No. 20-772

In the Supreme Court of the United States

WATERFRONT COMMISSION OF NEW YORK HARBOR,
PETITIONER

v.

PHIL MURPHY, GOVERNOR OF NEW JERSEY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

Whether an interstate-compact agency may sue a state official under *Ex parte Young*, 209 U.S. 123 (1908), to prevent implementation of a law enacted by the state legislature purporting to withdraw from a congressionally approved interstate compact.

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INTEREST OF THE UNITED STATES

This brief is submitted in response to this Court's order inviting the Acting Solicitor General to express the views of the United States. In the view of the United States, the petition for a writ of certiorari should be denied.

STATEMENT

1. Each State has the sovereign power to enter into a compact with another State. See *Hinderlider* v. *La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92, 104 (1938). The Constitution qualifies that power by forbidding States from entering into compacts without the consent of Congress. See U.S. Const. Art. I, § 10, Cl. 3. Once an interstate compact receives congressional approval, it becomes federal law and preempts contrary

state law. See *Tarrant Regional Water District* v. *Herrmann*, 569 U.S. 614, 627 n.8 (2013).

In 1953, the States of New York and New Jersey, with the consent of Congress, entered into the Waterfront Commission Compact (Compact) to address corruption and racketeering at the Port of New York-New Jersey. Act of Aug. 12, 1953, ch. 407, 67 Stat. 541; see *De Veau* v. *Braisted*, 363 U.S. 144, 150 (1960) (plurality opinion). The Compact created the Waterfront Commission of New York Harbor (Commission), an interstate entity consisting of two members, one appointed by the Governor of each participating State. Art. III, 67 Stat. 543. The Compact empowers the Commission to regulate employment at the port and to levy assessments at the port in order to fund the Commission's operations. Arts. IV-XIII, 67 Stat. 544-556. The Compact provides that "[a]mendments and supplements * * * may be adopted by the action of the Legislature of either State concurred in by the Legislature of the other." Art. XVI, ¶ 1, 67 Stat. 557.

In 2018, New Jersey unilaterally enacted a statute, Chapter 324, that purported to withdraw the State from the Compact and to abolish the Commission. See 2017 N.J. Laws 2102 (reprinted at Pet. App. 105a-178a). Chapter 324 declares that the Commission has "itself been tainted by corruption," has "exercised powers that do not exist within the authorizing compact," and has "over-regulated the businesses at the port." *Id.* at 2103. It requires the Governor of New Jersey to notify Congress, the Governor of New York, and the Commission of the State's intent to withdraw from the Compact, *id.* at 2104; declares that the Compact and the Commission will be "dissolved" 90 days after the notification, *id.* at 2144; transfers the Commission's powers, duties, and

assets that pertain to New Jersey to New Jersey's state police, *id.* at 2108; requires officers with custody of Commission funds that are "applicable" to New Jersey to deliver those funds to the state treasurer, *ibid.*; and directs the state police to collect assessments at the port, *id.* at 2137. Neither Congress nor New York has consented to the dissolution of the Compact. See Pet. App. 2a.

2. One day after the enactment of Chapter 324, the Commission sued the Governor of New Jersey in the United States District Court for the District of New Jersey. Pet. App. 4a-5a. The Commission sought a declaration that Chapter 324 is invalid and an injunction prohibiting the Governor from enforcing Chapter 324. *Id.* at 5a. The court permitted New Jersey's legislative bodies and leaders—its Senate, General Assembly, President of the Senate, and Speaker of the General Assembly—to intervene in defense of Chapter 324. *Ibid.*

The district court issued a preliminary injunction prohibiting the Governor of New Jersey from enforcing Chapter 324, Pet. App. 37a-66a, and then granted the Commission summary judgment, *id.* at 15a-36a. The court held, as relevant here, that New Jersey's sovereign immunity did not bar the Commission's suit against the Governor. *Id.* at 46a-47a. On the merits, the court held that New Jersey's unilateral effort to withdraw from the Compact was barred by the clause requiring the consent of both state legislatures for any amendment to the Compact. *Id.* at 26a-36a.

The court of appeals reversed, holding that New Jersey's sovereign immunity shielded the Governor from the Commission's suit. Pet. App. 1a-14a. The court acknowledged that, under *Ex parte Young*, 209 U.S. 123 (1908), sovereign immunity generally does not preclude

a suit that seeks to enjoin state officials from violating federal law. Pet. App. 7a. But the court gave two reasons for finding *Ex parte Young* inapplicable here. First, the court concluded that the judgment requested by the Commission would improperly "expend itself on the public treasury" of New Jersey. *Id.* at 10a (citation omitted). The court observed that Chapter 324 transferred certain of the Commission's assets to the State and empowered the State to collect assessments previously collected by the Commission; enjoining those provisions, the court reasoned, "would divert state treasury funding." *Id.* at 12a. Second, the court concluded that *Ex parte Young* does not authorize a suit to seek "specific performance of a State's contract." *Ibid.* (citation omitted). Here, the court reasoned, the Compact "is a contract," and an injunction prohibiting the Governor from enforcing Chapter 324 would be "tantamount" to an order requiring specific performance of that contract. *Id.* at 13a.

DISCUSSION

The Third Circuit may have erred in holding that New Jersey's sovereign immunity bars the Commission's suit against the Governor of New Jersey. Even so, the decision does not warrant this Court's review. There is no square conflict with decisions of other courts of appeals; a subsequent decision of the Third Circuit confines the scope of the decision below; and this case presents complex threshold issues that would render it an unsuitable vehicle for review. The Court should therefore deny the petition for a writ of certiorari.

A. The Court Of Appeals' Holding That New Jersey's Sovereign Immunity Bars This Suit Rests On Unique Circumstances That May Warrant Special Consideration

1. A State, as a sovereign, generally is immune from being sued without its consent. See *Alden* v. *Maine*, 527 U.S. 706, 713 (1999). That immunity is not, however, absolute. See *PennEast Pipeline Co.* v. *New Jersey*, 141 S. Ct. 2244, 2258 (2021). One important limit, most prominently articulated in *Ex parte Young*, 209 U.S. 123 (1908), is that sovereign immunity does not preclude a person from suing a state *officer* in federal court to enjoin acts that would violate federal law. *Id.* at 159-160. "This doctrine has existed alongside [this Court's] sovereign-immunity jurisprudence for more than a century, accepted as necessary to 'permit the federal courts to vindicate federal rights.'" *Virginia Office for Protection & Advocacy* v. *Stewart*, 563 U.S. 247, 254-255 (2011) (*VOPA*) (citation omitted).

This Court has set out a "straightforward inquiry" for determining whether a case falls within the scope of *Ex parte Young*, at least as a general rule. *VOPA*, 563 U.S. at 255 (citation omitted). First, does the complaint allege "an ongoing violation of federal law"? *Ibid.* (citations omitted). Second, does the complaint seek "relief properly characterized as prospective"? *Ibid.* (citations omitted). If the answer to both questions is yes, state sovereign immunity ordinarily does not bar the suit. *Ibid.*; see *Verizon Maryland Inc.* v. *Public Service Commission*, 535 U.S. 635, 645 (2002).

The complaint in this case would appear to satisfy that straightforward inquiry. The complaint alleges an ongoing violation of federal law: the Compact is federal law, see *Tarrant Regional Water District* v. *Herrmann*, 569 U.S. 614, 627 n.8 (2013), and the Commission alleges

that the Governor of New Jersey is violating it by enforcing Chapter 324, see Compl. 12-15. The complaint also seeks prospective relief: it requests a declaration that Chapter 324 is invalid and an injunction prohibiting the Governor from implementing it. See Compl. 19. In the absence of some basis for departing from this Court's straightforward rule, see *VOPA*, 563 U.S. at 256-257, the case would thus fall within the scope of *Ex parte Young*, and New Jersey's sovereign immunity would not preclude this suit.

2. a. The court of appeals held that this case falls outside the scope of *Ex parte Young* because the relief requested by the Commission would "'expend itself on the public treasury'" and would "divert state treasury funding." Pet. App. 10a, 12a (citation omitted). That holding is incorrect.

As discussed above, *Ex parte Young* permits suits that seek "prospective" relief for an "ongoing" violation of federal law. *VOPA*, 563 U.S. at 255 (citations omitted). It does not authorize "retroactive * * * monetary relief"—whether labeled "damages," "equitable restitution" or something else—that compensates for "a monetary loss resulting from a past breach of a legal duty." *Edelman* v. *Jordan*, 415 U.S. 651, 668 (1974); see *Verizon Maryland*, 535 U.S. at 646.

This Court's cases make clear that a declaration or injunction does not become a forbidden award of retroactive monetary relief simply because complying with the injunction will cost money or result in loss of revenue. For example, a taxpayer may seek an injunction preventing state officials from collecting an unconstitutional state tax, even though such an injunction would stop the flow of funds into the state treasury. See *Osborn* v. *Bank of the United States*, 22 U.S. (9 Wheat.)

738, 847-859 (1824) (Marshall, C.J.). A student or parent may seek an injunction requiring state officials to integrate public schools, even though integration will cost money. See *Milliken* v. *Bradley*, 433 U.S. 267, 288-290 (1977). And a litigant may seek an injunction preventing state officials from denying welfare benefits on unconstitutional grounds, even though such relief has an obvious "impact on state treasuries." *Edelman*, 415 U.S. at 667. As those cases show, "an ancillary effect on the state treasury is a permissible and often an inevitable consequence of the principle announced in *Ex parte Young*." *Id.* at 668.

The court of appeals did not adhere to those principles when it held that sovereign immunity bars this suit because the requested relief could "divert state treasury funding." Pet. App. 12a. The Commission does not claim that New Jersey violated federal law in the past and that the State must pay monetary compensation for that wrong. The Commission instead claims that the Governor of New Jersey is violating federal law now by enforcing Chapter 324 and that he should be enjoined from continuing to do so. Complying with such an injunction may well result in loss of revenue; for example, as the court of appeals observed, the injunction may prevent the State from collecting assessments at the port and from taking a share of the Commission's assets for itself. See *ibid.* But because those "fiscal consequences" are simply the "ancillary effect" of "compliance with [a] decree[] which by [its] terms [is] prospective in nature," they do not take this case outside *Ex parte Young*'s scope. *Edelman*, 415 U.S. at 667-668.

b. The court of appeals held, in the alternative, that *Ex parte Young* does not cover this case because the relief sought by the Commission is equivalent to "specific

performance" of a contract. Pet. App. 13a. That alternative holding rests on two cases decided before *Ex parte Young*: *In re Ayers*, 123 U.S. 443 (1887), and *Hagood* v. *Southern*, 117 U.S. 52 (1886). In each of those cases, parties to a contract with a State sued state officials; claimed that the State had enacted a law impairing the obligation of the contract in violation of the Contract Clause, U.S. Const. Art. I, § 10, Cl. 1; and sought an order directing the officials to fulfill the contract. See *Ayers*, 123 U.S. at 492-493; *Hagood*, 117 U.S. at 67. This Court held that sovereign immunity barred those suits for specific performance. *Ayers*, 123 U.S. at 491; *Hagood*, 117 U.S. at 67.

Since *Ex parte Young*, however, this Court has read *Ayers* and *Hagood* narrowly. In *Georgia Railroad & Banking Co.* v. *Redwine*, 342 U.S. 299 (1952), the Court held that a plaintiff *could* sue state officials to prevent them from enforcing a law that allegedly violated the Contract Clause. *Id.* at 303-306. Distinguishing that case from *Ayers* and *Hagood*, the Court emphasized that the complaint was "not framed as a suit for specific performance" and that the plaintiff "merely s[ought] the cessation of [the state officer's] allegedly unconstitutional conduct and d[id] not request affirmative action by the State." *Id.* at 304 & n.15.

The specific-performance exception, whatever the scope of its application today, was recognized in circumstances that arguably differ from those giving rise to this suit. On the one hand, an interstate compact is not an ordinary contract. As this Court has long held, it is federal law, "like any other federal statute." *Texas* v. *New Mexico*, 138 S. Ct. 954, 958 (2018); see, *e.g.*, *Cuyler* v. *Adams*, 449 U.S. 433, 438 & n.7 (1981); *Pennsylvania* v. *Wheeling & Belmont Bridge Co.*, 54 U.S. (13 How.)

518, 566 (1852). And *Ex parte Young* permits suits to enjoin "an ongoing violation of federal law." *VOPA*, 563 U.S. at 255 (citation omitted). This suit, moreover, is not "framed as a suit for specific performance" of the Compact. *Georgia R.R.*, 342 U.S. at 304. The Commission has not sought an order requiring "affirmative action by the State"; rather, it has simply sought "the cessation of [the Governor's] allegedly unconstitutional conduct." *Id.* at 304 n.15. And *Ex parte Young* permits a suit "to restrain unconstitutional action threatened by an individual who is a state officer." *Id.* at 304.

On the other hand, this suit can be seen as involving something beyond the mere violation of federal law. It involves a challenge to an act of the New Jersey Legislature —the same body whose approval was necessary for New Jersey to enter into the Compact—purporting to withdraw from the Compact and thereby terminate its effect as federal law. Viewed in that manner, the case may implicate the State's sovereign interests in a way that other cases relying on *Ex parte Young* do not.

There is, however, no occasion for this Court to resolve that question here. As explained below, certiorari should in any event be denied.

B. The Question Presented Does Not Warrant This Court's Review

The Third Circuit's decision in this case does not warrant review. The court of appeals' decision is in some tension with another, more recent decision of the Third Circuit, and the en banc court may be able to resolve any such tension between the two decisions without this Court's intervention. If the court did so, it could also resolve any tension between the decision below and decisions of the Eighth and Tenth Circuits. And this case would be a poor vehicle for resolving the question

presented in any event, because it raises complex and fact-bound threshold issues about the Commission's authority to file the petition for a writ of certiorari.

1. The Third Circuit's decision here is in tension with a later decision of the same court. It also is in tension with decisions of the Eighth and Tenth Circuits. The resolution of any inconsistency between the Third Circuit's decisions in these circumstances should be left in the first instance to the en banc Third Circuit, which may eliminate any tension with decisions of the Eighth and Tenth Circuits as well.

In *Delaware River Joint Toll Bridge Commission* v. *Secretary Pennsylvania Department of Labor & Industry*, 985 F.3d 189 (2021), cert. denied, No. 20-1761 (Oct. 4, 2021), the Third Circuit receded from much of the reasoning of the decision below. There, an interstate-compact entity, the Delaware River Joint Toll Bridge Commission, sued a Pennsylvania official for allegedly violating a congressionally approved compact between Pennsylvania and New Jersey. *Id.* at 191. The Third Circuit concluded that, because the suit sought "prospective relief to prevent an ongoing violation of federal law," it fell "squarely within the *Ex parte Young* exception to sovereign immunity." *Id.* at 194. The court acknowledged that the suit could "have an impact on Pennsylvania's revenues"—for example by preventing the State from collecting "inspection fees"—but explained that this "'ancillary effect on the state treasury'" could not defeat application of *Ex parte Young*. *Ibid.* (citation omitted). The court also explained that "[a] declaratory judgment requiring the [state official] to respect the Compact as written [would] not constitute an impermissible order of specific performance."

Id. at 194. That reasoning appears to differ somewhat from the reasoning of the decision below.

Similarly, in *Tarrant Regional Water District* v. *Sevenoaks*, 545 F.3d 906 (2008), the Tenth Circuit held that a water district in Texas could sue state officials in Oklahoma to prevent them from enforcing a state law that allegedly violated an interstate compact. *Id.* at 908-909.* The court explained that the suit could proceed under *Ex parte Young* because it sought "prospective" relief against an "'ongoing violation'" of a federal law (namely, the compact). *Id.* at 912 (citation omitted). As relevant here, the court rejected the contention that the requested relief would improperly divert Oklahoma's resources to the plaintiff. *Id.* at 913. The court explained that the relief sought—"a declaratory judgment that the laws at issue [we]re unconstitutional and cannot be enforced"—was "clearly prospective," and that "[t]he fact that prospective relief could have financial consequences d[id] not give rise to immunity." *Id.* at 911-913. That holding, while consistent with the Third Circuit's decision in *Delaware River*, is less readily squared with the Third Circuit's earlier decision in this case, under which the financial consequences of declaratory and injunctive relief for the Commission *did* give rise to immunity. See Pet. App. 10a-12a.

Finally, in *Entergy, Arkansas, Inc.* v. *Nebraska*, 210 F.3d 887 (2000), the Eighth Circuit held that sovereign immunity did not preclude an interstate-compact entity's suit against Nebraska state officials who were purportedly violating the governing interstate compact by denying a license for a nuclear-waste disposal facility. *Id.* at 890. The decision rested on two alternative

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* This Court later granted review in *Tarrant* and decided the case on the merits. See 569 U.S. 614.

holdings: (1) the State had expressly waived its immunity in the compact, *id.* at 896-897, and (2) the suit could proceed under *Ex parte Young*, *id.* at 897-898. Respondents characterize (Br. in Opp. 10) the latter determination as dictum, but that appears to be incorrect: Ordinarily, "where there are two grounds, upon either of which an appellate court may rest its decision, and it adopts both, 'the ruling on neither is *obiter*, but each is the judgment of the court and of equal validity with the other.'" *United States* v. *Title Insurance & Trust Co.*, 265 U.S. 472, 486 (1924) (citation omitted). *Entergy*'s rationale for the latter determination is in some tension with the Third Circuit's specific-performance rationale in this case. By extension of the logic of the decision in this case, the order in *Entergy* directing the state official to issue a license could be viewed as an order requiring specific performance of an obligation under the compact. Pet. App. 12a-13a.

The Third Circuit in *Delaware River* distinguished its decision in this case on the ground that the State in this case had "expressly rejected" the compact here, while the State in *Delaware River* "did not seek to disavow" the compact there. 985 F.3d at 194. The Third Circuit explained in *Delaware River* that, in the present case, "[f]orcing New Jersey to abide by a compact it had expressly rejected through the proper legislative channels * * * was 'tantamount to specific performance that would operate against the State itself,'" while in *Delaware River*, a "declaratory judgment simply requiring the state official to comply with the unrepudiated compact as written would not have that effect." *Id.* at 194 (brackets and citation omitted). The Eighth and Tenth Circuits' decisions in *Entergy* and *Tarrant* could be distinguished from the decision below on the same ground;

the States in those cases had not sought to withdraw from the relevant compacts. See *Tarrant*, 545 F.3d at 909; *Entergy*, 210 F.3d at 890-893. Whatever the ultimate soundness of that distinction, it highlights the unique circumstances of the Third Circuit's ruling and distinct reasoning in this case.

Any tension between the decision below and *Tarrant*, *Entergy*, and *Delaware River* would not, in any event, warrant this Court's review. When a decision of a court of appeals conflicts with another decision of the same court, this Court usually leaves the resolution of the conflict to the en banc court. See *Wisniewski* v. *United States*, 353 U.S. 901, 902 (1957) (per curiam) ("It is primarily the task of a Court of Appeals to reconcile its internal difficulties."). There is no reason for a different result where, as here, the decision also is in tension with decisions of other circuits. See *Joseph* v. *United States*, 574 U.S. 1038, 1040 (2014) (Kagan, J., respecting the denial of certiorari) ("[W]e usually allow the courts of appeals to clean up intra-circuit divisions on their own, in part because their doing so may eliminate any conflict with other courts of appeals.").

Reinforcing that point, the Third Circuit's decision in *Delaware River* mitigates the practical consequences of its decision in this case. Under the law as it stands in the Third Circuit today, a plaintiff may invoke *Ex parte Young* to sue a state official for violating an interstate compact, except perhaps in the unusual case when the State seeks to withdraw entirely from the compact. See *Delaware River*, 985 F.3d at 194. The universe of cases covered by that exception is likely to be exceedingly small; the Commission identifies no other instance in which a State has allegedly violated an interstate compact by renouncing it in full.

2. This case also would be a poor vehicle for deciding the question presented, because the Commission may not have had the authority to file the petition for a writ of certiorari. See Br. in Opp. 24-26.

The Commission consists of two members, one from New York and one from New Jersey, and the Compact provides that the Commission "shall act only by the unanimous vote of both members thereof." Art. III, ¶ 3, 67 Stat. 543. The New York commissioner approved the initial decision to file this suit, while the New Jersey commissioner recused himself. Pet. App. 50a. Respondent reports—and petitioner does not deny—that, after the court of appeals issued its decision, the New Jersey commissioner rescinded his recusal and voted against the filing of the petition for a writ of certiorari. See Br. in Opp. 25; Pet. Reply Br. 11. The vote on filing the petition was thus 1-1—not unanimous, as the Compact requires. See Br. in Opp. 25.

The Commission argues (Pet. Reply Br. 12) that any concerns about its capacity to pursue this suit do not go to jurisdiction, and thus can be left for remand after this Court decides the question presented. But a defect in the filing of the petition, at least in some circumstances, may affect this Court's jurisdiction. In two cases in which a federal governmental entity filed a petition for a writ of certiorari without statutory authority to do so, the Court dismissed the petition for lack of jurisdiction. See *FEC* v. *NRA Political Victory Fund*, 513 U.S. 88, 98-99 (1994); *United States* v. *Providence Journal Co.*, 485 U.S. 693, 699 & n.5 (1988). There may be some question about the extent to which the Court today would regard the defects in such cases as jurisdictional. There is also a question whether the reasoning of those cases, which involved petitions filed by federal entities without

proper authorization from the Solicitor General, would extend to the filing of a petition by an interstate-compact commission without the unanimous approval of its members. See *NRA Political Victory Fund*, 513 U.S. at 98; *Providence Journal*, 485 U.S. at 698-699. But the very need to confront such questions would make this case a poor vehicle for resolving the question presented.

The Commission suggests (Pet. Reply Br. 12) that, because state sovereign immunity itself is jurisdictional, the Court could consider that issue before addressing the validity of the petition for a writ of certiorari. But the Court has stated that, on a writ of certiorari, "the first and fundamental question is that of jurisdiction, *first*, of this court, and *then* of the court from which the record comes." *Steel Co.* v. *Citizens for a Better Environment*, 523 U.S. 83, 94 (1998) (quoting *Great Southern Fire Proof Hotel Co.* v. *Jones*, 177 U.S. 449, 453 (1900)) (emphasis added). Under that reasoning, if this Court lacks appellate jurisdiction, it has no authority to examine a decision (jurisdictional or otherwise) of the lower court. And the circumstances surrounding the filing of the petition in this case, as just discussed, raise doubts about this Court's appellate jurisdiction.

The Commission also observes (Pet. Reply Br. 11) that the district court rejected respondents' argument that the Commission lacked authority to file this suit. See Pet. App. 47a-51a. But as respondents note (Br. in Opp. 24-25), the relevant circumstances have changed since the district court's decision. At that time, the New York commissioner had voted in favor of filing the suit; the New Jersey commissioner had recused himself; and the court determined that the unopposed vote of the New York commissioner was sufficient to authorize the suit. Pet. App. 50a. Now, the New Jersey commissioner

has rescinded his recusal, leaving the Commission divided 1-1 over whether to file the petition. Br. in Opp. 25. The district court never addressed that distinct scenario.

To be sure, that is not the end of the argument. The Commission suggests (Pet. Reply Br. 11 n.4) that the New Jersey commissioner's rescission of his recusal was invalid, while respondents maintain (Br. in Opp. 25 n.8) that the rescission was effective. In the Commission's view (Pet. Reply Br. 11), its bylaws enabled Commission counsel to conduct this litigation without obtaining the approval of the commissioners; in respondents' view (D. Ct. Doc. 21-1, at 20-23 (Feb. 6, 2018)), Commission counsel performs her functions on behalf of the commissioners and thus may not act over the objection of one of them. Regardless of which side has the better view, those case-specific and fact-bound disputes confirm that this case does not warrant further review.

3. The denial of the petition for a writ of certiorari would not mean that New Jersey's unilateral effort to dissolve the Compact is immune from judicial review. The most obvious plaintiff to challenge that decision by the State of New Jersey is the State of New York, the other party to the Compact. If New York believes that New Jersey has violated the agreement between the two States, it could seek leave to file an original action against New Jersey in this Court. See U.S. Const. Art. III, § 2, Cl. 2; 28 U.S.C. 1251. It may also be that New York could sue New Jersey state officials in district court to obtain an injunction stopping them from enforcing Chapter 324. See U.S. Amicus Br. at 13, *Texas* v. *California*, No. 153, Original (Dec. 4, 2020) (discussing disagreement among lower courts about whether a State may bring an injunctive action against an official

of another State in district court, given this Court's original and exclusive jurisdiction over controversies between States).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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