Constitutional Law—Seventh Circuit Applies *Ex parte Young* Doctrine to Allow State Agency’s Action Against State Officials—*Indiana Protection and Advocacy Services v. Indiana Family and Social Services Administration*, 603 F.3d 365 (7th Cir. 2010)

Article VI of the Constitution establishes the supremacy of federal law over the states, while the Eleventh Amendment grants the states immunity from suit without their consent. The incompatibility of these provisions becomes apparent, however, when a defendant state asserts its immunity in response to an attempt to enforce a valid federal law in federal court. This constitutional contradiction recently divided two circuit courts ruling on suits brought under the same state-managed federal program: the Fourth Circuit held the Eleventh Amendment barred a state agency from enforcing the program’s requirements against state officials in federal court, while the Seventh Circuit held the amendment posed no bar. This Case Comment analyzes the Seventh Circuit’s decision in *Indiana Protection & Advocacy Services v. Indiana Family & Social Services Administration* and concludes that the court was correct in holding an independent state agency’s suit against named state officials can be heard in federal court under the Supreme Court’s Eleventh Amendment exception, the doctrine of *Ex parte Young*.

In 1986, Congress enacted the Protection and Advocacy for Individuals with Mental Illness Act (PAIMI Act) and provided each state with funds to establish an independent protection and advocacy system to safeguard the rights of the mentally ill. The PAIMI Act requires that these systems receive access to all

1. See U.S. CONST. art. VI, cl. 2 (“This Constitution, and the Laws of the United States . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby . . . .”); U.S. CONST. amend. XI (“The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced . . . against one of the United States . . . .”).

2. See infra notes 18-32 and accompanying text (tracing attempts to resolve conflict through Eleventh Amendment jurisprudence).


4. 603 F.3d 365 (7th Cir. 2010).

5. See generally Verizon Md. Inc. v. Pub. Serv. Comm’n of Md., 535 U.S. 635 (2002) (explaining how to apply *Ex parte Young* doctrine). The doctrine permits a suit in federal court against state officials in their official capacities for “an ongoing violation of federal law” so long as the suit seeks “relief properly characterized as prospective.” Id. at 645 (quoting Idaho v. Coeur d’Alene Tribe of Idaho, 521 U.S. 261, 296 (1997) (O’Connor, J., concurring)); see also 603 F.3d at 374 (calling state agency’s lawsuit “classic application” of *Ex parte Young* doctrine).

records of the individuals for whom they advocate and authorizes these systems to pursue legal remedies in federal court when necessary.\textsuperscript{7} Indiana designated an independent state agency, Indiana Protection and Advocacy Services (IPAS), as its protection and advocacy system under the PAIMI Act.\textsuperscript{8}

Pursuant to the PAIMI Act, IPAS requested the records of two patients during an investigation into allegations of abuse and neglect at a state-operated psychiatric hospital.\textsuperscript{9} The hospital, while supplying some of the patient information, denied IPAS’s requests for more extensive disclosure.\textsuperscript{10} As a result, IPAS filed suit in federal district court, seeking to enjoin the State of Indiana, the Indiana Family and Social Services Administration, and three named state officials from restricting IPAS’s reasonable access to all records the PAIMI Act covers.\textsuperscript{11} In response, the defendants argued the PAIMI Act did not require the hospital to release the records at issue.\textsuperscript{12} The district court granted IPAS’s motion for summary judgment, the defendants appealed, and a panel of the Seventh Circuit reversed.\textsuperscript{13}

investigation into the “appalling conditions in many state-operated mental health institutions.” 603 F.3d at 373 n.6 (stressing state responsibility for condition of institutions). Under the PAIMI Act, each state can choose to designate an independent state agency or a private entity as its protection and advocacy system. See 42 U.S.C. § 10804 (2006). Only eight states—including Indiana and Virginia—designated a public, instead of a private, agency as their PAIMI Act system. See 603 F.3d at 387 (Posner, J., concurring) (questioning why Congress gave option for either public or private agency); see also SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., U.S. DEP’T OF HEALTH & HUMAN SERVS., PROTECTION AND ADVOCACY FOR INDIVIDUALS WITH MENTAL ILLNESS (PAIMI) PROGRAM (2003).

7. See 42 U.S.C. §§ 10805, 10807 (2006). The PAIMI Act permits systems to access not only the records of clients, but also the records of individuals who are unable to authorize access, who do not have legal guardians, or who may have been subject to abuse and neglect. Id. § 10805(a)(4)(B). Systems may institute actions in either federal or state court, but only after exhausting all administrative remedies within a reasonable time. See id. § 10807(a).

8. See 603 F.3d at 368 (enumerating factors supporting agency’s independence). A board of thirteen people governs IPAS, only four of whom the governor appoints—the IPAS board itself votes on the remainder. See id. Officials or employees of state mental health agencies may not serve on the IPAS board. See id. After establishing IPAS as its system, Indiana may not designate another system without good cause. See id.

9. See id. at 368-69 (detailing histories of patients known as Patient 1 and Patient 2). Patient 1 was admitted to the Larue Carter Memorial Hospital (Larue Carter) on June 21, 2006, and died at another hospital on July 31, 2006. See id. at 368. IPAS received information from a staff member at Larue Carter that triggered IPAS’s investigation into Patient 1’s treatment at the hospital. See id. Patient 2 authorized IPAS to access his records after filing grievances with Larue Carter and IPAS, alleging battery, assault, and attempted murder. See id. at 369; see also Ind. Prot. & Advocacy Servs. v. Ind. Family & Soc. Servs. Admin., 573 F.3d 548, 550 (7th Cir. 2009) (providing additional information on Patient 1), aff’d en banc, 603 F.3d 365 (7th Cir. 2010).

10. See 603 F.3d at 369 (describing record requests). Larue Carter provided part of Patient 1’s chart, and a summary of its investigation into Patient 2’s grievance, but refused to provide Patient 1’s complete chart or the underlying records behind the hospital’s investigation into Patient 2’s grievance. See id. Compare 603 F.3d at 369 (emphasizing PAIMI Act’s broad definition of records covered), with Ind. Prot. & Advocacy Servs. v. Ind. Family & Soc. Servs. Admin., 573 F.3d 548, 550 (7th Cir. 2009) (emphasizing importance of state privacy protections in hospital’s decision to withhold records), aff’d en banc, 603 F.3d 365 (7th Cir. 2010).

11. See 603 F.3d at 369-70 (detailing procedural history). IPAS sought declaratory and injunctive relief but no monetary damages. See id.

12. See id. at 370 (listing defendants’ reasons for records denial). The State also argued that IPAS did not obtain the consent of Patient 1’s parents. See id.

13. See id. (noting appeal limited to records issue); see also Ind. Prot. & Advocacy Servs. v. Ind. Family
The panel raised the issue of Indiana’s constitutional immunity from suit in federal court sua sponte, holding the Eleventh Amendment barred IPAS’s federal action. Moreover, the panel held that the \textit{Ex parte Young} doctrine—which allows suits for prospective relief against state officials (in their official capacities) in federal court—would not lift the constitutional bar, reasoning that the doctrine does not apply when one arm of a state sues another. IPAS successfully petitioned for rehearing en banc, and the court of appeals affirmed the district court’s ruling with modifications. The court held that, while the Eleventh Amendment barred the suit against the State of Indiana and its Family and Social Services Administration, the \textit{Ex parte Young} doctrine authorized the claim against the three named state officials.

The text of the Eleventh Amendment shields states from suits in federal court brought by citizens of other states or nations. The Supreme Court has held that the fundamental principle of sovereign immunity underlies the amendment’s text, derived from a longstanding English legal tradition that

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14. See Ind. Prot. & Advocacy Servs. v. Ind. Family & Soc. Servs. Admin., 573 F.3d 548, 550 (7th Cir. 2009) (summarizing district court’s holding), \textit{aff’d en banc}, 603 F.3d 365 (7th Cir. 2010). The district court found that Patient 1 was an adult at the time of her death and her parents had not been appointed as her legal guardians, placing her within the ambit of the PAIMI Act. \textit{See Ind. Prot. & Advocacy Servs. v. Ind. Family & Soc. Servs. Admin., 573 F.3d 548, 550 (7th Cir. 2009) (summarizing district court’s holding), aff’d en banc, 603 F.3d 365 (7th Cir. 2010)}. The state argued on appeal that parents of mentally ill adults should be treated as their guardians regardless of court appointment, and any further disclosure should require the approval of Patient 1’s parents. \textit{See id.}

15. See Ind. Prot. & Advocacy Servs. v. Ind. Family & Soc. Servs. Admin., 573 F.3d 548, 552-53 (7th Cir. 2009) (explicating Eleventh Amendment bar and exceptions), \textit{aff’d en banc}, 603 F.3d 365 (7th Cir. 2010). The opinion by Chief Judge Easterbrook also raised a separate issue of IPAS’s cause of action under the PAIMI Act, an issue that the court addressed at length en banc. \textit{See id. at 550-52; see also 603 F.3d at 374-83 (holding PAIMI Act gives IPAS cause of action); 603 F.3d 388-94 (Easterbrook, C.J., dissenting) (arguing PAIMI Act confers no explicit federal right of action)}. That issue is beyond the scope of this Comment.

16. \textit{See id. at 374 (describing suit as “classic application” of \textit{Ex parte Young}); cf. id. at 392 (Easterbrook, C.J., dissenting) (“I accept my colleagues’ view that \textit{Young} . . . overcomes any sovereign-immunity defense.”)}. The defendants subsequently filed a motion to stay the court’s mandate, signaling their intent to petition the Supreme Court for review; the motion, however, was denied. \textit{See Ind. Prot. & Advocacy Servs. v. Ind. Family & Soc. Servs. Admin., 376 F. App’x 630, 631 (7th Cir. 2010)}.

subjects could not sue the king. The Court has concluded that America’s founding generation considered state sovereignty an integral part of the federalist structure and thus adopted the Eleventh Amendment with “swiftness and near unanimity.” In a long line of cases, the Court has broadened Eleventh Amendment immunity to bar suits by a state’s own citizens and to shield state agencies and officials. The Court has concurrently carved out three exceptions to the bar: waiver—a state may waive its Eleventh Amendment immunity by consenting to be sued in federal court; abrogation—Congress may abrogate a state’s Eleventh Amendment immunity pursuant to Section 5 of the Fourteenth Amendment, and the Ex parte Young doctrine—a plaintiff may seek prospective relief against state officials (though not the state itself) in federal court for ongoing violations of federal law.

19. See Hans v. Louisiana, 134 U.S. 1, 3 (1890) (holding individual cannot sue state in federal court without state’s consent). To support the doctrine of Eleventh Amendment sovereign immunity, the Court in Hans quoted Alexander Hamilton’s “profound remarks” in THE FEDERALIST NO. 81:

It is inherent in the nature of sovereignty not to be amenable to the suit of an individual without its consent. This is the general sense and the general practice of mankind; and the exemption, as one of the attributes of sovereignty, is now enjoyed by the government of every state in the Union.


20. Alden v. Maine, 527 U.S. 706, 724 (1999). The opinion by Justice Kennedy states further: “[A]s the Constitution’s structure, its history, and the authoritative interpretations by this Court make clear, the States’ immunity from suit is a fundamental aspect of the sovereignty which the States enjoyed before the ratification of the Constitution, and which they retain today.” Id. at 713; see also Dodson, supra note 18, at 728 (noting states’ relinquishment of some but not all sovereign immunity in ratification of Constitution). But see Alden v. Maine, 527 U.S. 706, 764 (1999) (Souter, J., dissenting) (“Some Framers thought sovereign immunity was an obsolete royal prerogative inapplicable in a republic . . . .”); Edelman v. Jordan, 415 U.S. 651, 687 (1974) (Brennan, J., dissenting) (calling sovereign immunity a “nonconstitutional but ancient doctrine”).


In *Ex parte Young*, the Court reasoned that officials no longer represent the state when they act contrary to federal law and, consequently, they relinquish the protection of the Eleventh Amendment. *Ex parte Young*, decided in 1908, produced a doctrine enabling federal courts to enforce federal law pursuant to the Supremacy Clause while nominally respecting state sovereignty. The *Ex parte Young* doctrine, however, is not absolute: in *Idaho v. Coeur d’Alene Tribe of Idaho*, the Court held state sovereignty interests outweighed the supremacy interests *Ex parte Young* promotes, even when the doctrine was clearly applicable. A majority of the Court upheld Idaho’s Eleventh Amendment immunity in the case; two justices went even further, calling for a careful balancing of state interests before applying *Ex parte Young* and cautioning against “a reflexive reliance on an obvious fiction.” Five years

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26. See *Ex parte Young*, 209 U.S. 123, 159-60 (1908) (stripping state officials of official character when acts violate Constitution). In *Ex parte Young*, the Court permitted shareholders of a railroad company to file suit in federal court to enjoin Minnesota’s attorney general from enforcing certain allegedly unconstitutional criminal penalties against the railroad company. See id. at 127-33. The attorney general raised Eleventh Amendment state immunity as a defense to the suit. See id. at 133. The Court, however, held “the state has no power to impart to him any immunity from responsibility to the supreme authority of the United States.”
27. See U.S. CONST. art. VI, cl. 2 (“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby . . . .”); see also *Green v. Mansour*, 474 U.S. 64, 68 (1985) (discussing *Ex parte Young*’s role in upholding Supremacy Clause). The Court reasoned that “the availability of prospective relief of the sort awarded in *Ex parte Young* gives life to the Supremacy Clause. Remedies designed to end a continuing violation of federal law are necessary to vindicate the federal interest in assuring the supremacy of that law.”
30. *Idaho v. Coeur d’Alene Tribe of Idaho*, 521 U.S. 261, 270 (1997); see also *Althouse*, supra note 21, at 1123 (“Legal fiction permeates eleventh amendment analysis.”). In *Coeur d’Alene*, Chief Justice Rehnquist and Justices O’Connor, Scalia, and Thomas joined Justice Kennedy’s five to four majority opinion. See *Idaho v. Coeur d’Alene Tribe of Idaho*, 521 U.S. 261, 262-63 (1997). Only Chief Justice Rehnquist, however, joined Justice Kennedy’s three-part disquisition on the need to tailor the *Ex parte Young* doctrine to the dignity of the state. See id. at 270-81. Justices Scalia and Thomas joined in Justice O’Connor’s concurrence, which criticized Justice Kennedy’s three-part disquisition for unnecessarily narrowing the Court’s *Ex parte Young* jurisprudence. See id. at 291 (O’Connor, J., concurring). Justice O’Connor, in a view seven members of the
later, in an apparent limitation of Coeur d'Alene, the Court in Verizon Maryland Inc. v. Public Service Commission of Maryland\(^{31}\) lifted the Eleventh Amendment bar and reiterated that “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” for Ex parte Young to apply in a suit against state officials.\(^{32}\)

In Virginia v. Reinhard,\(^{33}\) however, the Court of Appeals for the Fourth Circuit declined to conduct the straightforward inquiry prescribed in Verizon Maryland and instead revived the Coeur d'Alene balancing test.\(^{34}\) The Virginia Office for Protection and Advocacy (VOPA), an independent state agency created under the PAIMI Act, sued three Virginia state officials in federal court, seeking injunctive relief to gain access to patient records pursuant to federal law.\(^{35}\) The Fourth Circuit, while acknowledging the facts of the case appeared to meet Ex parte Young standards, pointed to one critical difference: the plaintiffs in Ex parte Young and its progeny were private parties, while the plaintiff in Reinhard was a state agency.\(^{36}\) Bringing an “intramural contest”

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\(^{32}\) Verizon Md. Inc. v. Pub. Serv. Comm’n of Md., 535 U.S. 635, 645 (2002) (internal quotations omitted). Justice Scalia delivered the opinion of the Court, vacating a decision of the Fourth Circuit and holding that a telecommunications company can sue state commissioners in federal court under Ex parte Young to enjoin them from enforcing an order allegedly inconsistent with federal law. See id. at 647-48. Justice Kennedy filed a concurring opinion emphasizing that the complaint in Verizon Maryland did not implicate the same state sovereignty interests as did the one in Coeur d’Alene. See id. at 648-49 (Kennedy, J., concurring).

\(^{33}\) 568 F.3d 110 (4th Cir. 2009), cert. granted, 130 S. Ct. 3493 (2010).


\(^{35}\) See Virginia v. Reinhard, 568 F.3d 110, 113-14 (4th Cir. 2009) (recounting procedural history), cert. granted, 130 S. Ct. 3493 (2010). Unlike the defendants in Indiana Protection, the Reinhard defendants asserted their Eleventh Amendment immunity before the district court. See id. at 114. The district court held that the suit met the Ex parte Young standards and the defendants appealed. See id. at 114-15; see also Gates, supra note 34, at 228 (noting district court determined Virginia’s sovereignty interests not implicated). The district court “found that the application of the Ex Parte Young exception did not depend on the identity of the plaintiffs. Rather, the nature of the action governed the exception.” Gates, supra note 34, at 228.

\(^{36}\) See Virginia v. Reinhard, 568 F.3d 110, 118 (4th Cir. 2009) (citing Ex parte Young cases involving private-party plaintiffs), cert. granted, 130 S. Ct. 3493 (2010). The court stressed that the identity of the plaintiff as a private party is basic to the doctrine. See id. at 119-20. The court added that it could not find any precedent applying the doctrine to a state agency. See id. at 118. One observer characterized the court’s decision as a “new limitation on Ex Parte Young, [in which] the Court of Appeals drew primarily on historical and structural analysis which has characterized the Supreme Court’s recent jurisprudence in the area of federalism.” Gates, supra note 34, at 230-31.
between a state agency and state officials into federal court, the court reasoned, too greatly infringed on the sovereign dignity of the state. The court, therefore, held that the plaintiff’s status as a state agency tilted the Coeur d’Alene balance in the state’s favor; as a result, Virginia’s Eleventh Amendment immunity barred the suit.

Ten months later, in Indiana Protection & Advocacy Services v. Indiana Family & Social Services Administration, the Court of Appeals for the Seventh Circuit embraced Verizon Maryland’s straightforward inquiry and used Ex parte Young to lift the Eleventh Amendment bar. Like Reinhard, the facts in Indiana Protection concerned an independent state agency suing state officials to enforce provisions of the PAIMI Act in federal court. Unlike the Fourth Circuit, the Seventh Circuit held the agency’s suit satisfied all Ex parte Young criteria, as IPAS: named individual state officials as defendants; alleged an ongoing violation of federal law—refusal to disclose records subject to the PAIMI Act; and sought relief that was prospective—future access to those records. The court dismissed the defendants’ contention that the case was a state-level interagency dispute. IPAS, the court averred, was not a traditional state agency: its independence from state control over policy, budget, personnel, and governance made it more like an agent of the federal government than of the state. Moreover, the court said its proper focus,


38. See Virginia v. Reinhard, 568 F.3d 110, 124 (4th Cir. 2009) (reaffirming availability of Ex parte Young to private plaintiffs), cert. granted, 130 S. Ct. 3493 (2010). Regarding the state agency’s independence, the court contended that many state agencies receive federal funding, govern themselves independently, and must comply with federal law; allowing these agencies to sue state officials in federal court would substantially expand Ex parte Young. See id. In other words, “freedom from interference in a legal battle between state agencies” was the sovereign interest at stake in Reinhard. Gates, supra note 34, at 251.

39. See 603 F.3d at 374 (allowing declarative and injunctive relief); see also supra notes 31-32 and accompanying text (describing application and origins of Verizon Maryland’s straightforward inquiry approach).

40. Compare 603 F.3d at 369-70 (summarizing Indiana agency’s patient record requests), with supra notes 35-36 and accompanying text (summarizing Virginia agency’s patient record requests).

41. See 603 F.3d at 371 (outlining Ex parte Young factors); cf. supra notes 25-27 and accompanying text (discussing development of Ex parte Young jurisprudence).

42. Compare 603 F.3d at 372-73 (refusing to focus on state agency status), with supra notes 36-38 and accompanying text (finding state agency status pivotal to court’s decision).

43. Compare 603 F.3d at 373 (distinguishing IPAS from traditional state agency), with supra note 38 (maintaining many traditional state agencies possessed similar qualities).
consistent with *Ex parte Young*, should be on the identity of the defendants and
the relief sought, not on the identity of the plaintiff.  

The court noted that Indiana had neglected to raise its Eleventh Amendment
immunity as a defense in the first two rounds of litigation, thus weakening the
state’s arguments about any injuries to its sovereign dignity. Even Chief Judge
Easterbrook, who raised the issue of Indiana’s Eleventh Amendment immunity
during the first appellate hearing, joined the majority in accepting *Verizon
Maryland*’s straightforward approach and in disagreeing with the Fourth
Circuit’s holding in *Reinhard*.  

The conflicting holdings in *Indiana Protection* and *Reinhard* illustrate two
distinct theoretical strains characterizing the Supreme Court’s Eleventh
Amendment jurisprudence. Professor Carlos Manuel Vázquez categorized
these two approaches as the “supremacy strain” and the “state sovereignty
strain.” The supremacy strain, embodied in the *Ex parte Young* doctrine and
grounded in the Supremacy Clause of the Constitution, emphasizes the
practical need for Eleventh Amendment exceptions in order to carry out valid
federal acts despite the resistance of state officials. As Dean Erwin
Chemerinsky noted: “The importance of this basic principle—that sovereign
immunity does not bar suits against state officers for injunctive relief—cannot
be overstated. The decision in *Ex parte Young* long has been recognized as

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44. See 603 F.3d at 372 (defining “threshold problem” with state agency defense); *cf.* supra notes 25-26 and
accompanying text (recounting original *Ex parte Young* analysis).

45. See 603 F.3d at 372 (noting district court did not address issue); *see also* supra note 14 and
accompanying text (detailing panel’s raising of immunity issue); *cf.* supra note 35 (recounting defendants’
raising of immunity defense in *Reinhard*).

46. See 603 F.3d at 372 (dismissing *Coeur d’Alene* approach). *See generally* supra notes 28-30 and
accompanying text (explaining *Coeur d’Alene* rationale).

47. See 603 F.3d at 392 (Easterbrook, C.J., dissenting) (acknowledging *Ex parte Young*’s applicability);
*supra* note 17 (quoting Chief Judge Easterbrook’s acknowledgement).

48. See Vázquez, *supra* note 19, at 859-60 (noting two distinct strains). As Professor Althouse pointed
out: “The two sides have cogently set out their two historical interpretations. Neither side is moved by
the other’s historical arguments, because the historical evidence is nebulous enough that either position can
be maintained.” Althouse, *supra* note 21, at 1130. *See generally* supra notes 18-21 and accompanying text
(elucidating philosophical underpinnings of Eleventh Amendment).

49. Vázquez, *supra* note 19, at 859-60 (introducing terms).

50. See Vázquez, *supra* note 19, at 873 (describing Eleventh Amendment’s practical implications).
Professor Vázquez concluded: “Because a state can act (or refrain from acting) only through its officers, a
regime that bars suits against states but permits suits against state officers would appear to afford states
protection as a matter of form but not substance.” Id.; *see also* supra notes 22-24 and accompanying text
detailing exceptions to Eleventh Amendment immunity. Professor Monaghan argued that “any doctrine of
state sovereign immunity strains both the traditional conception of the rule of law, which emphasizes
governmental accountability to courts of law, and national supremacy, which generally presumes that Congress
can entrust enforcement of whatever rights it can validly create to the national courts.” Monaghan, *supra* note
19, at 122.
essential to ensuring state compliance with federal law."  

51 Proponents of the state sovereignty strain, however, view the Eleventh Amendment as the expression of a fundamental constitutional principle governing the balance of power between the federal government and the states.  

52 The Hamiltonian maxim that “[i]t is inherent in the nature of sovereignty not to be amenable to the suit of an individual without its consent,” best expresses the rationale behind the state sovereignty strain.  

53 Reinhard exemplifies the historical and structural focus of the state sovereignty strain.  

54 Indiana Protection exemplifies the mechanistic, results-oriented approach of the supremacy strain.  

In Indiana Protection, the Seventh Circuit, sitting en banc, rejected all state sovereignty arguments and decided the case in adherence with the most recent Supreme Court precedent, Verizon Maryland.  

56 The court applied the Ex parte Young doctrine to enforce Indiana’s compliance with the PAIMI Act’s disclosure requirements.  

57 The doctrine was appropriate: IPAS named state officials as defendants, alleged ongoing violations of federal law, and sought prospective relief.  

58 Regarding IPAS’s status as a state agency plaintiff,

51. Chemerinsky, supra note 24, at 142-43.  

52. See Vázquez, supra note 19, at 888-93 (focusing on federalist debates surrounding Constitution’s formation); supra notes 18-21 and accompanying text (emphasizing state sovereignty as philosophical underpinning to Eleventh Amendment). The Supreme Court in Alden expressed the principle as follows: “The federal system established by our Constitution preserves the sovereign status of the States . . . it reserves to them a substantial portion of the Nation’s primary sovereignty, together with the dignity and essential attributes inhering in that status.” Alden v. Maine, 527 U.S. 706, 714 (1999). The Alden decision “buttressed its historical findings with principles of normative concerns: the respect for the dignity of states as sovereigns [and] the alignment of state sovereignty with federal sovereignty in some semblance of symmetrical sovereignty.” Dodson, supra note 18, at 741. But see Jackson, supra note 19, at 1005 (offering alternative rationale for Eleventh Amendment immunity). Professor Jackson asserted: “State sovereign immunity is at the periphery of those constitutional features that most importantly constitute the federal union . . . A fair reader of history must conclude that the framing minds held different views on the amenability of states to suit.” Id. In regard to the concept of “sovereign dignity,” Professor Monaghan mockingly noted: “The idea that a state, an utterly abstract entity, has feelings about being sued by a private party when ‘its’ highest officials are regularly sued surely strains credulity.” Monaghan, supra note 19, at 132.  

53. THE FEDERALIST NO. 81 (Alexander Hamilton). This passage arguably led the Supreme Court to conclude that sovereign immunity “inheres” in the Constitution’s structure. Dodson, supra note 18, at 740-41. As Professor Monaghan countered, however, “the word ‘inherent’ is both meaningless and misleading. At least in the context of the historical conception of sovereignty, the word has no content; the ‘inherent’ unamenable of sovereigns to suit is an attribution made by the writer, not a ‘property’ of the ‘entity’ described.” Monaghan, supra note 19, at 123.  

54. See Vázquez, supra note 19, at 888-90 (citing case law supporting state sovereignty strain); see also supra notes 18-21 and accompanying text (explicating Hans through Alden).  

55. See Vázquez, supra note 19, at 863-65 (citing case law supporting supremacy strain); see also supra notes 24-27 and accompanying text (explicating Verizon Maryland and Ex parte Young).  

56. See 603 F.3d at 372 (giving court’s point-by-point rejection of state sovereignty defenses). But see supra notes 18-21, 36-38 and accompanying text (asserting arguments in favor of state sovereignty defense).  

57. See 603 F.3d at 367, 374 (holding PAIMI Act enforceable against state officials). But see supra notes 36-38 and accompanying text (discussing Reinhard’s shielding of state officials from PAIMI Act’s requirements).  

58. See 603 F.3d at 371 (applying Ex parte Young factors); see also supra note 31-32 and accompanying
however, the court had no controlling authority on which to rely. While IPAS does not function as a state agency in the traditional sense, its structure is that of a state agency, though insulated from state control by federal law. The court did observe, however, that allowing a state to render the PAIMI Act unenforceable simply by designating an independent state agency instead of a private party as its statutory protection and advocacy system would be “strange indeed.” Furthermore, the court noted that the identity of the plaintiff is not material to the Ex parte Young formula.

The Supreme Court will likely address the applicability of Ex parte Young to independent-state-agency plaintiffs when it hears Reinhard during the 2010 term. In resolving the conflict between the circuits, the Court should side with the reasoning in Indiana Protection, which hews closely to the Court’s most recent Ex parte Young precedent. It would be self-defeating for the Court to restrict the doctrine: as one judicial access expert recently observed, “Ex parte Young, decided over a hundred years ago, remains one of the most powerful tools to compel states to comply with federal law, not only for big business but also for disadvantaged individuals.” Even under the Coeur d’Alene balancing test, it is difficult to see how enforcement of the PAIMI Act would infringe on a state’s sovereign dignity. After all, protecting the rights of individuals with mental illness does not conflict with the sovereign interests of the state; indeed, protecting their rights furthers the interests of society as a whole.

The Supreme Court should confirm that independent state agencies may bring Ex parte Young actions against state officials under the PAIMI Act. IPAS brought its suit seeking prospective relief against state officials (in their official capacities) in federal court, alleging an ongoing violation of federal text (reaffirming Ex parte Young guidelines).

59. See supra note 36 and accompanying text (stressing absence of case law involving state agency plaintiff).

60. See 603 F.3d at 373 (describing agency’s independence from state funding and authority). But see supra note 38 (maintaining state agencies not truly independent).

61. 603 F.3d at 373.

62. See id. at 372 (stressing Ex parte Young focuses on identity of defendant rather than identity of plaintiff).


64. See 603 F.3d at 370-72 (adhering to straightforward application of Ex parte Young); cf. supra notes 31-32 and accompanying text (recounting Verizon Maryland definition of Ex parte Young doctrine).

65. Bobroff, supra note 27, at 820; see also Althouse, supra note 21, at 1124 (discussing importance of Ex parte Young to Court in enforcing federal interests).


67. See supra note 6 and accompanying text (describing congressional findings and purpose of PAIMI Act). “[T]he conflict in Reinhard arguably was not one between two state administrative agencies for power and resources. Rather, the conflict arguably was between state government caregivers . . . and the mental health patients to whom they had a duty under federal law.” Gates, supra note 34, at 256.
law—the refusal of the state-operated hospital to disclose patient records. Therefore, for the reasons detailed above, the Seventh Circuit’s holding in *Indiana Protection* should pass constitutional muster.

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