No. 21-2180

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PAUL GOLDMAN,

Plaintiff-Appellee,

v.

ROBERT H. BRINK, in his official capacity, *et al.*,

Defendants-Appellants.

On Appeal from the United States District Court for the Eastern District of Virginia

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TABLE OF CONTENTS

INTRODUCTION 1

JURISDICTION 3

ISSUES PRESENTED 4

STATEMENT 5

I. Factual Background 5

SUMMARY OF ARGUMENT 12

STANDARD OF REVIEW 13

ARGUMENT 13

I. The Eleventh Amendment bars Goldman's remaining claim because it rests on state law 16

II. Goldman has not presented a substantial federal question 20

CONCLUSION 25

CERTIFICATE OF COMPLIANCE 27

CERTIFICATE OF SERVICE 28

TABLE OF AUTHORITIES

Page

CASES

Alden v. Maine,
527 U.S. 706 (1999) 14

Antrican v. Odom,
290 F.3d 178 (4th Cir. 2002) 2

Bethune-Hill v. Virginia State Bd. of Elections,
326 F. Supp. 3d 128 (E.D. Va. 2018),
139 S. Ct. 1945 (2019) 5

Board of Trustees of Univ. of Alabama v. Garrett,
531 U.S. 356 (2001) 13

Bragg v. West Virginia Coal Ass'n,
248 F.3d 275 (4th Cir. 2001) 15, 16, 17, 19

Carney v. Adams,
141 S. Ct. 493 (2020) 24, 25

Cunningham v. Lester,
990 F.3d 361 (4th Cir. 2021) 17

Ex parte Young,
209 U.S. 123 (1908) 12, 14, 16

Gill v. Whitford,
138 S. Ct. 1916 (2018) 21, 22, 23

Green v. Mansour,
474 U.S. 64 (1985) 15

Lance v. Coffman,
549 U.S. 437 (2007) 21

Lee-Thomas v. Prince George's Cty. Pub. Sch.,
666 F.3d 244 (4th Cir. 2012) 3

Lewis v. Clarke,
137 S. Ct. 1285 (2017) 14

Lujan v. Defenders of Wildlife,
504 U.S. 555 (1992) 21

NAACP v. Merrill,
939 F.3d 470 (2d Cir. 2019) 20

Newburyport Water Co. v. City of Newburyport,
193 U.S. 561 (1904) 20

Pennhurst State Sch. & Hosp. v. Halderman,
465 U.S. 89 (1984) ..... passim

Pense v. Maryland Dep't of Pub. Safety & Corr. Servs.,
926 F.3d 97 (4th Cir. 2019) 13

Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.,
506 U.S. 139 (1993) 14

Republic of Paraguay v. Allen,
134 F.3d 622 (4th Cir. 1998) 20

Reynolds v. Sims,
377 U.S. 533 (1964) 10, 18

Seminole Tribe of Fla. v. Florida,
517 U.S. 44 (1996) 15

Sinkfield v. Kelley,
531 U.S. 28 (2000) 22

Spokeo, Inc. v. Robins,
578 U.S. 330 (2016) 21

Suarez Corp. Indus. v. McGraw,
125 F.3d 222, (4th Cir. 1997) 2

United States v. Hays,
515 U.S. 737 (1995) 23, 24

Will v. Michigan Dep't of State Police,
491 U.S. 58 (1989) 14

STATUTES

2019 Va. Acts Ch. 821 5

28 U.S.C. § 1291 3

42 U.S.C. § 1983 11

Section 24.2-515.1, Code of Virginia 8

Section 24.2-612, Code of Virginia 8

Va. Const. art. II, § 6 ..... passim

Va. Const. art. II, § 6-A 6

Va. Const. art. II, § 6-A(g) 6

OTHER AUTHORITIES

U.S. Census Bureau, *Census Bureau Statement on Redistricting Data Timeline* (Feb. 12, 2021) 6

Ethan Herenstein et al., *The Upcoming Census Redistricting Data Release, Explained*, BRENNAN CTR. FOR JUST. (Aug. 12, 2021) 7

U.S. CENSUS BUREAU, DECENNIAL CENSUS P.L. 97–171 REDISTRICTING DATA (Aug. 12, 2021) 7

VA. DEP'T OF ELECTIONS,
2021 ELECTION RESULTS,
(Virginia primaries held on June 8, 2021 7

VA. DEP'T OF ELECTIONS, 2020 NOVEMBER GENERAL OFFICIAL RESULTS, REFERENDUMS (2020) 6

INTRODUCTION

The Virginia Constitution states that "[t]he Commonwealth shall be reapportioned into electoral districts . . . in the year 2021 and every ten years thereafter." Va. Const. art. II, § 6. It adds that these reapportioned districts "shall be implemented for the November general election . . . that is held immediately prior to the expiration of the term being served in the year that the reapportionment law is required to be enacted." *Id.* But due to the U.S. Census Bureau's failure to transmit the 2020 Census data on the required timeline and an unprecedented change to Virginia's redistricting procedures, the November 2021 Virginia House of Delegates election took place under the pre-existing electoral districts, which were created from data obtained in the 2010 Census.

Appellee Paul Goldman challenges the use of those pre-existing districts in the November 2021 election as violative of the Virginia and federal Constitutions. Specifically, Goldman argues that the failure to use an updated reapportionment plan violated the deadline incorporated into Article II, Section 6 of the Virginia Constitution. Goldman also alleges that the use of these older districts violated the federal principle

of one-person, one-vote as a result of population shifts occurring since the 2010 Census.

But while this case may raise important questions of Virginia law, Goldman has chosen the wrong forum to obtain those answers. State (not federal) courts exist to referee compliance with state-law requirements. While Goldman nominally alleges violations of the equal population principle of the Fourteenth Amendment, in truth, he seeks to vindicate the deadline imposed by the state constitution. But "a claim seeking injunctive relief for a state official's violation of state law . . . is barred by the Eleventh Amendment." *Suarez Corp. Indus. v. McGraw*, 125 F.3d 222, 228 (4th Cir. 1997); *Antrican v. Odom*, 290 F.3d 178, 187 (4th Cir. 2002) ("The *Ex Parte Young* exception does not apply to actions against State officials seeking to compel their compliance with State law.").

In any case, Goldman has not presented a substantial federal question sufficient to invoke the *Ex Parte Young* exception to sovereign immunity because he plainly lacks standing to vindicate his nominally federal claim.

For these reasons, the Court should reverse the judgment of the district court permitting Goldman's nominally federal claim to proceed.

JURISDICTION

The district court partially denied sovereign immunity to Robert H. Brink, John O'Bannon, Jamilah D. LeCruise, and Christopher E. Piper (the Elections Officials) on October 12, 2021. See JA 70. The Elections Officials timely appealed on October 18, 2021. See JA 125.

"[A] denial of Eleventh Amendment immunity . . . is deemed a final decision under 28 U.S.C. § 1291." *Lee-Thomas v. Prince George's Cty. Pub. Sch.*, 666 F.3d 244, 247 (4th Cir. 2012). This Court therefore has appellate jurisdiction under 28 U.S.C. § 1291.

ISSUES PRESENTED

(1) Whether sovereign immunity bars Goldman's remaining claim because, while nominally federal, it rests in actuality on state law?

(2) Whether Goldman has presented a substantial federal question sufficient to invoke the *Ex Parte Young* exception to sovereign immunity?

STATEMENT

I. Factual Background

1. In 2011, Virginia adopted an updated districting plan to govern elections for the state General Assembly and the federal House of Representatives. JA 16. These districts were adjusted several years later in response to litigation. JA 16–17; see *Bethune-Hill v. Virginia State Bd. of Elections*, 326 F. Supp. 3d 128, 181 (E.D. Va. 2018), *appeal dismissed for lack of jurisdiction*, 139 S. Ct. 1945 (2019). Both before and after the adjustment, mapmakers relied on the 2010 Census data to create the relevant districts.

As the 2020 Census approached, the Virginia General Assembly introduced a joint resolution to alter the way Virginia creates its legislative districts. See 2019 Va. Acts Ch. 821 (HJ 615). This resolution proposed transferring redistricting authority from the General Assembly to a newly-constituted Virginia Redistricting Commission (the Commission)—an independent, bipartisan body composed of sixteen members.

On the November 2020 ballot, Virginia voters approved this resolution by a large margin, formally amending the Virginia

Constitution. See VA. DEP'T OF ELECTIONS, 2020 NOVEMBER GENERAL OFFICIAL RESULTS, REFERENDUMS (2020), https://results.elections.virginia.gov/vaelections/2020%20November%20General/Site/Referendums.html; see also Va. Const. art. II, § 6, 6-A. Under the new system, the Commission develops proposed maps, which it then submits to the General Assembly for an up-or-down vote. See *id.* If the Commission is unable to develop the necessary maps before the specified deadline, or if the General Assembly fails to adopt the Commission's proposed maps by a specified deadline, the "districts shall be established" instead "by the Supreme Court of Virginia." *Id.* art. II, § 6-A(g).

The newly-amended Virginia Constitution contemplated reapportionment of the Commonwealth's legislative districts in accordance with these procedures "in the year 2021 and every ten years thereafter." Va. Const. art. II, § 6. Unfortunately, the United States Census Bureau delivered the initial 2020 Census data four-and-a-half months behind schedule.[1] As a result, the Commonwealth did not receive

[1] Press Release, U.S. Census Bureau, *Census Bureau Statement on Redistricting Data Timeline* (Feb. 12, 2021),

the census data until August 12, 2021—more than two months after the primary elections (and over three-and-half months after early voting had begun in the primaries) for the November 2021 election.[2] See U.S. CENSUS BUREAU, DECENNIAL CENSUS P.L. 97–171 REDISTRICTING DATA (Aug. 12, 2021), https://www.census.gov/programs-surveys/decennial-census/about/rdo/summary-files.html. The Census data thus arrived too late to use in the November 2021 election.

When it received the relevant data, the Commission began the process of attempting to develop new electoral maps. The Commission was ultimately unable to agree on proposals to submit to the General Assembly, and the redistricting duty passed to the Supreme Court of

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https://www.census.gov/newsroom/press-releases/2021/statement-redistricting-data-timeline.html. In addition, "[t]o get results out as soon as possible, the August 12 numbers were" initially "released in what the [B]ureau calls a 'legacy format'—essentially an older, less user-friendly presentation that may require mapmakers to do some additional work sorting and organizing the data before they can start drawing lines." Ethan Herenstein et al., *The Upcoming Census Redistricting Data Release, Explained*, BRENNAN CTR. FOR JUST. (Aug. 12, 2021), brennancenter.org/our-work/research-reports/upcoming-census-redistricting-data-release-explained.

[2] VA. DEP'T OF ELECTIONS, 2021 ELECTION RESULTS, https://www.elections.virginia.gov/2021-election-results/ (Virginia primaries held on June 8, 2021).

Virginia, which appointed two non-partisan special masters to assist it in drawing new districts. These special masters have been ordered to submit compliant maps by December 19, 2021.[3]

In the meantime, the Elections Officials continued to carry out their statutory obligations to conduct the election scheduled for November 2, 2021. See, *e.g.*, Va. Code § 24.2-515.1 (requiring primaries be held "on the third Tuesday in June next preceding" the upcoming election); Va. Code § 24.2-612 (outlining procedures for ballot creation, including that ballots be made available not less than forty-five days prior to the election date).[4] The November 2021 election ultimately took place as scheduled using the pre-existing legislative maps.

2. On June 28, 2021—after the primary elections but before the Commonwealth had received the 2020 Census data—Appellee Paul Goldman filed suit in the Eastern District of Virginia to challenge the use of the pre-existing districts in the November 2021 House of Delegates

[3] Order Nov. 19, 2021, In Re: Decennial Redistricting Pursuant to The Constitution of Virginia, art. II, §§ 6 to 6-A, and Virginia Code § 30-399 (Va.) https://www.vacourts.gov/courts/scv/districting/redistricting_appointment_order_2021_1119.pdf.

[4] Notably, these duties do not include calling for a new election or establishing new electoral maps.

election. See JA 4. Goldman named as defendants Governor Ralph Northam, the Virginia State Board of Elections, and various Elections Officials—Christopher Piper (Commissioner of the Virginia Department of Elections); Jamilah D. LeCruise (Secretary of the State Board of Elections); John O'Bannon (Vice Chair of the State Board of Elections), and Robert Brink (Chairman of the State Board of Elections).[5] See JA 1–4. Goldman did not name the Commission, which was then responsible for drawing new districts.

Goldman's claims implicate two areas of law: Article II, Section 6 of the Virginia Constitution and the Equal Protection Clause of the federal Constitution.

Under Article II, Section 6 of the Virginia Constitution, "[t]he Commonwealth shall be reapportioned into electoral districts" according to the newly-adopted redistricting procedures "in the year 2021 and every ten years thereafter." Va. Const. art. II, § 6. These reapportioned districts "shall be implemented for the November general election for the United States House of Representatives, Senate, or House of Delegates, respectively, that is held immediately prior to the expiration of the term

[5] The Elections Officials were all named in their official capacities.

being served in the year that the reapportionment law is required to be enacted." *Id.*

While the federal Constitution does not mention any specific deadline for state reapportionments, the Supreme Court has long interpreted the Equal Protection Clause of the Fourteenth Amendment to require that States "make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable." *Reynolds v. Sims*, 377 U.S. 533, 577 (1964). That said, "[s]o long as the divergences from a strict population standard are based on legitimate considerations incident to the effectuation of a rational state policy, some deviations from the equal-population principle are constitutionally permissible" in state districts. *Id.* at 579.[6]

On its face, Goldman's complaint alleges that the use of the pre-existing districts in the November 2021 election for the Virginia House of Delegates violated both the deadline imposed by the Virginia Constitution and the one-person, one-vote principle of the federal Equal Protection Clause. As relief, Goldman seeks a declaration that the

[6] State receive "[s]omewhat more flexibility" when creating state legislative districts than they do with respect to federal legislative districts. *Reynolds*, 377 U.S. at 578.

defendants have violated the Virginia and United States Constitutions and, as such, that any House of Delegates electoral winners from the November 2021 election be limited to one-year terms (rather than the two-year terms they would ordinarily serve). JA 22, 49. Relatedly, Goldman asks the court to order the defendants to hold new elections for the Virginia House of Delegates in November of 2022 using a reapportionment plan based on the 2020 Census data. JA 22.[7]

Following two rounds of amended pleadings, the defendants moved to dismiss the case as barred by the Eleventh Amendment. The district court granted the motion in part and denied the motion in part. As to the Governor and the Virginia State Board of Elections, the district court granted the motion, holding that sovereign immunity precluded relief. JA 59, 61, 64. Likewise, the district court dismissed Goldman's claim under the Virginia Constitution as barred by sovereign immunity. JA 68–70; see also JA 84. But the district court did not dismiss Goldman's Equal Protection claim against the Elections Officials, concluding that

[7] Although unstated in the complaint, the district court assumed that Goldman brought his claims under 42 U.S.C. § 1983. JA 57.

the *Ex Parte Young* exception to sovereign immunity permitted this claim to go forward. JA 64–67.

The Elections Officials timely appealed, and the district court stayed the proceedings pending resolution of the appeal. See JA 125, 128.

SUMMARY OF ARGUMENT

Goldman's case should be dismissed for two, independent reasons.

First, the Eleventh Amendment bars Goldman's remaining claim. The *Ex Parte Young* exception to sovereign immunity does not permit injunctions against state officials based on alleged violations of state law. See *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106 (1984) ("[W]hen a plaintiff alleges that a state official has violated state law . . . the entire basis for the doctrine of *Young* and *Edelman* disappears."). Although Goldman nominally characterizes his remaining claim as one under the federal Equal Protection Clause, in reality, he seeks to vindicate a deadline imposed by the Virginia Constitution. State, not federal, court provides the proper forum for vindicating this right.

Second, even if Goldman's claim could be understood as a true federal claim, Goldman has not presented a substantial federal question because he lacks standing. Goldman has not suffered an injury as a

result of the use of the pre-existing maps in the 2021 election. As the district court recognized, Goldman's vote was if anything inflated, not deflated, by the use of these districts. See JA 88 ("It looks like, on the face of what's going on, [Goldman is] not underrepresented. In fact, he's overrepresented."). Goldman also has not suffered any imminent or concrete injury as a prospective political candidate because he has alleged no more than abstract contemplation about potentially running for office if the conditions were to favor his candidacy.

Accordingly, the Court should reverse with instructions to dismiss Goldman's remaining claim for lack of subject-matter jurisdiction.

STANDARD OF REVIEW

This Court reviews questions of Eleventh Amendment immunity de novo. *Pense v. Maryland Dep't of Pub. Safety & Corr. Servs.*, 926 F.3d 97, 100 (4th Cir. 2019).

ARGUMENT

"The ultimate guarantee of the Eleventh Amendment is that nonconsenting States may not be sued by private individuals in federal court." *Board of Trustees of Univ. of Alabama v. Garrett*, 531 U.S. 356, 363 (2001). Because "a suit against a state official in his or her official

capacity . . . is no different from a suit against the State itself," *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71 (1989), such "official capacity" suits are likewise subject to "sovereign immunity," *Lewis v. Clarke*, 137 S. Ct. 1285, 1290–91 (2017). This limit on federal judicial power "accords the States the respect owed them as members of the federation," *Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.,* 506 U.S. 139, 146 (1993), and protects the States' ability "to govern in accordance with the will of their citizens," *Alden v. Maine,* 527 U.S. 706, 750–51 (1999).

In *Ex Parte Young*, 209 U.S. 123 (1908), the Supreme Court recognized a narrow exception to Eleventh Amendment immunity that permits a federal court to grant prospective relief against a state officer when that officer acts in violation of federal law. As the Court explained, this exception is premised on the fiction that an officer who acts unconstitutionally is "stripped of his official or representative character" and may therefore be "subject[]" to "the consequences of his individual conduct" in federal court. *Id.* at 159–60.

But because this balance is a careful one, the Supreme Court has strictly limited application of the *Ex Parte Young* exception to

circumstances in which injunctive relief is necessary to "give[] life to the Supremacy Clause." *Green v. Mansour,* 474 U.S. 64, 68 (1985); see also *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 76 (1996) (describing the *Ex Parte Young* exception as "narrow"). The exception thus does not permit a federal court to order state officials to comply with state law. See *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106 (1984) ("We conclude that *Young* and *Edelman* are inapplicable in a suit against state officials on the basis of state law"); see also *Bragg v. West Virginia Coal Ass'n*, 248 F.3d 275, 293 (4th Cir. 2001) ("[S]overeign immunity also bars a court's grant of any type of relief, whether retrospective or prospective, based upon a State official's violation of State law."). Indeed, the Supreme Court has held that "it is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law." *Pennhurst,* 465 U.S. at 106.

The decision below should be reversed for two reasons. *First*, because this case is no more than an effort to compel state officials to comply with state law, it is barred by sovereign immunity under

Pennhurst. *Second*, Goldman cannot invoke the *Ex Parte Young* exception to sovereign immunity because he lacks standing.

I. The Eleventh Amendment bars Goldman's remaining claim because it rests on state law

Although Goldman nominally pleads a violation of the Equal Protection Clause, his claim rests, in truth, on a deadline imposed by the Virginia Constitution. Sovereign immunity therefore precludes relief against the Elections Officials.

Determining whether a plaintiff seeks relief under federal or state law requires more than a quick glance at the pleadings. The court "must evaluate the degree to which a State's sovereign interest would be adversely affected by a federal suit seeking injunctive relief against State officials, as well as the extent to which *federal*, rather than State, law must be enforced to vindicate the federal interest." *Bragg v. West Virginia Coal Ass'n*, 248 F.3d 275, 293 (4th Cir. 2001) (emphasis in original) (finding *Ex Parte Young* exception inapplicable to suit nominally brought under federal law because the State had adopted its own compliance regime as part of a federal-state cooperative).

This remains true even where a plaintiff facially pleads a federal claim—and even where "the federal interest in adjudicating the dispute

is undoubtedly stronger" and the federal government retains a "modicum of control over the enforcement of that State law." *Bragg*, 248 F.3d at 289–91, 296. "[T]o sidestep the substantive focus of sovereign immunity doctrine through the subterfuge of artful pleading," *Cunningham v. Lester*, 990 F.3d 361, 368 (4th Cir. 2021), "would improperly sacrifice the 'real interests served by the Eleventh Amendment,'" *Bragg*, 248 F.3d at 293 (citation omitted); see also *Cunningham*, 990 F.3d at 365 ("If there is one unbroken thread in real-party-in-interest jurisprudence, it is a general refusal to privilege the form of a complaint over its substance.").

Here, Goldman's Equal Protection Claim, while nominally federal, is nothing more than a state law claim in disguise. Goldman's complaint, to be sure, highlights population changes that have occurred in Virginia since the previous redistricting in 2011. But, as Goldman himself describes it, the "gravamen" of his complaint is that these deviations resulted in disproportionate districts "in a reapportionment year." JA 15; see also JA 14, 19. This timing matters for an important reason: according to Goldman, "*[t]he Constitution of Virginia* mandates" that elections conducted in a "reapportionment year must be contested in new districts drawn pursuant to the 2020 U.S. Census." JA 11, 17 (emphasis

added) (referencing Va. Const. art. II, § 6). And Goldman has pointed to no federal law equivalent expressly requiring that elections conducted in a reapportionment year use districts drawn from the 2020 Census.

To the contrary (and as Goldman himself acknowledges), the federal principle of one-person, one-vote requires only that States act in "good faith" to establish districts of equal population. See JA 17–18; *Reynolds v. Sims*, 377 U.S. 533, 577 (1964). In fact, in *Reynolds* itself, the Supreme Court expressly sanctioned decennial reapportionment as "a rational approach to readjustment of legislative representation in order to take into account population shifts and growth," despite the common-sense reality that some population shifts would occur over that ten-year period. *Id.* at 583; see also *id.* at 586 ("[J]udicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites *in a timely fashion after having had an adequate opportunity to do so*." (emphasis added)).

Despite the centrality of good faith to Goldman's federal-law claim and the recognition of decennial reapportionment as a valid system of compliance with federal constitutional requirements, Goldman disregards as "irrelevant" the fact that the Census data was not available

in time to create new maps for the 2021 House of Delegates election. JA 18. This can only mean that Goldman relies not on the federal Equal Protection Clause, but on the Election Officials' alleged state-law duty to redistrict prior to the 2021 election (or to call a special election one year later).

Perhaps most tellingly, Count II of Goldman's complaint—the count addressing his state-law claim—echoes the language in Count I—the count purportedly addressing his federal-law claim. Compare JA 20–21 (¶¶ 124, 129), with JA 21 (¶¶ 138–139). The reason is simple: Count I represents little more than a state-law challenge dressed up in federal garb. And a plaintiff cannot strategically shroud a state constitutional claim in language from the federal Constitution to plead around *Pennhurst*.

In short, Goldman's Equal Protection claim represents an effort to enforce a state constitutional requirement to use new districts for elections held in a census year. As it did in *Bragg*, this Court should hold that sovereign immunity does not permit a plaintiff to obtain relief

against state officials for a claim, like this one, that is federal in name only.[8]

II. Goldman has not presented a substantial federal question

Goldman's effort to bring his claim in federal court also fails for another reason: Goldman lacks standing.

The *Ex Parte Young* exception to sovereign immunity requires a plaintiff to allege an ongoing violation of federal law. *Republic of Paraguay v. Allen*, 134 F.3d 622, 627 (4th Cir. 1998). To provide a basis for jurisdiction, this alleged violation must be "neither insubstantial nor frivolous." *NAACP v. Merrill*, 939 F.3d 470, 475 (2d Cir. 2019); see also *Newburyport Water Co. v. City of Newburyport*, 193 U.S. 561, 579 (1904) (dismissing case for "want of jurisdiction" because "the [federal] rights asserted . . . were so attenuated and unsubstantial as to be absolutely devoid of merit"). "A claim is insubstantial for purposes of rejecting federal jurisdiction if it is implausible, foreclosed by prior decisions of the Supreme Court, or otherwise completely devoid of merit." *Merrill*, 939 F.3d at 475 (citation and internal quotation marks omitted).

[8] The *Pennhurst* principle would not, of course, preclude a plaintiff from bringing such a state-law challenge in state court.

Here, Goldman has not presented a substantial violation of federal law sufficient to invoke the *Ex Parte Young* exception because he nakedly lacks standing to pursue the Equal Protection claim he alleges.

To establish standing, Goldman must show that he "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559–60 (1992)). This injury must be "'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Id.* at 339 (quoting *Lujan*, 504 U.S. at 560). A mere desire to remedy a perceived constitutional violation is not enough. *Lance v. Coffman*, 549 U.S. 437, 440–42 (2007) (per curiam). Goldman must instead show that the alleged violation affects his interests personally. See, *e.g.*, *Gill v. Whitford*, 138 S. Ct. 1916, 1930 (2018). Goldman, not the Election Officials, bears the burden of establishing these necessary elements.

1. Goldman has not established standing as a Virginia voter because, according to his own data, Goldman's legislative district is currently over-represented in the General Assembly.

Goldman resides in District 68. JA 86. Based on the data Goldman attached to his Second Amended Complaint, District 68 has a current population of 85,223. JA 28. Virginia, for its part, has a total population of 8,631,393.[9] As a result, because the Virginia House of Delegates contains 100 member districts, JA 29, a districting scheme composed of entirely equal districts would produce 100 districts of 86,314 people. See also JA 88. Goldman's current district thus contains 1,091 *fewer* people than it would under a purely proportional system—meaning that Goldman's vote is inflated *above* what it likely will be when Virginia implements new maps based on the 2020 Census data.

On these facts, Goldman cannot show a particularized injury arising from the Commonwealth's failure to implement a districting scheme based on the 2020 Census data. As the Supreme Court has long held, "[t]o the extent the plaintiffs' alleged harm is the dilution of their votes, that injury is district specific." *Gill v. Whitford*, 138 S.Ct. 1916, 1930 (2018); see also *Sinkfield v. Kelley*, 531 U.S. 28, 30 (2000); *United*

[9] U.S. Census Bureau, *Virginia: 2020 Census*, https://www.census.gov/library/stories/state-by-state/virginia-population-change-between-census-decade.html (last visited Dec. 5, 2021).

States v. Hays, 515 U.S. 737, 739 (1995). Based on Goldman's own data, he lacks a district-specific injury.

Before the district court, Goldman resisted this conclusion on the grounds that other districts have even fewer voters than his own. See JA 89. But the baseline for standing is not the population in other, over-represented districts. It is the "hypothetical district" that Goldman would receive if he were to obtain the relief he seeks: proportionate districts based on the 2020 Census data. See *Gill*, 138 S.Ct. at 1930 (describing vote dilution injury as a harm that "arises from the particular composition of the voter's own district, which causes his vote . . . to carry less weight *than it would carry in another, hypothetical district*" (emphasis added)).

In any event, Goldman does not ask the court to inflate these other, underpopulated districts to match the population in District 68. He asks the court to order a new election under entirely new maps based on the 2020 Census data. JA 22. And that remedy would deflate, not inflate, the power of Goldman's vote.

Moreover, it would make little sense to permit a plaintiff to establish standing simply by showing that other voters are even more

advantaged by the existing system. As a practical matter, this would mean that *all* voters, save those few in the most underpopulated district, could challenge a State's districting scheme under the Equal Protection Clause, whether or not they are actually underrepresented. The Supreme Court has consistently rejected such efforts to open the courthouse doors to redistricting challenges from the state population at large. See, *e.g.*, *Hays*, 515 U.S. at 744 ("We therefore reject appellees' position that 'anybody in the State has a claim.'").

2. As a potential candidate for office, Goldman fares no better.

To establish standing on the basis of a proposed future candidacy, Goldman would need to show that he is "able and ready" to pursue public office. *Carney v. Adams*, 141 S. Ct. 493, 501 (2020). "[A] few words of general intent" are insufficient "to show an injury in fact." *Id.*

Goldman comes nowhere close. In his complaint, Goldman alleges only that he "is contemplating" running for a seat in the House of Delegates. JA 15. At the hearing, Goldman reiterated that his intent to run "depends on the" contours of the new districts. JA 87.

Standing requires far more. In *Carney*, the Supreme Court rejected as insufficient to establish standing a candidate's general statement that

he intended to pursue public office. 141 S. Ct. at 501. Goldman has not even said that much. He has not stated an intent to run for a seat in the House of Delegates. He has stated only that he is "contemplating" a run should the new districts favor his candidacy. JA 15, 87. That falls far short of the showing required to establish standing as a potential candidate for office.

In sum, Goldman is no more entitled to federal court adjudication than the "general population of individuals" who "believe[] that the government is not following the law." *Carney*, 141 S. Ct. at 501–02.

The Court should therefore reverse the judgment below for want of a substantial federal question.

CONCLUSION

For these reasons, we ask that the decision of the district court be reversed with instructions to dismiss.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the requirements of Fed. R. App. P. 32(a)(5) and (6) because it has been prepared in 14-point Century, a proportionally spaced font, and that it complies with the Court's Order dated November 1, 2021, because it contains 4,536 words, excluding the parts exempted by Rule 32(f), according to the count of Microsoft Word.

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CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2021, I electronically filed the foregoing brief with the Clerk of this Court by using the appellate CM/ECF system. A true copy was also sent, via first class mail and electronically, to:

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