No. 19-743

In the Supreme Court of the United States

CURTIS T. HILL, JR., ATTORNEY GENERAL OF INDIANA, IN HIS OFFICIAL CAPACITY, *ET AL.*,
Petitioners,

v.

WHOLE WOMAN'S HEALTH ALLIANCE, *ET AL.*,
Respondents.

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

BRIEF OF KENTUCKY, ALABAMA, ALASKA, ARIZONA, ARKANSAS, IDAHO, KANSAS, LOUISIANA, MISSOURI, MONTANA, NEBRASKA, OKLAHOMA, SOUTH CAROLINA, TENNESSEE, TEXAS, UTAH, AND WEST VIRGINIA AS *AMICI CURIAE* SUPPORTING PETITIONERS

DANIEL CAMERON
Attorney General of Kentucky

BARRY L. DUNN
Deputy Attorney General

Office of the Kentucky Attorney General
700 Capital Avenue
Suite 118
Frankfort, Kentucky 40601
(502) 696-5300
chad.meredith@ky.gov

S. CHAD MEREDITH
Solicitor General
Counsel of Record

MATTHEW F. KUHN
Deputy Solicitor General

BRETT R. NOLAN
Special Litigation Counsel

Counsel for Amici Curiae

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001

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INTERESTS OF *AMICI CURIAE*[1]

In the decision below, the United States Court of Appeals for the Seventh Circuit ordered the State of Indiana to issue a license to a would-be provider of abortion services. *See Whole Woman's Health Alliance v. Hill*, 937 F.3d 864, 879 (7th Cir. 2019). Indiana's Petition for Writ of Certiorari presents two questions, the second of which is whether a federal court may order a state agency to issue an abortion clinic license as a remedy for an "as applied" undue-burden challenge to the state's implementation of its licensing laws. The *amici* States have fundamental sovereign interests in the answer to this question because the licensing of businesses and professions is a matter generally left to the states as part of their police power. Allowing federal courts to order the issuance of state licenses will interfere with state sovereignty and disrupt the delicate balance of power between the states and the federal government. The *amici* States seek to protect their sovereignty and preserve their rightful place in our Republic's system of federalism.

The *amici* States also have an interest in protecting their residents. Unlike the federal government, the states have a general police power that gives them broad authority to protect the health, safety, and well-being of their people. As a result, the *amici* States have established regulatory frameworks governing certain industries and professions. And, as part of their regulatory frameworks, the *amici* States require

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[1] *Amici* have notified counsel for all parties of their intention to file this brief. Sup. Ct. Rules 37.2(a), 37.4.

individuals and businesses to become licensed before providing certain services in regulated industries and professions. To determine when to issue such licenses, the *amici* States have created intricate, well-developed administrative processes. This is especially true in the healthcare field, where the provision of services obviously has the greatest impact on the health and safety of citizens.

Federal courts are neither equipped nor authorized to determine when state licenses ought to be issued to those seeking to provide medical services; only states and their well-developed administrative processes are. Therefore, the *amici* States urge this Court to grant Indiana's Petition and to protect states' sovereignty by clarifying that federal courts have no authority to order a state agency to issue an abortion clinic license.

SUMMARY OF THE ARGUMENT

Federalism is one of the bedrock principles of our Republic. The constitutional design established by the Founders places a limited number of issues within the realm of federal control and leaves the remainder for the states to govern. The issuance of professional licenses—especially in the medical field—is unquestionably one of the matters left to the states. By ordering the State of Indiana to issue a license to a would-be provider of abortion services, the Seventh Circuit intruded upon the realm of state authority in a way that radically threatens our system of federalism.

The states' authority to license the provision of medical services within their borders stretches back to the colonial era. It is perhaps the oldest and most

unquestionably legitimate form of professional licensure in American history, and there has never been any serious suggestion that the power to issue a license to provide medical services within a state resides anywhere but with the respective state itself. The states are uniquely suited to determine which would-be medical services providers ought to be licensed. The federal government is neither equipped nor authorized by the Constitution to make such determinations. Allowing any branch of the federal government to do so would disrupt the delicate balance of power at the heart of our government.

Federal courts are especially ill-equipped to determine when a state license should be issued. And, perhaps more importantly, they are prohibited from doing so by state sovereign immunity. The doctrine of *Ex parte Young* allows federal courts to navigate around sovereign immunity by enjoining state officials—rather than states themselves—from violating the United States Constitution. But that doctrine does not permit federal courts to order a state official to grant a state license to a would-be medical provider. Because *Ex parte Young* cannot be applied in that manner, the Seventh Circuit had no authority to issue such an order to the State of Indiana.

Finally, even if one assumed for the sake of argument that a federal court's authority extended as far as the Seventh Circuit would have it, there perhaps could be no stronger case for abstention. *Burford* abstention requires that federal courts abstain from exercising their equitable power when doing so interferes with the independence of state governments

in establishing and carrying out their domestic policies through administrative decision-making. The actual granting of state licenses is precisely the kind of significant issue of public policy from which the federal courts ought to abstain.

ARGUMENT

I. The second question presented is vitally important to states because they have the sole power to license medical providers.

The Seventh Circuit essentially *ordered* the State of Indiana to issue a license to a would-be provider of medical services. In the second question presented, Indiana asks whether a federal court has authority to issue such an order. This question is vitally important to the states, and it can only be answered in the negative. The issuance of licenses to would-be medical providers is a power that belongs solely to the states. The Seventh Circuit's decision tramples on that aspect of state sovereignty.

From the beginning of the Republic, the United States Constitution has provided for a system of federalism in which the national government has authority over a limited number of issues, and all remaining authority resides in the state governments. Writing in The Federalist No. 45, James Madison explained that:

> The powers delegated by the . . . Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite. . . . The powers reserved to the several States will

> extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State.

The Federalist No. 45, at 260–61 (James Madison) (Clinton Rossiter ed., 1961, reprinted 1999). This division of authority, which was plainly implicit in the original text of the Constitution, "was rendered express by the Tenth Amendment's assertion that '[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.'" *Printz v. United States*, 521 U.S. 898, 919 (1997).

Among the powers reserved to the states—and withheld from the federal government—is the general police power. *See United States v. Lopez*, 514 U.S. 549, 567 (1995) (observing that the federal government has no general police power of the sort possessed by the states). While not always easy to define, "the police power of a state must be held to embrace, at least, such reasonable regulations established directly by legislative enactment as will protect the public health and the public safety." *Jacobson v. Massachusetts*, 197 U.S. 11, 25 (1905) (citations omitted). An earlier description of the police power recognized that states have the authority to enact "health laws of every description." *Mayor of New York v. Miln*, 36 U.S. 102, 147 (1837).

The power to issue licenses to would-be medical providers has always been understood to fall directly in the heartland of the states' police power. Indeed, individual colonies were regulating aspects of the

practice of medicine as early as 1639. *See* Gregory Dolin, Note, *Licensing Healthcare Professionals: Has the United States Outlived the Need for Medical Licensure?*, 2 Geo. J.L. & Pub. Pol'y 315, 316 (2004) (citations omitted). "By 1800, thirteen of the sixteen states had given their respective state medical boards the power to examine and license physicians." Mitch Altschuler, Note, *The Dental Health Care Professionals Nonresidence Licensing Act: Will it Effectuate the Final Decay of State Discrimination Against Out-of-State Dentists?*, 26 Rutgers L.J. 187, 192 (1994) (citations omitted). This trend reversed course with a period of deregulation in the mid-1800's, but the deregulation trend itself reversed following the Civil War. Edward P. Richards, *The Police Power & the Regulation of Medical Practice: A Historical Review and Guide for Medical Licensing Board Regulation of Physicians in ERISA-Qualified Managed Care Organizations*, 8 Annals Health L. 201, 206–08 (1999) (citations omitted).

This Court first recognized that the licensure of medical providers is a function of the states' police power in *Dent v. West Virginia*, 129 U.S. 114 (1889). In upholding West Virginia's licensure standards for physicians, this Court held that "[t]he power of the state to provide for the general welfare of its people authorizes it to prescribe all such regulations as in its judgment will secure or tend to secure them against the consequences of ignorance and incapacity, as well as of deception and fraud." *Id.* at 122. Following *Dent*, there was no doubt that medical licensure falls "squarely within the States' sovereign police power." *N.C. State*

Bd. of Dental Examiners v. FTC, 574 U.S. 494, 135 S. Ct. 1101, 1119 (2015) (Alito, J., dissenting).

Less than a decade after *Dent*, this Court clarified that the states' police power extends not only to setting the minimum competency standards for medical licensure, but also to the minimum character and moral standards of medical professionals. Specifically, in *Hawker v. New York*, this Court upheld a New York law that prohibited the practice of medicine by those who had been convicted of a felony. 170 U.S. 189, 189–92 (1898). The Court held that:

> No precise limits have been placed upon the police power of a state, and yet it is clear that legislation which simply defines the qualifications of one who attempts to practice medicine is a proper exercise of that power. Care for the public health is something confessedly belonging to the domain of that power. The physician is one whose relations to life and health are of the most intimate character. It is fitting, not merely that he should possess a knowledge of diseases and their remedies, but also that he should be one who may safely be trusted to apply those remedies.

Id. at 192–94.

The bottom line is that the licensing of medical providers is a "quintessential" police power belonging to the states. *N.C. State Bd. of Dental Examiners*, 135 S. Ct. at 1119 (Alito, J., dissenting). No part of the federal government has authority to decide when such a state license must be issued. Yet, the Seventh

Circuit appropriated that authority to itself in this case.

The Seventh Circuit's decision tramples on state prerogatives and shows profound disrespect for the proper balance of power between the states and national government under the system of federalism established by the Constitution. This is no small matter. Federal courts are not competent to evaluate the ethics and qualifications of each would-be provider of medical services. The states—being closer to the people and having well-developed processes for evaluating license applications—are better equipped to determine whether a license should be granted in any particular instance.

Perhaps more importantly, however, the Seventh Circuit's decision to usurp state police power poses an existential threat to the states, as well as to the people themselves. The division of power between the federal and state governments "is one of the Constitution's structural protections of liberty." *Printz*, 521 U.S. at 921. The "constitutionally mandated balance of power between the States and the Federal Government was adopted by the Framers to ensure the protection of our fundamental liberties." *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991) (internal quotation marks and citations omitted). "Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front." *Id.* "If this 'double security' is to be effective, there must be a

proper balance between the States and the Federal Government." *Id.* at 459.

The Seventh Circuit's decision below represents a grave disruption of that balance, and this Court should step in to restore the proper equilibrium by holding that federal courts have no power to order a state to issue a license to a would-be medical provider.

II. The Seventh Circuit's holding conflicts with this Court's sovereign immunity decisions, as well as those of other circuits.

The Seventh Circuit not only disrupted the delicate balance of power between the federal and state governments, but—as Indiana's Petition correctly argues—the court also violated Indiana's sovereign immunity. In doing so, the Seventh Circuit acted in conflict with decisions of this Court, as well as decisions of other circuits.

As sovereign entities, the states are generally immune from suit. *See Alden v. Maine*, 527 U.S. 706, 712–15 (1999). However, in *Ex parte Young*, this Court held that sovereign immunity does not necessarily prohibit a lawsuit seeking to have a state official enjoined from taking official action that violates the United States Constitution. 209 U.S. 123, 159–60 (1908). While this exception appears broad, it is not nearly broad enough to authorize the Seventh Circuit's holding below.

It is well established that *Ex parte Young* does not give blanket authorization for *any and all* injunctive relief sought against state officials. Indeed, this Court has held:

> To interpret *Young* to permit a federal-court action to proceed in every case where prospective declaratory and injunctive relief is sought against an officer, named in his individual capacity, would be to adhere to an empty formalism and to undermine the principle . . . that Eleventh Amendment immunity represents a real limitation on a federal court's federal-question jurisdiction.

Idaho v. Coeur d'Alene Tribe of Id., 521 U.S. 261, 270 (1997). There are multiple reasons why *Ex parte Young* does not apply here.

First, as Indiana's Petition correctly points out, the doctrine of *Ex parte Young* does not authorize a federal court to issue an injunction requiring a state official to comply with his or her state's *own* laws. *See Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106 (1984). But that is precisely what the Seventh Circuit did when it ordered Indiana to either license the Respondent or treat it as if it were licensed under *Indiana* law. For the reasons explained in Indiana's Petition, it is clear that *Ex parte Young* does not provide a sovereign-immunity exception in this case. *See id.*; *see also Bragg v. W. Va. Coal Ass'n*, 248 F.3d 275, 296–97 (4th Cir. 2001) (holding that the district court violated West Virginia's sovereign immunity by requiring a state official to make certain findings required as part of the state's surface coal mining permitting process). As a result, the decision below necessarily violated Indiana's sovereign immunity.

Second, it is wholly inconsistent with the theory underlying the *Ex parte Young* doctrine for a federal

court to grant injunctive relief that orders a state official to issue a state license. The doctrine is based "on the premise—less delicately called a 'fiction'—that when a federal court commands a state official to do nothing more than refrain from violating federal law, he is not the State for sovereign-immunity purposes." *Va. Office for Protection & Advocacy v. Stewart*, 563 U.S. 247, 255 (2011) (internal quotation marks and citations omitted). In other words, the theory behind *Ex parte Young* is that state officials are only acting in their individual capacities when they violate the Constitution, and therefore an injunction prohibiting their unconstitutional conduct is not really an injunction against the sovereign itself. *See Cory v. White*, 457 U.S. 85, 101 (1982); *see also Okpalobi v. Foster*, 244 F.3d 405, 411 (5th Cir. 2001) ("This exception rests on the fiction of *Ex parte Young*—that because a sovereign state cannot commit an unconstitutional act, a state official enforcing an unconstitutional act is not acting for the sovereign state and therefore is not protected by the Eleventh Amendment."). In the words of the *Ex parte Young* Court itself, a federal court can enjoin a state official from violating federal law because the official is deemed to have been "stripped of his official or representative character" due to the unlawful conduct. *Ex parte Young*, 209 U.S. at 159–60.

Given this underlying theory, it is clear that the *Ex parte Young* doctrine must be limited in application to situations where the sought-after injunction would simply compel an individual state official to stop violating the Constitution. The doctrine does not fit in situations—like the one at hand—where a federal court

orders a state official to affirmatively take some action that can only be accomplished under the guise of the state's official, sovereign power. In those situations, the injunction can no longer be justified on the premise that the court is merely enjoining the actions of an *individual* rather than a state actor.

Officials, for example, have no authority to issue state licenses in their individual capacities; they can only do so in their official capacities, exercising the power of the sovereign. Thus, when a federal court orders a state official to issue a state license, that order cannot be viewed as anything but an injunction ordering the *state* itself to issue the license. Such injunctions are irreconcilable with sovereign immunity because the theory underlying *Ex parte Young* plainly does not apply in those situations. *See Va. Office for Protection & Advocacy*, 563 U.S. at 255 (holding that *Ex parte Young* "does not apply when the state is the real, substantial party in interest" (internal quotation marks and citations omitted)).

The Seventh Circuit itself has expressly recognized this distinction in prior decisions. In *MSA Realty Corporation v. Illinois,* the Seventh Circuit held that "the eleventh amendment bars a claim for injunctive relief . . . that seeks to require state officials to carry out a task that only the state can perform in its political capacity." 990 F.2d 288, 295 (7th Cir. 1993). And in *Jensen v. State Board of Tax Commissioners of Indiana*, the Seventh Circuit likewise held that plaintiffs cannot circumvent the Eleventh Amendment by requesting injunctive relief that would "compel

[officials] to act solely within their capacity as state officials." 763 F.2d 272, 277 (7th Cir. 1985).

Other circuits have reached the same conclusion. In *Berry v. Allen*, the district court ordered the Kentucky State Alcoholic Beverages Control Board to grant an individual a local liquor license after finding the licensing process unconstitutionally arbitrary. 411 F.2d 1142, 1143 (6th Cir. 1969). The Sixth Circuit reversed, holding that "[t]he District Court had no power to tell the State of Kentucky that [it] should have an additional liquor outlet and that Appellees were entitled to open a store there." *Id.* at 1145. According to the Sixth Circuit, the federal court's role was properly limited to assessing whether the process was unconstitutional, *not* deciding whether the plaintiff should ultimately be allowed to operate a liquor store in the state. *See id.* The Seventh Circuit's decision below clearly conflicts with the Sixth Circuit's decision in *Berry*.

The Fifth Circuit reached the same conclusion in a case also involving liquor licenses. In *Hornsby v. Allen*, the court held:

> The proper question to be determined upon the hearing of this case in the district court is not whether the plaintiff below is entitled under the law to a liquor license. The determination of whether she should be granted one is a function of the Aldermanic Board. The role of the courts is to ascertain whether the manner in which this determination was or is made accords with

> constitutional standards of due process and equal protection.

326 F.2d 605, 612 (5th Cir. 1964).

Finally, this Court has held that *Ex parte Young* does not apply when the requested injunctive relief would implicate special sovereignty interests. *See Coeur d'Alene Tribe of Id.*, 521 U.S. at 270. Such interests are implicated when, as relevant here, the requested relief would strike at a state's fundamental power. *See J.B. ex rel. Hart v. Valdez*, 186 F.3d 1280, 1286–87 (10th Cir. 1999) (citation omitted). In *Coeur d'Alene Tribe*, for example, a Native American tribe sought declaratory and injunctive relief pertaining to a dispute that the tribe and Idaho had over land submerged under Lake Coeur d'Alene. *See* 521 U.S. at 265. Specifically, the tribe sought a declaration establishing its exclusive right to use and occupy the land, as well as an injunction prohibiting Idaho from regulating or permitting the land, or otherwise taking any measures to interfere with the tribe's exclusive rights to the land. *See id.* The tribe contended that the *Ex parte Young* doctrine permitted a federal court to hear its claims, but this Court held otherwise. The Court concluded that the suit was barred by the Eleventh Amendment because the claim for relief involved "special sovereignty interests." *See id.* at 281. In particular, the Court found that:

> The suit would diminish, even extinguish, the State's control over a vast reach of lands and waters long deemed by the State to be an integral part of its territory. To pass this off as a judgment causing little or no offense to Idaho's

> sovereign authority and its standing in the Union would be to ignore the realities of the relief the Tribe demands.

Id. at 282.

The case at hand similarly involves special sovereignty interests. In fact, it is hard to imagine a suit that would strike more at a state's fundamental power than the present case, where the relief granted by the Seventh Circuit stripped Indiana of part of its police power and placed that power in the hands of a federal court. If the relief granted by the Seventh Circuit in the decision below does not implicate special sovereignty interests, then it is difficult to imagine what would. This is not a case where a federal court merely declared a statute unconstitutional. Rather, the Seventh Circuit affirmatively *ordered* Indiana to issue a state license. *Cf. Curling v. Sec. of Georgia*, 761 F. App'x 927, 934 (11th Cir. 2019) (holding that the plaintiffs' claims did not implicate special sovereignty interests because they *were not* seeking an order "directing the precise way in which Georgia should conduct voting" but were instead merely seeking an injunction against continued use of a purportedly unconstitutional system). In doing so, the Seventh Circuit not only commandeered Indiana's licensure authority—an authority that belongs *only* to Indiana as part of its general police power—but it also allowed the Respondent to skip over the Indiana courts and the administrative and judicial appellate process provided

by Indiana's licensing regime.[2] This obviously implicates extraordinarily important sovereignty interests, which means that *Ex parte Young* does not apply here.

The ultimate point is this: Indiana is a sovereign state that enjoys sovereign immunity. While the doctrine of *Ex parte Young* allows federal courts to enjoin state officials from violating federal law under certain circumstances, those circumstances do not exist here. It is abundantly clear that the doctrine does not allow federal courts to order states to issue licenses under *state law* to would-be medical providers. Federal courts simply have no power to entertain suits for such relief.

III. Federal courts must, at the very least, abstain from using equitable relief as a means to override state licensing schemes.

Even if one assumed for the sake of argument that a federal court can order a state to issue a license to a would-be medical provider without regard for the state's administrative process, it would be difficult to find a stronger case for abstention.

Federal courts have no place deciding how states implement their own licensing laws. To perhaps understate the problem, the federal judiciary is "comparatively unsophisticated" as a regulatory

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[2] As Indiana correctly argues in its Petition, the decision below also contravenes the *Rooker-Feldman* doctrine. *See* Pet. at 27–30; *see also D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 486 (1983); *Rooker v. Fid. Trust Co.*, 263 U.S. 413, 415 (1923).

agency. *See New Orleans Public Serv., Inc. v. Council of City of New Orleans*, 491 U.S. 350, 360 (1989) (citing *Burford v. Sun Oil Co.*, 319 U.S. 315, 327 (1943)). That is why this Court has mandated that lower courts abstain from exercising their equitable power in these kinds of cases when doing so interferes with "the rightful independence of state governments in carrying out their domestic policy." *Burford*, 319 U.S. at 318 (quoting *Pennsylvania v. Williams*, 294 U.S. 176, 185 (1935)).

Burford abstention protects the ability of states to establish coherent public policy over their own affairs. *See Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 727–28 (1996). Under *Burford*, "[w]here timely and adequate state-court review is available, a federal court . . . must decline to interfere with the proceedings or orders of state administrative agencies" when doing so would disrupt the state's "coherent policy" on matters "of substantial public concern." *New Orleans Public Serv., Inc.*, 491 U.S. at 361 (quoting *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 814 (1976)). This kind of administrative abstention prevents federal courts from "actively participat[ing] in the fashioning of the state's domestic policy." *Burford*, 319 U.S. at 335 (Douglas, J., concurring).

This rule of equity is especially pronounced in the context of state-licensing decisions. *Burford* itself involved such an issue. There, the Court ordered abstention in a suit challenging the Texas Railroad Commission's decision to grant a drilling permit to the petitioner. *See id.* at 317–18, 334. The plaintiff had

ample recourse through the state's administrative process, which included judicial review, but brought suit in federal court for relief. *Id.* at 325. That troubled the Court. The administrative decision to grant a drilling permit, the Court explained, is precisely the kind of regulatory judgment that "so clearly involves basic problems of [state] policy" that federal courts must refuse to resolve. *Id.* at 333. So, despite having jurisdiction, the Court mandated abstention to "avoid[] needless friction with state policies." *Id.* (citation omitted).

When states establish licensing systems and empower administrative agencies to implement them, those agencies become the vehicle for executing a careful balance of public policy judgments. *See id.* at 318 (explaining that the Texas Railroad Commission manages "as thorny a problem as has challenged the ingenuity and wisdom of legislatures" (citation omitted)). The Court in *Burford* recognized the danger here from federal interference. If a federal court can simply waive away an administrative process and order a state to issue a license to a complaining party, the states could quickly lose their ability to set coherent and uniform policy throughout their borders. *See Quackenbush*, 517 U.S. at 727. That kind of power would needlessly lay waste to the careful balance of federal and state sovereignty our Constitution protects.

The Court need not look further than its own docket to see the kinds of cases that the Seventh Circuit's overreach might inspire. Last term, this Court held that Tennessee's residency requirement for obtaining a retail liquor license violated the Dormant Commerce

Clause. *See Tenn. Wine & Spirits Retailers Assoc. v. Thomas*, --- U.S. ---, 139 S. Ct. 2449, 2457 (2019). What relief should follow from that kind of decision? According to the Seventh Circuit, it might be perfectly proper for the lower court simply to order that Tennessee provide the plaintiff with a liquor license, regardless of any administrative process that otherwise governs. Or what if a federal court finds that a state's dental licensing board violated antitrust law by preventing competition in a market? *See, e.g., N.C. State Bd. of Dental Examiners*, 135 S. Ct. at 1117. Could the court simply order that the state issue a dental license to an unqualified applicant as a remedy for the unlawful act? That seems to be exactly what the Seventh Circuit did here.

Of course, no one would argue that federal courts must always abstain from disputes touching on state regulatory policy. Federal courts can and must adjudicate legal challenges to state action, including resolving the constitutionality of laws and regulations. *See Quackenbush*, 517 U.S. at 716 ("We have often acknowledged that federal courts have a strict duty to exercise the jurisdiction that is conferred upon them by Congress."). But deciding whether to enjoin an unconstitutional provision of a licensing scheme is of a wholly different character than *overriding* that scheme altogether, *bypassing* the administrative process, and *ordering* a state to grant the complaining party a license. Such action is an affront to the careful balance of state and federal interests at the heart of our Constitutional order, which is why the Court in *Burford* mandated that lower courts abstain from exercising their equitable power in this manner.

CONCLUSION

The decision below is deeply at odds with Indiana's sovereign immunity and its ability to exercise its general police power within its own borders. The *amici* States urge this Court to undo this disturbing precedent and to provide a clear rule that federal courts have no authority to usurp state police power by ordering states to issue state licenses.

Respectfully submitted,

DANIEL CAMERON
Attorney General of Kentucky

BARRY L. DUNN
Deputy Attorney General

Office of the Kentucky Attorney General
700 Capitol Ave., Ste.118
Frankfort, KY 40601
(502) 696-5300
Chad.Meredith@ky.gov

S. CHAD MEREDITH
Solicitor General
Counsel of Record

MATTHEW F. KUHN
Deputy Solicitor General

BRETT R. NOLAN
Special Litigation Counsel

Counsel for Amici Curiae

ADDITIONAL COUNSEL

STEVE MARSHALL
Attorney General of
Alabama

KEVIN G. CLARKSON
Attorney General of
Alaska

MARK BRNOVICH
Attorney General of
Arizona

LESLIE RUTLEDGE
Attorney General of
Arkansas

LAWRENCE WASDEN
Attorney General of
Idaho

DEREK SCHMIDT
Attorney General of
Kansas

JEFF LANDRY
Attorney General of
Louisiana

ERIC SCHMITT
Attorney General of
Missouri

TIMOTHY C. FOX
Attorney General of
Montana

DOUG PETERSON
Attorney General of
Nebraska

MIKE HUNTER
Attorney General of
Oklahoma

ALAN WILSON
Attorney General of
South Carolina

HERBERT H. SLATERY III
Attorney General of
Tennessee

KEN PAXTON
Attorney General of
Texas

SEAN D. REYES
Attorney General of
Utah

PATRICK MORRISEY
Attorney General of
West Virginia