No. 159, Original

In the Supreme Court of the United States

STATE OF MISSOURI

Plaintiff,

v.

STATE OF NEW YORK

Defendant.

ON MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

BRIEF OF FLORIDA, IOWA, ALASKA, AND MONTANA AS AMICI CURIAE IN SUPPORT OF PLAINTIFF'S MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

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INTEREST OF AMICI CURIAE

Amici curiae States of Florida, Iowa, Alaska, and Montana[1] have a fundamental interest in the proper scope of this Court's original jurisdiction and call on this Court to exercise its jurisdiction consistent with the original understanding of Article III and 28 U.S.C. § 1251(a).

This Court's practice of treating jurisdiction over disputes between states as discretionary leaves states without adequate recourse in many instances. But the Framers gave this Court jurisdiction over such disputes because of their importance, not to treat states as second-class litigants.

This case demonstrates the pitfalls of the Court's practice. Missouri's allegation that New York is interfering with the 2024 presidential election is a serious one. And while views on that allegation will vary widely, this Court's obligation under the Constitution and laws is to adjudicate Missouri's claim and "say what the law is." *Marbury v. Madison*, 5 U.S. 137, 177 (1803).

The Amici States respectfully ask this Court to take this case out of respect for the sovereign dignity inherent in a state against state dispute.

SUMMARY OF ARGUMENT

President Trump is the target of a prosecution by a New York County District Attorney who campaigned on targeting the former president. Never before has a presidential candidate for a major party been

[1] This brief is filed under Supreme Court Rule 37.4. No notice of intent to file is required because it was filed more than 10 days before the deadline under Rule 37.2(a).

prosecuted by a state during a Presidential election. Missouri contends that this Court should step in to delay this politically motivated prosecution until after the election to thwart its apparent purpose to interfere with the election. That is a serious contention, and this Court has a constitutional and statutory obligation to adjudicate it.

Article III vested this Court with jurisdiction for disputes arising between the states. U.S. Const. art. III, § 2. And Congress enacted a law to implement that grant of jurisdiction. 28 U.S.C. § 1251(a). Those texts are mandatory. The Court should follow their unambiguous dictates and hear Missouri's case.

This Court has adopted a "discretionary rule" for original actions between states. But that rule was grounded in policy and finds no footing in the text. It also makes no sense. This Court's jurisdiction over such actions is exclusive. Without jurisdiction in this Court, there is no court in which a state may press its claims.

ARGUMENT

I. THE CONSTITUTION AND FEDERAL LAW TASK THIS COURT WITH ADJUDICATING DISPUTES BETWEEN STATES.

A. The Court's jurisdiction over original actions in suits between states is mandatory, not discretionary. The Framers "vested" "[t]he judicial Power of the United States . . . in one supreme Court[] and in such inferior Courts as the Congress may from time to time ordain and establish." U.S. Const. art. III, § 1. And the Constitution provides that this Court's "judicial Power *shall* extend . . . to Controversies between two or more States." U.S. Const. art. III, § 2 (emphasis added).

Such suits fall within this Court's original jurisdiction. *See United States v. Texas*, 143 U.S. 621, 644 (1892). Having this Court adjudicate such cases is part of what the states signed up for when they ratified the Constitution. This Court's "role in these cases is to serve as a substitute for the diplomatic settlement of controversies between sovereigns and a possible resort to force." *Texas v. New Mexico*, 583 U.S. 407, 412 (2018). And the Court's jurisdiction is "exclusive." 28 U.S.C. § 1251(a).

Not surprisingly, given the importance of that task, and the fact that states lack an alternative forum to be heard, this Court's duty to hear such suits is mandatory, not discretionary. The relevant statute, which dates from the Judiciary Act of 1789, provides that this Court "*shall* have original and exclusive jurisdiction of *all* controversies between two or more States." 28 U.S.C. § 1251(a) (emphasis added). Those words are devoid of ambiguity. The word "shall" "normally creates an obligation impervious to judicial discretion." *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998). The word "all" is also expansive. Combining the two yields a directive that is "as clear as statutes get." *Axon Enter., Inc. v. FTC*, 598 U.S. 175, 205 (2023) (Gorsuch, J., concurring). The result is an obligation at least to hear such suits. *See*, *e.g.*, *Texas v. California*, 141 S. Ct. 1469, 1469 (2021) (Alito, J., dissenting); *Arizona v. California*, 140 S. Ct. 684, 684 (2020) (Thomas, J., dissenting); *cf. California v. West Virginia*, 454 U.S. 1027, 1027–28 (1981) (Stevens, J., dissenting).

Similar considerations undergird the principle that federal courts ordinarily have "a virtually unflagging obligation to hear and resolve questions properly

before [them]." *FBI v. Fikre*, 601 U.S. 234, 240 (2024) (quotation marks omitted). And on the rare times a federal court may decline to exercise otherwise mandatory jurisdiction, it is usually because there is some other important constitutional interest at stake, like showing due respect to the states. *See, e.g., Younger v. Harris*, 401 U.S. 37, 44 (1971).

Here, that respect counsels in favor of exercising original jurisdiction in cases like this. This Court has explained that states cannot be haled into their sister states' courts against their will because it disrespects their inherent sovereignty. *See Franchise Tax Bd. of California v. Hyatt*, 587 U.S. 230, 237 (2019). But the states did consent to their disputes being heard in this Court when they ratified the Constitution. *See* U.S. Const. art. III, § 2.

When Congress wants to make the federal courts' jurisdiction discretionary, it has done so in unmistakably clear terms. Especially pertinent here, the certiorari statute, which was enacted precisely to confer discretion on this Court over its own docket, *see* William Howard Taft, *The Jurisdiction of the Supreme Court Under the Act of February 13, 1925*, 35 Yale L.J. 1, 1–2 (1925), is phrased in expressly discretionary terms. *See* 28 U.S.C. §§ 1254, 1257 (this Court "may" review cases by certiorari from the federal courts of appeals and from state courts of last resort). Other statutes explicitly conferring discretion over whether to exercise jurisdiction abound.[2] The Court should

[2] For example, Congress has given district courts discretion to decline to hear certain class actions: "A district court *may*, in the interests of justice and looking at the totality of the

construe "that difference in language to convey a difference in meaning." *Bittner v. United States*, 598 U.S. 85, 94 (2023).

The original-jurisdiction statute reflects the opposite tradition. "For the first 150 years after the adoption of the Constitution, the Court never refused to permit the filing of a complaint in a case falling within its original jurisdiction." *Texas*, 141 S. Ct. at 1470 (Alito, J., dissenting). The Court seems to have moved away from that tradition out of concern about its "'increasing duties with the appellate docket.'" *Id.* at 1471 (quoting *Illinois v. City of Milwaukee*, 406 U.S. 91, 94 (1972)). The appellate docket today, however, is quite small. And policy concerns are no warrant for departing from the language of the statute anyway.

B. The Court has hesitated to assert its mandatory original jurisdiction in part because it is "structured to perform as an appellate tribunal, ill-equipped for the task of factfinding" and because the cases are inordinately complex. *Ohio v. Wyandotte Chemicals Corp.*, 401 U.S. 493, 498 (1971). But this Court has ample tools for managing those challenges, just as it manages them in the few cases that come to this Court on its mandatory appellate docket.

Many disputes between states can be disposed of on cross-motions for judgment on the pleadings. *See New York v. New Jersey*, 598 U.S. 218, 223 (2023).

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circumstances, decline to exercise jurisdiction under paragraph (2) over a class action" that does not implicate truly national interests. 28 U.S.C. § 1332(d)(3) (emphasis added). Similarly, Congress has given district courts discretion to hear pendent state-law claims: "The district courts *may* decline to exercise supplemental jurisdiction over a claim under subsection (a) if" certain factors are met. *Id.* § 1367(c) (emphasis added).

Those proceedings are virtually identical to how this Court handles appeals—the parties submit briefs, and this Court then holds oral arguments on pure questions of law. Indeed, these types of disputes are even easier to dispose of than appeals because there is no underlying record to review. The Court only need apply the law to agreed-upon facts.

In cases that do involve factfinding, this Court routinely appoints a special master who makes findings of fact and conclusions of law. *See, e.g., Delaware v. Pennsylvania*, 598 U.S. 115, 126–27 (2023). After the special master makes those findings, the states submit exceptions, *see id.*, this Court holds oral arguments, and then it issues a ruling. That is much like how an appeal proceeds, which sometimes requires detailed review of district-court factual findings. *See, e.g., Alexander v. S.C. State Conf. of the NAACP*, 144 S. Ct. 1221, 1233 (2024) (holding that the district court's factual findings were clearly erroneous). And at least some review of the facts is central to an appeal. *See Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 399–405 (1990) (explaining how appellate courts review factual findings on appeal of Rule 11 motions).

Hearing original actions as a matter of course will not clog this Court's docket either. States have sued each other just seven times in the last five years. *See Texas v. Pennsylvania*, 141 S. Ct. 1230 (2020); *Arizona*, 140 S. Ct. 684; *New Hampshire v. Massachusetts*, 141 S. Ct. 2848 (2021); *Montana v. Washington*, 141 S. Ct. 2848 (2021); *Texas*, 141 S. Ct. 1469; *New York*, 598 U.S. 218; *Alabama v. California*, No. 158, Orig. (filed May 22, 2024). In that same time, only four parties have taken appeals as of right to this

Court. *See Trump v. New York*, 592 U.S. 125 (2020); *FEC* v. *Cruz*, 596 U.S. 289 (2022); *Allen v. Milligan*, 599 U.S. 1 (2023); *Alexander*, 144 S. Ct. 1221. Original actions are not meaningfully different from direct appeals. Indeed, direct appeals often require review of voluminous statistical data required to create a congressional map.

What is more, state courts sometimes must exercise mandatory original jurisdiction, and they do not run into any problems. We are not aware, for example, that election contests have clogged the Missouri Supreme Court's docket. *See* Mo. Const. art. VII, § 5 (original jurisdiction over election contests). Nor does the Illinois Supreme Court decline to hear redistricting cases to save room for its appellate docket. *See* Ill. Const. art. IV, § 3(b) (original, exclusive jurisdiction over redistricting cases).

This is true across the Nation, even in states (like Missouri, Illinois, and many others) that have far larger mandatory appellate dockets than this Court has. *See*, *e.g.*, Mo. Const. art. V, § 3 (mandatory jurisdiction over attacks on the validity of a statute, tax cases, and death penalty cases, among others); Ill Const. art. VI, § 4(c) (constitutional cases); N.J. Const. art. VI, § 5, ¶ 1 (constitutional cases and cases with a dissent below); Ga. Const. art. VI, § 6, ¶ 2 (election contests and attacks on the validity of a statute). Not to mention that many state high courts also must hear attorney and judicial disciplinary proceedings. *See*, *e.g.*, Fla. Const. art. V, §§ 12(c), 15; Iowa Ct. R. 36.21–22; Or. Const. art. VII, § 8; Ga. Const. art. VI, § 7, ¶ 8.

All told, the concerns that exercising original jurisdiction would clog up this Court's docket are overstated.

II. IF THE COURT CONTINUES TO TREAT ITS JURISDICTION AS DISCRETIONARY, IT SHOULD GIVE DUE WEIGHT TO NEW YORK'S UNPRECEDENTED CONDUCT.

This case involves allegations that one state is using its criminal process to interfere with a presidential election. Those are serious allegations, and there is ample indication that New York officials are acting in an unprecedented attempt to target a presidential candidate.

Alvin Bragg was elected as the Manhattan District Attorney in 2021.[3] He campaigned on using his office to target President Trump and his family. He frequently bragged that he "had investigated Trump and his children" and sued President Trump "more than a hundred times."[4] He also hosted a campaign fundraiser with a former House of Representatives lawyer involved in President Trump's first impeachment.[5] Even one of Bragg's Democratic primary opponents felt that he was crossing a line by obsessively targeting President Trump "for political advantage."[6]

When Bragg took office, he inherited a sprawling criminal investigation into President Trump's

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[3] *Alvin Bragg Elected as Manhattan's First Black District Attorney*, CBS News (Nov. 2, 2021), https://tinyurl.com/2p8zw3xt.

[4] Jonah E. Bromwich, et al., *2 Leading Manhattan D.A. Candidates Face the Trump Question*, N.Y. Times (June 2, 2021), https://tinyurl.com/4ey23p6w.

[5] *Id.*

[6] *Id.*

financial records.[7] But despite his previously expressed zeal for targeting President Trump, Bragg "had serious doubts" about the investigation.[8] After repeated briefings, Bragg decided that the case was too weak to charge and brought the investigation "to a sudden halt."[9]

That decision proved unpopular in Bragg's political circles. It prompted "fierce" and "heated" "political backlash."[10] The two prosecutors leading the investigation—one of whom had come out of retirement to investigate Trump for no pay—resigned.[11] And when one made his resignation letter public, it only further stoked flames among Bragg's constituency, which "widely loathed" President Trump.[12] Bragg was experiencing a "brutal start to his tenure."[13]

Under that kind of political pressure, Bragg went "back to square one," "poring over" material in search of something to charge.[14] He became increasingly interested in a prosecution centered on payments President Trump had made under nondisclosure agreements to keep confidential alleged personal improprieties—an investigation some in Bragg's office

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[7] Jonah E. Bromwich, et al., *How Alvin Bragg Resurrected the Case Against Donald Trump*, N.Y. Times (March 31, 2023), https://tinyurl.com/3yju6b9z.

[8] Ben Protess, et al., *How the Manhattan D.A.'s Investigation into Donald Trump Unraveled*, N.Y. Times (March 5, 2022), https://tinyurl.com/3mvkmkdt.

[9] *Id.*

[10] Bromwich, *supra* n.7.

[11] Protess, *supra* n.8.

[12] Bromwich, *supra* n.7.

[13] *Id.*

[14] *Id.*

referred to as the "zombie case" because of how long the office had abandoned it before Bragg brought it back to life.[15] Bragg communicated his change of heart to "outside supporters," indicating "that he was newly optimistic" about coming up with criminal charges for the former president.[16]

To lead the prosecution, Bragg hired a former "political consultant" for the Democratic National Committee with little criminal experience.[17] Inexplicably, that former Democratic political operative left a high-ranking post at the U.S. Department of Justice for this new role with the District Attorney's Office, a move some observed to be akin to "climb[ing] several steps down the career ladder."[18]

Bragg also began coordinating the prosecution with New York Attorney General Letitia James, enlisting attorneys from her office to assist.[19] James has not been afraid to make her political motivations explicit. As with Bragg, "[e]ven before she took office" James "had Donald Trump in her sights,"[20]

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[15] *Id.*

[16] *Id.*

[17] Josh Christenson, *Trump Hush Money Prosecutor Matthew Colangelo Was Political Consultant for DNC, Ex-Obama Donor*, N.Y. Post (May 6, 2024), https://tinyurl.com/9z4utfbd; Jonah E. Bromwich, *Manhattan D.A. Hires Ex-Justice Official to Help Lead Trump Inquiry*, N.Y. Times (Dec. 5, 2022), https://tinyurl.com/2u466n9d.

[18] Emma Colton, *Trump Prosecutor Quit Top DOJ Post for Lowly NY Job in Likely Bid to 'Get' Former President, Expert Says*, Fox News (Apr. 25, 2024), https://tinyurl.com/bde79tk4.

[19] Bromwich, *supra* n.17.

[20] Max Matza, *Letitia James and Donald Trump's History of Clashes*, BBC News (Sept. 27, 2023), https://tinyurl.com/4mwsutwe.

campaigning on a promise "to bring Mr. Trump to justice."[21] She described the United States as a "country at war with itself" with President Trump "at the eye of the storm" and pledged to criminally investigate him in an effort to "remov[e him] from office."[22]

With that team of political operatives, Bragg indicted President Trump on 34 counts of falsifying business records.[23] Those charges would ordinarily constitute misdemeanors in New York, N.Y. Penal Law § 175.05, but at that point the statute of limitations on misdemeanors had arguably run, *see* N.Y. Crim. Proc. Law § 30.10(2)(c). So to convert the charges into felonies, Bragg alleged that the records were falsified with "intent to commit another crime and aid and conceal the commission thereof," without specifying what that other crime was.[24] *See* N.Y. Penal Law § 175.10. That decision was striking considering that Bragg's preferred practice for armed robbers and drug dealers is to downgrade felony charges to misdemeanors.[25]

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[21] Jonah E. Bromwich & Ben Protess, *Trump Fraud Trial Penalty Will Exceed $450 Million*, N.Y. Times (Feb. 16, 2024), https://tinyurl.com/3ds2j4vj.

[22] NowThis Impact, *Why Letitia James Wants to Take on Trump as NY's Attorney General*, YouTube (Sept. 28, 2018), https://tinyurl.com/2zy7enkb.

[23] *District Attorney Bragg Announces 34-Count Felony Indictment of Former President Donald J. Trump*, Manhattan Dist. Att'y's Off. (Apr. 4., 2023), https://tinyurl.com/hz9w4536.

[24] Indictment, *People v. Trump* (N.Y. Sup. Ct.), https://tinyurl.com/y2j8vntu.

[25] Larry Celona, et al., *Manhattan DA to Stop Seeking Prison Sentences in Slew of Criminal Cases*, N.Y. Post (Jan. 4, 2022), https://tinyurl.com/bdf62r57.

The indictment was met with immediate skepticism from legal commentators across the political spectrum. One described it as "a setback for the rule of law" and worried that it only gave "fodder to those who would portray this case as a political prosecution still in search of a legal theory."[26] Another noted that the charged crimes were "obscure" and "seemingly crafted individually for the former president and nobody else."[27] But as far as the prosecution was concerned, the indictment was having its intended effect. Following the indictment, "powerful Democrats and left-leaning labor unions [began] cheering on the prosecution with their wallets," gifting Bragg a massive boost in contributions to his re-election campaign.[28]

That history confirms that New York's prosecution is not a genuine attempt at seeking justice, but an attempt to load the dice against New York officials' disfavored candidate in the 2024 presidential election.

CONCLUSION

Given the mandatory language of our law, this Court should grant Missouri's Motion for Leave to File a Bill of Complaint.

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[26] Jed H. Shugerman, *The Trump Indictment Is a Legal Embarrassment*, N.Y. Times (April 5, 2023), https://tinyurl.com/3bw8367f.

[27] Elie Honig, *Prosecutors Got Trump — But They Contorted the Law*, Intelligencer (May 31, 2024), https://tinyurl.com/mt7d66at.

[28] Carl Campanile, *'Soft-on-Crime' DA Alvin Bragg Collected $850K in Campaign Donations After Trump Indictment*, N.Y. Post (April 15, 2024), https://tinyurl.com/5n726bmv.

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