No. 17-1740

IN THE

United States Court of Appeals for the Fourth Circuit

DAMIAN STINNIE, *et al.*,

Appellants,

v.

RICHARD HOLCOMB,

Appellee.

On Appeal from the United States District Court
for the Western District of Virginia
Hon. Norman K. Moon
Case No. 3:16-00044

BRIEF FOR LAW PROFESSORS AS AMICI CURIAE IN SUPPORT OF APPELLANTS AND REVERSAL

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STATEMENT OF INTEREST

Amici curiae are law professors with expertise in the areas of constitutional law, civil rights, and federal jurisdiction.[1] Amici have an interest in the sound development of legal doctrines governing the power of federal courts to vindicate federal rights. And they submit this brief to highlight the fundamental legal errors

[1] All parties have consented to the filing of this brief. No party or counsel for a party authored this brief in whole or in part. No party, counsel for a party, or person other than amici curiae and their counsel made any monetary contribution intended to fund the preparation or submission of this brief.

that the district court made in dismissing this suit without reaching the merits of appellants' federal constitutional challenge to a state statute. Amici are the following scholars[2]:

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SUMMARY OF ARGUMENT

Appellants are Virginia residents (referred to here as "the Debtors") who could not afford the costs and fines they owed Virginia courts. When they did not pay, their driver's licenses were automatically suspended, without hearing, pursuant to Virginia Code § 46.2-395. The Commissioner of the Virginia

Department of Motor Vehicles processed the suspensions on his databases, so police across the Commonwealth could ascertain whether a Debtor was driving on a suspended license. Believing the statute authorizing this scheme to be a violation of their federal constitutional rights to due process and equal protection, the Debtors sued the Commissioner in federal district court, seeking (among other things) an injunction ordering him to remove their unlawful suspensions from his databases.

The district court, though, did not reach the merits of the Debtors' constitutional claims. Instead, the district court held that their suit could not proceed at all. According to the district court, suspensions under Virginia Code § 46.2-395 are the product of orders issued by *state courts*, not by *the Commissioner*. And because of that supposed fact, the district court held that it lacked subject-matter jurisdiction under the *Rooker-Feldman* doctrine, *see Rooker v. Fidelity Tr. Co.*, 263 U.S. 413 (1923); *Dist. of Columbia Ct. of Appeals v. Feldman*, 460 U.S. 462 (1983); that the Debtors lacked standing under Article III of the Constitution; and that their suit lacked authorization under *Ex parte Young*, 209 U.S. 123 (1908).

Each of those conclusions is wrong. Indeed, the district court committed a number of basic errors of law in reaching them. Thus, in ruling on *Rooker-Feldman*, the district court ignored the "crucial question" under Supreme Court

precedent: whether the orders suspending the Debtors' licenses were "*judicial* in nature." *Feldman*, 460 U.S. at 476 (emphasis added). Instead, the district court wrongly assumed that they were, just because they were orders of state courts.

In ruling on the Debtors' standing, the district court distorted two of the three elements under Article III. Instead of asking whether the Debtors' alleged injuries were *fairly traceable* to the Commissioner's processing of their suspensions, the court asked whether the Commissioner was *ultimately responsible* for the suspensions themselves. And instead of asking whether a favorable judicial decision would redress *an* injury suffered by the Debtors, the court asked whether such a decision would relieve their *every* injury.

Finally, in ruling on *Ex parte Young*, the district court focused on an additional requirement, beyond the "straightforward inquiry" identified by the Supreme Court, *Va. Office for Prot. & Advocacy v. Stewart*, 563 U.S. 247, 255 (2011): that the defendant must have a "special relation" with the challenged statute or action, J.A. 604. And in holding that the Commissioner lacks one here, the district court disregarded the Commissioner's own responsibility for the processing of suspensions on his databases.

If adopted, the district court's reasoning will upend settled doctrines and close the courthouse doors to many who are entitled to invoke a federal forum to vindicate their federal constitutional rights. This Court should not permit these

legal errors to stand. It should reverse the district court's judgment and allow the Debtors' suit to proceed.

ARGUMENT

I. THE *ROOKER-FELDMAN* DOCTRINE DOES NOT APPLY IN THIS CASE

The district court held that it lacked subject-matter jurisdiction over this case because of the *Rooker-Feldman* doctrine. That doctrine, however, applies only when state action of a *judicial* nature is challenged in lower federal courts. And the district court overlooked the fact that even state courts can engage in nonjudicial acts of an administrative, ministerial, or legislative nature. Accordingly, the district court erred in dismissing the Debtors' complaint for lack of subject-matter jurisdiction.

A. The *Rooker-Feldman* Doctrine Applies Only When State Action Of A Judicial Nature Is Challenged In Lower Federal Courts

Under 28 U.S.C. §§ 1331 and 1343(a)(3), federal district courts enjoy broad jurisdiction to decide cases arising under the Federal Constitution. That jurisdiction includes the power to "say what the law is"—and to strike down acts of the Federal Government and the States that conflict with the Constitution. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803); *see Cooper v. Aaron*, 358 U.S. 1, 18 (1958).

Sections 1331 and 1343(a)(3), however, are "grant[s] of *original* jurisdiction." *Verizon Md. Inc. v. Pub. Serv. Comm'n*, 535 U.S. 635, 644 n.3 (2002) (emphasis added). They do "not authorize district courts to exercise *appellate* jurisdiction over state-court judgments." *Id.* (emphasis added). Only the Supreme Court of the United States may exercise such appellate jurisdiction. *See* 28 U.S.C. § 1257(a); *Lance v. Dennis*, 546 U.S. 459, 463 (2006) (per curiam). Accordingly, "lower federal courts are precluded from exercising jurisdiction over final state-court judgments." *Lance*, 546 U.S. at 463.

The Supreme Court's decisions in *Rooker* and *Feldman* both rested on that basic principle. In *Rooker*, the plaintiffs sued in federal district court, asking to have a state-court judgment "declared null and void." 263 U.S. at 414. In their view, the judgment had been issued in violation of the Federal Constitution. *Id.* at 414-15. The Supreme Court, however, held that the district court lacked subject-matter jurisdiction over the suit. *Id.* at 415. As the Court explained, the district court's jurisdiction was "strictly original." *Id.* at 416. And what the plaintiffs were asking the district court to do would be tantamount to "an exercise of appellate jurisdiction." *Id.* Because the district court lacked such jurisdiction, the suit had to be dismissed. *Id.* at 415-16.

Feldman was decided sixty years later. That case involved two plaintiffs who had applied for admission to the District of Columbia Bar. 460 U.S. at 465,

471. At the time, a D.C. Bar rule adopted by the D.C. Court of Appeals required applicants to have graduated from an "approved law school." *Id.* at 465 (internal quotation marks omitted). Because neither plaintiff had done so, each petitioned the D.C. Court of Appeals for a waiver of the rule. *Id.* at 466-67, 471. The court denied their petitions. *Id.* at 468, 472. The plaintiffs then sued in federal district court, challenging those denials and the D.C. Bar rule as violations of the Federal Constitution. *Id.*

The Supreme Court's analysis in *Feldman* began with the same principle underlying its decision in *Rooker*: Federal district courts lack jurisdiction to review the "final determinations" of state courts "in judicial proceedings." *Id.* at 476. The Supreme Court thus framed the "crucial question" in the case as "whether the proceedings before the District of Columbia Court of Appeals were *judicial* in nature." *Id.* (emphasis added). The Court expounded upon that inquiry. "[T]he nature of a proceeding," the Court explained, "depends not upon the character of the body but upon the character of the proceedings." *Id.* at 477 (internal quotation marks omitted). And in discussing the various types of proceedings, the Court drew a distinction between "judicial" proceedings, on the one hand, and "legislative, ministerial, or administrative" proceedings, on the other. *Id.* at 476-77, 479.

Turning to the facts before it, the Supreme Court concluded that in denying the plaintiffs' petitions for waivers, the D.C. court had acted "judicial[ly]." *Id.* at 479. Which is to say, it had heard "legal," "policy," and "equitable arguments," *id.* at 480-81; it had "adjudicated" the plaintiffs' claims in light of those arguments, *id.* at 481; and it had "rejected" their claims, *id.* "This is the essence of a judicial proceeding," the Supreme Court concluded. *Id.* Thus, to the extent the plaintiffs were challenging the D.C. court's denial of their petitions, "the District Court lacked subject-matter jurisdiction over their complaints." *Id.* at 482.

But "that determination did not dispose of the entire case," for the Supreme Court held that "in promulgating the bar admission rule, . . . the D.C. court had acted legislatively, not judicially." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 285-86 (2005) (citing *Feldman*, 460 U.S. at 485-86). The "proceedings giving rise to the rule," the Supreme Court explained, "[were] nonjudicial." *Feldman*, 460 U.S. at 486. And when a district court is "asked to assess the validity of a rule promulgated in a nonjudicial proceeding," it "is not reviewing a state-court judicial decision." *Id.* Thus, the Supreme Court held that, to the extent the plaintiffs had "mounted a general challenge to the constitutionality of [the rule]," "the District Court *did* have subject-matter jurisdiction over their complaints." *Id.* at 483 (emphasis added).

Since *Feldman*, the Supreme Court has adhered to the inquiry set forth in that opinion, which asks whether the state action at issue was "*judicial* in nature." *Id.* at 476 (emphasis added). Accordingly, the Court has held that the *Rooker-Feldman* doctrine "has no application to judicial review of *executive* action, including determinations made by a *state administrative agency*." *Verizon*, 535 U.S. at 644 n.3 (emphases added). And it has clarified that even when "a state-court decision is not reviewable by lower federal courts," "a *statute or rule* governing the decision may be." *Skinner v. Switzer*, 562 U.S. 521, 532 (2011) (emphasis added). The "few" remaining Supreme Court "decisions that have mentioned *Rooker* and *Feldman* have done so only in passing or to explain why those cases did not dictate dismissal." *Exxon*, 544 U.S. at 287; *see also id.* at 287-88 (discussing other Supreme Court decisions).

The upshot is that in 94 years, the Supreme Court has applied the *Rooker-Feldman* doctrine to divest a district court of subject-matter jurisdiction "only twice": in *Rooker* and in *Feldman*. *Skinner*, 562 U.S. at 531; *see also Exxon*, 544 U.S. at 287 ("Since *Feldman*, this Court has never applied *Rooker-Feldman* to dismiss an action for want of jurisdiction."). As envisioned by the Court, the doctrine is a "narrow" one, *Exxon*, 544 U.S. at 284, to be applied only when a complaint filed in district court challenges state action "truly judicial" in nature, *Feldman*, 460 U.S. at 476 n.13 (internal quotation marks omitted).

B. The State Action Here Was Not Judicial In Nature

None of the conduct taken by state actors in this case was judicial in nature—and that is true even if one accepts the district court's version of the facts and of how Virginia Code § 46.2-395 works. It follows that the *Rooker-Feldman* doctrine does not apply, and that the district court should have exercised subject-matter jurisdiction over this case.

According to the district court, this is how Virginia Code § 46.2-395 works: "When a defendant is convicted in state court, his fines and costs are due immediately." J.A. 590. If the defendant does not make immediate payment, his driver's license "is suspended immediately ('forthwith') by the court." *Id.* "*Every* conviction involving a fine or costs thus effectively includes the suspension of the person's license . . . , although in many instances the defendant may make payment shortly thereafter." J.A. 584 (emphasis added). If the defendant makes payment within 30 days, "the suspension is lifted by operation of law before ever going into effect." J.A. 591. "If he does not pay, his suspension then becomes effective on Day 31. At that point, the court clerk sends the Commissioner a record of both his nonpayment and of the suspension itself for administrative and data-entry purposes." *Id.*

The Debtors dispute the district court's account and explain why the district court gets both the statute and the facts wrong. *See* Appellants' Opening Br. 23-31.

But even accepting the foregoing account as true, it does not describe a single *judicial* act.

Consider the supposed role of the state court. On the district court's telling, the state court does two main things: (1) it suspends the license immediately if the defendant does not immediately make payment; and (2) it sends a record to the Commissioner if the defendant still has not paid within 30 days. Neither of those actions is judicial in nature. The first is purely ministerial—indeed, automatic, in the case of "[*e*]*very* conviction involving a fine or costs" when the defendant does not immediately pay. J.A. 584 (emphasis added). There is no "judicial inquiry" into whether a license should be suspended or not. *Jordahl v. Democratic Party of Va.*, 122 F.3d 192, 201 (4th Cir. 1997). The court hears no "legal," "policy," or "equitable arguments" on either side of the issue. *Feldman*, 460 U.S. at 480-81. It considers no pleas for waivers of the suspension. *Cf. id.* at 467, 471. And it exercises no judgment in the "application of existing laws to the facts of a particular case." *Jordahl*, 122 F.3d at 199. Rather, on even the district court's account of the statute and the facts, the state court "simply engage[s] in ministerial action" when suspending a defendant's license. *Feldman*, 460 U.S. at 479.

The state court's other action—transmitting to the Commissioner a record of the failure to pay—is purely ministerial, too. The "clerk of the court" simply sends over the record after 30 days go by without payment. Va. Code § 46.2-395(C).

Again, there is no judicial inquiry into why the defendant did not pay, whether he or she was able to pay, or any other particulars. *See Feldman*, 460 U.S. at 477 ("A judicial inquiry *investigates*, declares, and enforces liabilities . . . ." (emphasis added) (internal quotation marks omitted)). Instead, the transmittal is automatic, just like the suspension itself. On even the district court's account, then, the state court performs only a ministerial role under Virginia Code § 46.2-395.

Next consider the role of the Commissioner. The Commissioner, the district court says, merely receives the "record of both [the defendant's] nonpayment and of the suspension itself for administrative and data-entry purposes." J.A. 591. That, of course, involves no judicial act either. Indeed, the Supreme Court has squarely held that the *Rooker-Feldman* doctrine has "no application" to the actions of a "state administrative agency," such as the Virginia Department of Motor Vehicles. *Verizon*, 535 U.S. at 644 n.3; *see also Thana v. Bd. of License Comm'rs*, 827 F.3d 314, 320 (4th Cir. 2016) ("[S]tate administrative and executive actions are not covered by the doctrine."). The actions of the Commissioner are thus "ministerial[] or administrative," no different in kind from those of the state court. *Feldman*, 460 U.S. at 479.

That should come as no surprise. After all, the actions of the state court and the Commissioner are dictated by Virginia Code § 46.2-395. It is the *statute itself* that makes suspension of a driver's license automatic when a defendant does not

make payment; neither the state court nor the Commissioner has any say in the matter, which is why each plays only a ministerial or administrative role in the process. At bottom, this case is a constitutional challenge to *the statute*, as the Debtors have maintained all along. *See* Appellants' Opening Br. 18 ("[T]he Debtors are not challenging any state court judgment . . . . Instead, the Debtors bring an independent constitutional challenge to a state statute."). And that fact only magnifies the error in the district court's conclusion that the *Rooker-Feldman* doctrine applies. For a statute is a quintessentially "legislative" act. *Feldman*, 460 U.S. at 479. And the Supreme Court's decision in *Feldman* itself makes clear that legislative acts are beyond the purview of *Rooker-Feldman*; that is why the district court there had jurisdiction to hear the plaintiffs' challenge to the D.C. Bar rule, notwithstanding the fact that the rule was the basis for the D.C. court's denial of their petitions. *Id.* at 482-87; *see also Skinner*, 562 U.S. at 532 ("[A] statute or rule governing [a state-court] decision may be challenged in a federal action."); *Jordahl*, 122 F.3d at 199 ("The *Rooker-Feldman* doctrine only applies to 'adjudications' not 'legislative acts.'"); *LaMar v. Ebert*, 681 F. App'x 279, 287-88 (4th Cir. 2017) (similar).

In short, this case concerns ministerial or administrative acts taken pursuant to a legislative one. Because there were no proceedings of a "judicial" nature, *Feldman*, 460 U.S. at 476, and because no one "acted judicially," *Exxon*, 544 U.S.

at 285, the *Rooker-Feldman* doctrine does not bar the district court's exercise of subject-matter jurisdiction.

In reaching a contrary conclusion, the district court reasoned that because "the state court suspends the licenses," "[t]he suspension is a judicial one." J.A. 595. But not everything a state court does is a "judicial" act. As the Supreme Court has said, "the nature of a proceeding depends not upon the character of the body but upon the character of the proceedings." *Feldman*, 460 U.S. at 477 (internal quotation marks omitted). And so a state court can act not only judicially, but also ministerially, administratively, and even legislatively (as the D.C. court did in *Feldman* itself). *Id.* at 482-86; *see also Exxon*, 544 U.S. at 285-26 ("[I]n promulgating the bar admission rule, this Court said, the D.C. court had acted legislatively, not judicially."). Thus, even if the district court were correct that "the state court suspends the licenses," J.A. 595, it should have still asked whether the state court, in doing so, acts judicially. If it had addressed that question—instead of skipping over it—the answer would have been clear: Suspension under the statute is a nonjudicial action, for all the reasons explained above.

The Supreme Court in *Exxon* observed that "the *Rooker-Feldman* doctrine had been construed by some federal courts 'to extend far beyond the contours of the *Rooker* and *Feldman* cases.'" *Skinner*, 562 U.S. at 532 (quoting *Exxon*, 544 U.S. at 283). That is what happened here, when the district court invoked the

doctrine to "overrid[e] Congress' conferral of federal-court jurisdiction." *Exxon*, 544 U.S. at 283. This Court should reverse that ruling and send the case back for the district court to exercise subject-matter jurisdiction over the Debtors' complaint.

II. THE DEBTORS HAVE ARTICLE III STANDING TO SUE THE COMMISSIONER

The district court also concluded that the Debtors lacked Article III standing to sue the Commissioner. In its analysis, however, the district court again committed some basic legal errors—which, if left uncorrected, would distort Article III's traceability and redressability requirements and drastically limit the universe of defendants whom plaintiffs would have standing to sue.

Start with traceability, the second element of Article III standing. To establish this element, a plaintiff must show that his or her alleged injury "is fairly traceable to the challenged conduct of the defendant." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016). That is what the Debtors did here. One of their alleged injuries (among others) has to do with the information on the Commissioner's statewide databases. J.A. 600. Were the police to stop a Debtor on the road, those databases would be what the police would check to determine whether the Debtor was driving on a suspended license. J.A. 601. Information on those databases stating that a Debtor has a suspended license thus injures that Debtor. And that injury, in turn, is fairly traceable to the Commissioner, who, after all, is responsible

for "overseeing the entry or 'processing' of the court suspension orders into [the] statewide databases." J.A. 600.

The district court nevertheless concluded that the Debtors' allegations flunk the traceability element because "the injury [the Debtors] complain of was caused not by the Commissioner, but by . . . the Virginia judiciary," which "suspend[ed] [their] licenses under the statute." *Id.* But even assuming the district court is correct that suspensions under the statute are ordered by the courts, its reasoning suffers from a fundamental flaw: It presumes that an injury is fairly traceable only to whoever is "*ultimate*[*ly*] responsib[le]" for it—here, whoever ordered the suspensions themselves. *Bennett v. Spear*, 520 U.S. 154, 168 (1997) (emphasis added). The Supreme Court squarely rejected that view in *Bennett*. *See id.* at 168-69. A plaintiff's injury might result from the actions of many different defendants, each standing at a different "step in the chain of causation." *Id.* at 169. But the traceability element does not require the plaintiff to sue the defendant who stands at the *first* step—or even the *last* one, *see id.* Nor does it require the plaintiff to sue the defendant who is the *root* cause—or even the *most proximate* one. *See Libertarian Party of Va. v. Judd*, 718 F.3d 308, 315-16 (4th Cir. 2013) (rejecting "[i]mposition of the stringent proximate cause standard, derived from principles of tort law," as the standard for traceability). As the Supreme Court has said, the traceability element "is relatively modest at this stage of the litigation." *Bennett*,

520 U.S. at 171. It requires only that the plaintiff sue a defendant who is "*at least in part* responsible" for the plaintiff's alleged injury. *Libertarian Party*, 718 F.3d at 316 (emphasis added).

The Debtors have easily met that standard here: As the district court itself acknowledges, they have sued the defendant responsible for "overseeing the entry or 'processing' of the court suspension orders into [the] statewide databases." J.A. 600. The Debtors' injury from the information found on those databases is thus fairly traceable to the Commissioner, even if someone further up the chain of causation might have contributed to the injury, too. This Court should thus reverse the district court—and reject its attempt to convert the traceability requirement into an "ultimate responsibility" requirement, *Bennett*, 520 U.S. at 168.

The district court's analysis of the third element of Article III standing—redressability—suffers from a similar flaw. To establish redressability, a plaintiff must show that his or her alleged injury "is likely to be redressed by a favorable judicial decision." *Spokeo*, 136 S. Ct. at 1547. If an alleged injury arises from information found on statewide databases, and if the Commissioner is responsible for overseeing those databases, then a judicial decision ordering the Commissioner to remove that information from those databases will redress the alleged injury. That is precisely the relief the Debtors seek: an injunction ordering the Commissioner "to disregard the notices of suspension and nonpayment he received

from the court clerks." J.A. 600; *see also* J.A. 63 (requesting an injunction prohibiting the Commissioner "from issuing or processing orders of driver's license suspension"). If such relief is granted, "[t]he suspensions consequently would not appear in statewide databases [the Commissioner] administers." J.A. 600.

Nevertheless, the district court reasoned that such relief "would not affect the existence and validity of the state courts' suspension orders." *Id.* And because "the licenses [would] still [be] suspended," the district court held that the Debtors had not established redressability. J.A. 600-01. That reasoning contradicts Supreme Court precedent. As the Supreme Court has held, redressability requires only that "the plaintiff has shown *an* injury to himself that is likely to be redressed by a favorable decision." *Larson v. Valente*, 456 U.S. 228, 243 n.15 (1982) (quoting *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 38 (1976)). "He need not show that a favorable decision will relieve his *every* injury." *Id.* It is therefore beside the point whether the Debtors would still suffer *other* injuries from the continued existence of the courts' supposed suspension orders. What matters is that a decision requiring the Commissioner to remove the suspensions from his databases would relieve the Debtors of at least *some* injury. Indeed, the district court itself acknowledged that such an injunction would "decrease the likelihood [the Debtors] will be charged with driving on suspended licenses." J.A. 601

(emphasis added). That fact alone is enough to satisfy the redressability requirement. *See Massachusetts v. EPA*, 549 U.S. 497, 526 (2007) (holding that the redressability requirement was satisfied where "the relief" sought would "reduce[] to some extent" the "risk" of injury).

In short, the district court's reasoning, if adopted, would mean that plaintiffs could only ever sue those defendants (1) *ultimately* responsible for (2) *all* of the plaintiffs' injuries—which, in many cases, would be no one at all. Because such requirements would deeply distort the law of Article III standing, this Court should reverse.

III. THE DEBTORS MAY SUE THE COMMISSIONER UNDER *EX PARTE YOUNG*

Finally, the district court concluded that the doctrine of *Ex parte Young* does not permit this suit against the Commissioner. That conclusion threatens to undermine that doctrine and, with it, the power of "federal courts to vindicate federal rights." *Va. Office for Prot. & Advocacy*, 563 U.S. at 255 (internal quotation marks omitted).

The *Ex parte Young* doctrine rests on the premise "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." *Id.* In determining whether the doctrine applies, "a court need only conduct a straightforward inquiry into whether the complaint alleges an ongoing violation of federal law and seeks

relief properly characterized as prospective." *Id.* (internal quotation marks and brackets omitted). That inquiry is satisfied here. The complaint alleges, among other things, that the Commissioner's ongoing processing of suspensions on his databases violates the Constitution, and it seeks an injunction enjoining that processing. J.A. 40, 62-63.

Citing this Court's precedent, the district court added another requirement to the inquiry: that "the sued official must have a 'special relation' with the challenged statute or action." J.A. 604-05 (quoting *McBurney v. Cuccinelli*, 616 F.3d 393, 396 (4th Cir. 2010)). Even assuming that such an additional requirement can be squared with Supreme Court precedent, it is satisfied here, too. A "special relation" exists when the defendant has "*proximity to* and *responsibility for* the challenged state action." *McBurney*, 616 F.3d at 399 (internal quotation marks omitted). As noted, the defendant here has responsibility for "overseeing the entry or 'processing' of the court suspension orders into [the] statewide databases." J.A. 600. At least to that extent, then, the Commissioner has a "special relation" with the challenged statute or action.

The district court concluded otherwise, once again relying on its view that the Commissioner "does not suspend the licenses—state courts do." J.A. 605. But even if that view is right, the challenged actions extend beyond the suspensions themselves, to encompass their processing. J.A. 63. And there can be no doubt

that the Commissioner has a special relation with the processing that occurs on his own databases. If upheld, the district court's ruling would encourage state officials to deny the existence of a "special relation" simply by pointing to someone else, such as the state courts here, who had a role in the plaintiff's injury. This Court should not permit *Ex parte Young* to be so easily evaded. It should hold that the doctrine authorizes the Debtors here to vindicate their federal rights against the Commissioner.

CONCLUSION

For these reasons, the judgment of the district court should be reversed, and the case should be remanded for further proceedings.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitations of Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7)(B) because it contains 4,802 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

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/s/ Frederick Liu
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August 16, 2017

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CERTIFICATE OF SERVICE

I certify that, on August 16, 2017, the foregoing document was served on all parties or their counsel of record through the CM/ECF system.

/s/ Frederick Liu
Frederick Liu

August 16, 2017

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