

***United States Court of Appeals***

FIFTH CIRCUIT  
OFFICE OF THE CLERK

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December 07, 2020

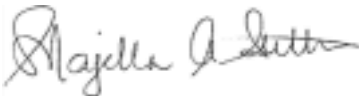
MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 19-60069 Indigo Williams, et al v. Tate Reeves, et al  
USDC No. 3:17-CV-404

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

By:  ~~Majella A. Sutton, Deputy~~  
Clerk  
504-310-7680

Mr. William B. Bardwell  
Ms. Rita Bender  
Mr. William Bender  
Ms. Christine Bischoff  
Mr. Brad Elias  
Mr. Kyle Douglas Hawkins  
Mr. Arthur S. Johnston III  
Mr. Anton Metlitsky  
Ms. Krissy C. Nobile  
Mr. Jason Zarrow

Case: 19-60069 Document: 00515663554 Page: 1 Date Filed: 12/07/2020

**United States Court of Appeals  
for the Fifth Circuit**

No. 19-60069

INDIGO WILLIAMS, *on behalf of* her minor child J.E.;  
DOROTHY HAYMER, *on behalf of* her minor child, D.S.;

PRECIOUS HUGHES, *on behalf of* her minor child, A.H.;  
SARDE GRAHAM, *on behalf of* her minor child, S.T.,

*Plaintiffs Appellants,*

*versus*

TATE REEVES, in his official capacity as Governor of Mississippi;  
PHILIP GUNN, in his official capacity as Speaker of the Mississippi



Case: 19-

barred according to *Pennhurst*, while permitting another, virtually identical claim, to move forward in the district court.

This court refused to order en banc reconsideration. I respectfully dissent. State sovereign immunity should bar this suit in its entirety based on *Pennhurst*. Moreover, such sovereign immunity includes immunity from suit, not simply adverse judgments; we should alternatively have dismissed the suit because the Mississippi Readmission Act created no implied private right of action on behalf of these plaintiffs.

required it to adopt a constitutional guarantee of a republican form of government to all state residents.<sup>2</sup> Mississippi adopted a constitution in 1868 that did just provisions

the quoted state constitutional provision has been amended four times. The  
W ffYbhj Yfg]cbž'UXcdhYX`]b`% , +žghUhYg. ĨH\Y`@Y[ ]g`Uhi fY`g\U`ž`Vm[ YbYfU`Uk ž  
provide for the establishment, maintenance and support of free public schools  
upon such conditions UbX``]a ]hUh]cbg`Ug`h\Y`@Y[ ]g`Uhi fY`a Um`dfYgW]VY"Ī`A ISS.  
CONST., art. VIII § 201.

The plaintiffs comprise a group of low-income African-American women  
k \cgY`W]`XfYb`UhYbX`A ]gg]gg]dd]`di V`]WgW`cc`g" H\YmU`Y[ Y`Īh\Uh`h\Y`W ffYbh`

the requirements of Article VIII, Section 1 of the Constitution of 1868 remain legally binding on the [d]efendants, their employees, their agents, and their gi *WYggcfcg*"*Id.* Uh + ( " H\Y dUbY UZZ]fa YX h\Y X]ghf]Vh Vci fhj' X]ga ]ggU' VcbWfb]b[ h\Y'gYVcbX'cZd`U]bh]Zg]FYeI Yghg'VYVWi gY]hI'gYY\_g'U'XYWUfUh]cb`cZ`state law and is therefore barred by the Supreme 7 ci fhj'XYW]g]cb'']b' *Pennhurst* "" "" ""*Id.* (emphasis in original).

7 cbhfUf]`mž'h\Y'dUbY`fYUgcbYX'h\Uh'h\Y'd`U]bh]Zg]V]fgh'fYeI Ygh'Zcf'' declaratory relief fits within *Ex parte Young* *YI Wdh]cb`hc'gcj YfY][ b`]a a i b]hm* for cases in which a state officer is charged with acting in violation of federal law. *Id.* at 735] 36. Plaintiffs allege that Section 201 of the current Mississippi *Vcbgh]hi h]cb`j`c`UhYg`ZYXYfU` Uk žgdYVZ]WV`mž'h\Y`A ]gg]gg]dd]`F YUXa ]gg]cb`5 W]g' VcbZ]fa Uh]cb`cZ]gW'cc`f][ \hg`UbX`df]j`Y[Yg"i`H\ Uh'h\Y`I'gW'cc`f][ \hg`UbX` df]j`Y[Yg]`Ub[i U[Y`XYdYbXg'cb`h\Y`ghUHY]g`% \*,`Vcbgh]hi h]cb`ž'h\Y'dUbY` XYWUfYXž`X]X`bch'dchYbh]U`m]fi b`UZci`cZ`*Pennhurst* because it does not ask the *Vci fh'hc`Vca dY`Vca d`]UbW`k ]h\`ghUHY`Uk`qua ghUHY`Uk`ž'h\Y'dUbY`YI d`U]bYX`" *Id.* at 740 (quoting *VuffUj`"HYI`"9a d]m`7ca a ]b, 823 F.2d 873, 877 (5th Cir. %-, +E`I`bghYUXž]h]Ug\_g'h\Y`Vci fh'hc`]bhYfdfYh'h\Y`a YUb]b[`cZU`federal law]` the Mississippi Readmission Act]`Vm]fYZfYbW`hc`U`fY`UhYX`ghUHY`Uk`"i`*Id.* (emphasis in original).***

F YgdYVWZ`mž'h\YfY]g'bc`k Um]hc`Uj`c]X`h\Y`VcbWi`g]cb`h\Uh'h\Y'dUbY`]g'' decision on the first request for declaratory relief requires the federal court to

impermissibly adjudicate a question of state law. The first decision the court must a U\_Y`cb`fYa UbX`d]hg`'']X` 'a a i`Q ]` ]` '7

constitutional immunity whereby a federal court has jurisdiction over a suit against a state officer to enjoin an ongoing violation of federal law, even though the state itself would be immune from suit in federal court. *Pennhurst*, 465 U.S. at 102] 03, 104 S. Ct. at 909. In preserving the delicate balance between rights WYUHYX' i bXYf' h\Y' 7 cbgh]hi h]cb' UbX' h\Y' ghUhygñ 9`Yj Ybh\` ' 5a YbXa Ybh' UbX' gcj YfY][ b' f][ \h' bch' hc' VY' \U]`YX' ]bhc' ZYXYfU` Vci fhž Îk Y` a i gh'` Ybgi fY' h\Uh' h\Y' doctrine of sovereign immunity remains meaningful, while also giving recognition to the need tc'dfYj Ybh'j ]c`Uh]cbg'cZ ZYXYfU` Uk "İ' *Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 269, 117 S. Ct. 2028, 2034 (1997). Accordingly, the Supreme Court has carefully limited the application of *Ex parte Young* to circumstances in which injunctive rel]YZ]g'bYWggUfmhc'Î [ ]j YQ`]Z'hc'h\Y'Gi dfYa UWñ7`Ui gY"İ' *Green v. Mansour*, 474 U.S. 64, 68, 106 S. Ct. 423, 426 (1985). One of the most important limitations is that *Ex parte Young* does not apply where private parties seek relief











or upon any such ground to require of him any other qualifications for office than such as are

(quoting *Gonzaga University v. Doe*, 536 U.S. 273, 286 (2002)). Furthermore, the  
Gi dfYa Y'7 ci fh\Ug'a UXY WYUf'h\UhÎhc'gYY\_fYXfYgg'h\fc [ \ Ÿ%, ' ž''''U'd`U]bh]Z  
must assert the violation of a federal *right*, not merely a violation of federal *law*." <sup>8</sup> *Id.* at \*17 (quoting *Gonzaga*, 536 U.S. at 282, 122 S. Ct. at 2274) (emphasis and  
alteration in original). It is not enough for plaintiffs to argue that Mississippi  
violated the Readmission Act



prevail.

But because the Act does not create a private right of action, it does not provide a remedy for the injury suffered by the plaintiffs. The Act places conditions on Mississippi that are enforced through congressional action, but in no way does it contemplate granting plaintiffs a right enforceable against the state.<sup>11</sup> And as previously explained, if we view the statute from the perspective of the *Gonzaga/Armstrong* framework, there is little doubt Congress did not intend to create a private right of action against the state.

Because the Act does not create a private right of action, it does not provide a remedy for the injury suffered by the plaintiffs. The Act places conditions on Mississippi that are enforced through congressional action, but in no way does it contemplate granting plaintiffs a right enforceable against the state. For this additional reason, we may not subject the State to further litigation