKES A FEDERAL COURT THE
MANAGER OF A STATE’S FOSTER-CARE SYSTEM IS
NOT RELIEF THAT EQUITY PERMITS.**

**A. CASA Requires a Founding-Era
Analogue for the Remedy Sought.**

Trump v. CASA, Inc., 606 U.S. 831 (2025), supplies the governing framework for deciding whether the extraordinary remedy sought here lies within federal equitable power. The critical distinction is between adjudication and management. A court adjudicates when it identifies unlawful conduct and orders the responsible officials to cease or cure it; it becomes a manager when it assumes continuing responsibility for designing policy, allocating resources, supervising personnel, measuring performance, and revising the institution’s operations over time.

The inquiry therefore does not begin with whether comprehensive federal management of a State’s foster-care system might seem useful, necessary, or familiar in modern institutional litigation. It begins with history: because the Judiciary Act authorizes only those equitable remedies “traditionally accorded by courts of equity,” a federal court must identify a sufficiently analogous form of relief available in the English Court of Chancery at the founding. *Id.* at 841 (quoting *Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 319 (1999)). Equity remains flexible, but only “within the broad boundaries of traditional equitable relief”; a modern remedy need not be an exact historical duplicate, but it must have

a founding-era antecedent. *Id.* at 846 (quoting *Grupo Mexicano*, 527 U.S. at 322). And the absence of such an antecedent is dispositive—repetition by modern courts, perceived necessity, and policy arguments cannot create remedial authority the Judiciary Act never conferred. *See id.* at 845–47, 854–56. Without a “founding-era” “historical pedigree,” a remedy “falls outside the bounds of a federal court’s equitable authority.” *Id.* at 847.

Applied here, *CASA* requires the Court to ask whether founding-era equity authorized a decree that makes a federal judge and monitor the continuing managers of a state institution—controlling its structure, staffing, resource allocation, and day-to-day operation. The answer is no.

“The equitable powers of federal courts are limited by historical practice.” *Whole Woman’s Health v. Jackson*, 595 U.S. 30, 44 (2021). This Court has held that “the equity jurisdiction of the federal courts is the jurisdiction in equity exercised by the High Court of Chancery in England at the time of the adoption of the Constitution and the enactment of the original Judiciary Act, 1789.” *Grupo Mexicano*, 527 U.S. at 318 (quoting A. DOBIE, HANDBOOK OF FEDERAL JURISDICTION AND PROCEDURE 660 (1928)). That inheritance brings “a background of several hundred years of history” from which American federal courts can draw guidance. *Hecht Co. v. Bowles*, 321 U.S. 321, 329 (1944).

Relief must therefore fall “within the traditional scope of equity as historically evolved in the English Court of Chancery.” *Guaranty Tr. Co. v. York*, 326 U.S.

99, 105 (1945). And “courts of equity must be governed by rules and precedents no less than the courts of law.” *Lonchar v. Thomas*, 517 U.S. 314, 323 (1996) (quoting *Missouri v. Jenkins*, 515 U.S. 70, 127 (1995) (Thomas, J., concurring)).

Under *CASA*, the inquiry asks whether a remedy is “sufficiently ‘analogous’” to the relief the High Court of Chancery issued at the founding. 606 U.S. at 841–42. The Court explained that equity’s “flexibility is confined within the broad boundaries of traditional equitable relief,” and that “[a] modern device need not have an exact historical match, but under *Grupo Mexicano*, it must have a founding-era antecedent.” *Id.* at 846–47. The Court also rejected the dissent’s reliance on *Ex parte Young*, explaining that *Young* does not license “novel remedies that have no background in traditional equitable practice.” *Id.* at 846 n.9. As this Court has long warned, “[t]he remedial powers of an equity court must be adequate to the task, but they are not unlimited.” *Sixty-Seventh Minn. State Senate v. Beens*, 406 U.S. 187, 199 (1972) (quoting *Whitcomb v. Chavis*, 403 U.S. 124, 161 (1971)). A decree that installs a monitor and supervises every aspect of a state agency’s operation is not a task to which equity’s remedial powers extend.

The historical limits of equity make that conclusion concrete here. Traditional equity resolved the rights of the parties by directing defendants to perform, or refrain from, particular acts; it did not place courts in continuing control of complex institutions. Respondents seek the opposite. Their proposed monitor would oversee compliance across the agency’s operations, while the district court would

repeatedly assess policies, staffing, services, placements, and performance over time. That is not merely an injunction with substantial practical consequences. It is the assumption of an ongoing supervisory office—a remedial role with no analogue in the traditional equitable practice that defines the federal courts’ authority.

B. Traditional Equity Did Not Authorize Continuing Judicial Supervision.

English equity reflected a decidedly “party-centered understanding of injunctions.” *Rodgers v. Bryant*, 942 F.3d 451, 461 (8th Cir. 2019) (Stras, J., concurring in part and dissenting in part) (collecting authorities). “At the Founding, the English Chancellor would issue injunctions to protect the immediate parties, and, at times, equity would extend relief to a ‘small and cohesive’ group of persons who shared a common interest. But that was it.” *CASA de Maryland, Inc. v. Trump*, 971 F.3d 220, 257–58 (4th Cir. 2020), *vacated on grant of rehearing en banc*, 981 F.3d 311 (4th Cir. 2020) (internal citation omitted). Accordingly, “[i]n the United States, no nationwide injunctions were issued in the nineteenth century.” Russell L. Weaver, *Nationwide Injunctions and the Administrative State*, 89 BROOK. L. REV. 853, 855 (2024). American courts of equity instead declined relief that went “beyond the case before” them. *Conway v. Taylor’s Executor*, 66 U.S. 603, 632 (1861). Justice Bushrod Washington likewise distinguished between active and passive parties so “that no decree can be made without their being before the court” and “that complete relief can be afforded to those who seek it, without affecting the rights of those who are

omitted.” *Joy v. Wirtz*, 13 F. Cas. 1172, 1173 (C.C.D. Pa. 1806). And in *Scott v. Donald*, this Court overturned an order enjoining enforcement of a South Carolina liquor-importation ban because the decree reached “persons not parties to the suit.” 165 U.S. 107, 117 (1897). The plaintiff instead had to rely on the expectation that other officers, once advised that the law was unconstitutional, would voluntarily refrain from enforcing it. *Id.* Federal equity thus resolved the rights of litigants; it did not use those disputes as a warrant to assume continuing control over government administration. See *Rhode Island v. Massachusetts*, 37 U.S. 657, 718 (1838).

That party-centered history establishes equity’s general orientation, but the next principle is even more directly controlling here. Equity did not merely limit whom a decree could protect; it also rejected decrees that required a court to remain continuously involved in supervising performance. The historical objection was at its strongest when relief would convert adjudication into administration—requiring the court to oversee ongoing duties, resolve recurring disputes, and direct conduct over time. Supervisory injunctions were outside equity’s traditional role.

For example, in *Marble Co. v. Ripley*, this Court refused to order specific performance of a contract to supply marble because the required duties were “continuous.” 77 U.S. (10 Wall.) 339, 358 (1870). The Court explained that “[i]f performance be decreed, the case must remain in court forever” and concluded that “the court cannot superintend the execution of such a decree. It is quite impracticable.” *Id.* at 358–59. The objection was therefore that the decree would require

the court itself to supervise performance indefinitely. If equity would not assume that role over a private supply contract, it did not authorize a federal court to become the continuing supervisor of a state agency.

In *Heine v. Levee Commissioners*, 86 U.S. (19 Wall.) 655 (1874), bondholders asked a federal court of equity to levy and collect taxes that local officials had failed to raise, and the Court refused. The Court held that “the total failure of ordinary remedies does not confer upon the court of chancery an unlimited power to give relief.” *Id.* at 658. The plaintiffs’ hardship could not “justify a court of equity to depart from all precedent and assume an unregulated power of administering abstract justice at the expense of well-settled principles.” *Id.* The Court determined that providing the requested relief would be “an invasion by the judiciary of the Federal government of the legislative functions of the State government.” *Id.* at 661.

Heine precludes the relief the Fourth Circuit has granted here. Respondents likewise contend that ordinary relief is inadequate and that only comprehensive judicial control can redress the asserted injuries. But *Heine* rejected that precise logic: the inadequacy of lawful remedies does not enlarge equity’s powers or authorize a federal court to assume governmental functions committed to the State. The proposed decree would do on a far greater scale what *Heine* forbade—placing a federal court in charge of decisions that require ongoing policymaking, resource allocation, and administration. If necessity could not justify judicial assumption of a State’s taxing function,

it cannot justify judicial assumption of its child-welfare system.

The relief respondents request would require structural decrees that completely depart from historical practice. For more than a century and a half after 1789, federal courts did not issue decrees managing state institutions, even though the occasions for doing so arose. States ran almshouses, orphan asylums, houses of refuge, prisons, and juvenile courts throughout the nineteenth century, and litigants who could not obtain satisfaction from public bodies repeatedly asked federal equity to step into government roles. The Court refused each time. *Heine*, 86 U.S. at 661; *Meriwether v. Garrett*, 102 U.S. 472 (1880); *Thompson v. Allen County*, 115 U.S. 550 (1885).

Justice Thomas has observed that federal courts have since “directed or managed the reconstruction of entire institutions and bureaucracies, with little regard for the inherent limitations on their authority,” and that “[s]uch extravagant uses of judicial power are at odds with the history and tradition of the equity power and the Framers’ design.” *Jenkins*, 515 U.S. at 126 (Thomas, J., concurring). Justice Scalia wrote that structural injunctions “depart from that historical practice, turning judges into long-term administrators of complex social institutions.” *Brown v. Plata*, 563 U.S. 493, 555 (2011) (Scalia, J., dissenting). A remedy that did not exist for the first 165 years of the Republic and then spread across two-thirds of the States in a few decades is a “modern device” without “a founding-era antecedent,” just like universal injunctions. *CASA*, 606 U.S. at 846–47.

C. Modern Structural Injunctions Cannot Supply the Missing Historical Authority.

The Fourth Circuit’s central premise was that “nationwide precedent since *Brown I* provides an unambiguous legal reality” that federal courts “can and must” reform state institutions through comprehensive decrees. *Jonathan R. II*, 178 F.4th at 155. That is the reasoning *CASA* rejected. Universal injunctions had been issued many times, by many courts, over several decades, yet the Court held they exceeded equitable authority because they lacked a founding-era analogue. *CASA*, 606 U.S. at 841–47. Courts do not acquire jurisdictional power by exercising it repeatedly, *United States v. L.A. Tucker Truck Lines, Inc.*, 344 U.S. 33, 38 (1952), and “no one acquires a vested or protected right in violation of the Constitution by long use.” *Walz v. Tax Comm’n*, 397 U.S. 664, 678 (1970). Nor does a remedy’s perceived utility save it: that a practice is “efficient, convenient, and useful” will not sustain it “if it is contrary to the Constitution.” *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 499 (2010) (quoting *Bowsher v. Synar*, 478 U.S. 714, 736 (1986)).

Respondents may invoke more recent cases, such as *Hutto v. Finney*, 437 U.S. 678 (1978), as binding approval of structural relief. But none of those decisions considered the antecedent question *CASA* makes controlling: whether the particular remedy imposed was traditionally available in equity at the founding. Nor does *CASA* permit courts to treat a line of modern decisions as a substitute for the required historical analogue. The point is not that those cases

lacked constitutional violations warranting relief; it is that any relief still had to remain within the equitable authority Congress conferred. The Fourth Circuit therefore could not answer the historical question by cataloguing twentieth-century decrees that never asked it.

That does not mean a state institution can never be subject to injunctive relief. A federal court may enjoin identified officials from committing a proven violation of federal law, and the practical effect of such relief may require institutional changes. But the remedy must remain directed to curing the violation before the court and within the traditional bounds of equity. What a court may not do is convert authority to restrain unlawful conduct into authority to redesign and administer an institution indefinitely—prescribing policy, staffing, spending, and performance targets under continuing judicial supervision. The distinction is therefore not between individual and institutional defendants, or between narrow and consequential relief; it is between an injunction that remedies unlawful conduct and a managerial decree that transfers ongoing governmental authority to the court.

Brown v. Board of Education (Brown II), 349 U.S. 294 (1955), was unquestionably correct to require effective relief against state-imposed segregation, and nothing in this argument calls that landmark decision into question. *Brown II* enforced a specific constitutional command: government officials had to dismantle the segregated school systems the States themselves had created. But *Brown II* and its progeny do not establish a freestanding judicial power to

manage state institutions whenever an alleged constitutional violation is described as systemic. They do not hold that a federal court may assume continuing authority over policy design, staffing, appropriations, and administrative performance untethered from the duty to eliminate the identified constitutional violation. The question here is therefore not whether *Brown II* properly authorized effective relief against unconstitutional state action—it plainly did. The question is whether that authority extends to making a federal court the ongoing administrator of a state program. *CASA* requires *that* distinct remedial power be justified by traditional equitable practice.

D. Respondents Seek Administration of West Virginia’s Foster-Care System, Not Traditional Injunctive Relief.

Respondents’ forty-seven demands do not simply identify discrete unlawful conduct and ask the court to prohibit it. They propose to regulate the foster-care system from intake through permanency. The decree would require statewide needs assessments; impose deadlines and substantive requirements for initial evaluations and individualized case plans; direct when identified services and treatment must be provided; prescribe standards for safe placements and continuing monitoring; and govern the availability and use of family placements, congregate care, and community-based services. It would further require the State to create and maintain a specified array of placements and therapeutic providers, recruit and retain additional foster homes, develop matching processes, and satisfy court-enforced targets

concerning placement stability, permanency, and other outcomes. *See Jonathan R. II*, 178 F.4th at 149–50, 157–59. Those requirements would not simply forbid unconstitutional treatment. They would determine what services the State must offer, when and how it must deliver them, which placements it must develop, and the benchmarks by which the adequacy of the entire system would be judged.

The demands would reach the State’s internal administration just as deeply. Respondents seek judicially enforceable rules governing caseworker caseloads, staffing levels, hiring, qualifications, retention, supervision, and training—matters inseparable from appropriations, labor markets, agency priorities, and the allocation of scarce personnel. They would require a statewide reform plan subject to outside approval and install a neutral monitor empowered to review records, measure compliance, receive recurring reports, and oversee implementation. *See id.* at 156–59.

The practical consequence would be a continuing federal supervisory regime: every missed deadline, staffing shortfall, disputed placement decision, service gap, or unsatisfied performance target could become a question of compliance for the monitor and, ultimately, the district court. The judge would thus cease merely adjudicating whether particular conduct violated federal law and would become the final overseer of the State’s ongoing policy choices—deciding whether its workforce is adequate, its provider network sufficient, its placements appropriately matched, and its progress fast enough. That is precisely the sort of managerial authority for

which *CASA* requires a founding-era antecedent. Respondents identify none. The breadth of their demands confirms that the remedy they seek is administration of government by decree, not relief traditionally available from a court of equity.

Respondents insist that their injury “can only be remedied through systematic, structural change.” *Jonathan R. I.*, 41 F.4th at 323; *see* Pet. 22. On their own theory, then, redressability depends on the availability of that particular form of relief. But *CASA* explains that “[c]omplete relief is not a guarantee—it is the maximum a court can provide.” 606 U.S. at 854. Justice Thomas likewise explained that the ceiling on relief “follows from both Article III and traditional equitable practice.” *Id.* at 862–63 (Thomas, J., concurring). If the managerial decree respondents say is indispensable lies outside the equitable power of a federal court, their asserted injuries are not redressable through the remedy on which their suit depends.

The Constitution divides power in two ways, between the Nation and the States, and among the branches of each. *THE FEDERALIST* NO. 51 (J. Madison). A managerial decree frustrates both divisions at once. It does not merely require state officials to comply with federal law; it transfers to a federal judge the continuing authority to decide how a state program should operate. The court thereby displaces state executive and legislative officials while itself performing executive and legislative work—setting priorities, directing expenditures, supervising implementation, and revising policy as conditions change. This Court described that

combination when it refused to let federal equity collect a local tax: the relief would be “an invasion by the judiciary of the Federal government of the legislative functions of the State government.” *Heine*, 86 U.S. at 661.

“No principle is more fundamental to the judiciary’s proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies.” *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 341 (2006) (quoting *Raines v. Byrd*, 521 U.S. 811, 818 (1997)). A federal court “sit[s] as a court of law, not a council of revision.” *Mackey v. United States*, 401 U.S. 667, 697 (1971) (Harlan, J., concurring). Respondents’ decree would require the district court to set hiring qualifications, training requirements, placement procedures, and recruitment timetables, which is the work of administration. It would also impose caseload ceilings that can be met only through additional hiring and spending, thereby directly implicating the State’s appropriations choices. The Fourth Circuit embraced rather than disputed this role, describing the judge in institutional reform litigation as “more like a manager or policy planner than a judge.” *Jonathan R. II*, 178 F.4th at 154 (quoting *Thompson v. HUD*, 404 F.3d 821, 827 (4th Cir. 2005)).

A single decree would also supplant the functions of every branch of West Virginia’s government in this field. It would direct the Department’s daily operations, override the Legislature’s appropriations choices, and constrain the state courts that supervise abuse-and-neglect proceedings. Such decrees “improperly deprive future officials of their

designated legislative and executive powers.” *Horne v. Flores*, 557 U.S. 433, 449 (2009) (quoting *Frew v. Hawkins*, 540 U.S. 431, 441 (2004)).

This Court should therefore grant review. *CASA* does not permit a court to justify unprecedented equitable power by invoking the necessity of a remedy, the frequency with which modern courts have imposed similar decrees, or the seriousness of the alleged wrong. The Judiciary Act requires a founding-era antecedent, and no such antecedent exists for a decree that transfers continuing control over a State’s child-welfare system to a federal judge and monitor. This conclusion does not disable federal courts from enjoining proven violations of federal law. It preserves the line between compelling lawful conduct and assuming responsibility for governmental administration. A federal court may adjudicate rights and require compliance; it may not become the permanent superintendent of a State’s foster-care system.

CONCLUSION

This Court should grant the petition for certiorari.

Respectfully submitted,

JAY ALAN SEKULOW

Counsel of Record

JORDAN A. SEKULOW

STUART J. ROTH

ANDREW J. EKONOMOU

BENJAMIN P. SISNEY

LINDSEY BACHMAN

NATHAN J. MOELKER

AMERICAN CENTER FOR

LAW & JUSTICE



Counsel for Amicus Curiae

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