No. 23-191

In the
Supreme Court of the United States

NANCY WILLIAMS, ET AL.,
Petitioners,
v.
FITZGERALD WASHINGTON,
ALABAMA SECRETARY OF LABOR,
Respondent.

On Writ of Certiorari to the Supreme Court of Alabama

BRIEF OF *AMICUS CURIAE* THE CHAMBER OF COMMERCE OF THE UNITED STATES IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICUS CURIAE*[1]

The Chamber of Commerce of the United States of America is the world's largest business federation. It represents approximately 300,000 members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the Nation's business community.

The decision below defies this Court's precedents by holding that a State may require plaintiffs to exhaust administrative remedies before seeking relief under 42 U.S.C. § 1983. If allowed to stand, that holding would threaten to create serious obstacles to businesses and trade associations that seek to challenge state actions that violate both federal and state rights. States could frustrate the effective and efficient vindication of such rights by subjecting plaintiffs to burdensome administrative schemes. And the availability of a federal forum for adjudicating § 1983 claims would not eliminate the harm, but instead would invite claim splitting and duplicative litigation. The Chamber and its members have a significant interest in avoiding that costly alternative.

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[1] No counsel for any party authored this brief in whole or in part, and no party or counsel made a monetary contribution to the preparation or submission of this brief. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution to the preparation or submission of this brief.

Consistent with this Court's longstanding interpretation of § 1983, plaintiffs should be able to pursue their claims in state court through a single lawsuit that is not subject to an exhaustion requirement.

INTRODUCTION AND SUMMARY OF ARGUMENT

This is a straightforward case under this Court's precedents. In *Patsy v. Board of Regents*, this Court held that "exhaustion of state administrative remedies" is not "a prerequisite to bringing an action pursuant to [42 U.S.C.] § 1983." 457 U.S. 496, 516 (1982). Since then, the Court has clarified that *Patsy*'s no-exhaustion rule applies with full force to actions filed in state court. *See Felder v. Casey*, 487 U.S. 131, 147 (1988). That is because state exhaustion requirements "are pre-empted as inconsistent with federal law." *Id.* at 134. Section 1983's no-exhaustion rule is part and parcel of the remedy Congress provided for vindicating federal violations perpetrated by state officials. As a result, state courts may not enforce a contrary rule in a § 1983 action without running afoul of the Supremacy Clause. *See* U.S. Const. art. VI, cl. 2.

This Court has never departed from those controlling principles. On the contrary, it has repeatedly struck down state laws that stifle access to state court for § 1983 litigants. *See Haywood v. Drown*, 556 U.S. 729, 742 (2009); *Howlett ex rel. Howlett v. Rose*, 496 U.S. 356, 383 (1990). In doing so, this Court has stressed that a state "jurisdictional rule cannot be used as a device to undermine federal law, no matter how evenhanded it may appear." *Haywood*,

556 U.S. at 739. And it has likewise emphasized that a State cannot place "condition[s]" on "its enforcement of federal law." *Id.* at 737. Otherwise, the States could frustrate the cause of action that Congress provided for the vindication of federal rights, as well as its choice to "enabl[e] the plaintiff to choose the forum in which to seek relief." *Patsy*, 457 U.S. at 506.

The decision below cannot be squared with *Patsy* and its progeny. Though Alabama has opened its courthouse doors to § 1983 plaintiffs, the lower court allowed the State to impose an administrative exhaustion requirement upon certain claimants "as a condition precedent to recovery." *Felder*, 487 U.S. at 144. That statutory scheme sharply conflicts with the "remedial objectives of the federal civil rights law," as it delays relief and "directs injured persons to seek redress in the first instance from the very targets of the federal legislation." *Id.* at 153. Federal law bars Alabama from "condition[ing] the right of recovery that Congress has authorized" in that way. *Id.* at 141.

Enforcing such exhaustion requirements for § 1983 claims will significantly impede the vindication of civil rights. And the prospect of a federal forum does not alleviate that concern. After all, § 1983 plaintiffs often seek to assert state-law claims alongside their federal claims. But under the Eleventh Amendment, the federal courts are powerless to enjoin the State for violations of state law. *See Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 120–21 (1984). The rule adopted below thus forces civil rights plaintiffs to engage in duplicative litigation—and to subject themselves to the potential hazards of *res judicata*.

The problems generated by the lower court's decision do not stop there. Litigants sometimes have no realistic choice but to bring their § 1983 claims in state court, because federal court litigation may cost more, be located in a less convenient forum, or pose additional hurdles to relief. In addition, state courts can remedy constitutional violations by fashioning certain forms of equitable relief that may raise serious federalism concerns or be unavailable in federal court.

These and other reasons weigh strongly in favor of the Court reaffirming that § 1983's no-exhaustion principle applies equally in state court. The Court should reverse the judgment below.

ARGUMENT

I. Plaintiffs Need Not Exhaust Administrative Remedies Before Suing Under Section 1983.

This Court has long held that § 1983 does not require a plaintiff to exhaust state administrative remedies before filing suit. For nearly as long, this Court has held that the Supremacy Clause prohibits state courts from enforcing contrary state rules. Those decisions are correct, and a routine application of their holdings compels a ruling in Petitioners' favor.

A. Congress Did Not Require Exhaustion For Claims Arising Under Section 1983.

More than six decades ago, this Court held that "relief under the Civil Rights Act may not be defeated because relief was not first sought under state law which provided a remedy." *McNeese v. Bd. of Educ. for Cmty. Unit Sch. Dist. 187*, 373 U.S. 668, 671 (1963). As *McNeese* explained, the federal remedy provided by § 1983 is "supplementary to [any] state remedy," and

so "the latter need not be first sought and refused before the federal one is invoked." *Id.* (citation omitted). This Court reaffirmed *McNeese*'s holding in nearly a dozen cases over the next two decades. *See Barry v. Barchi*, 443 U.S. 55, 63 n.10 (1979); *Gibson v. Berryhill*, 411 U.S. 564, 574 (1973); *Carter v. Stanton*, 405 U.S. 669, 671 (1972) (per curiam); *Wilwording v. Swenson*, 404 U.S. 249, 251 (1971); *Houghton v. Shafer*, 392 U.S. 639, 640–41 (1968) (per curiam); *King v. Smith*, 392 U.S. 309, 312 n.4 (1968); *Damico v. California*, 389 U.S. 416, 417 (1967) (per curiam).

In *Patsy*, this Court was asked to "reconsider th[o]se decisions" and adopt "a 'flexible' exhaustion rule" that accounted for various aspects of the State's remedial scheme. 457 U.S. at 499, 501 (citation omitted). But the Court declined, explaining that its prior decisions did not "misconstrue[] the meaning of § 1983." *Id.* at 502. The statute contains no exhaustion requirement. Rather, the 1871 Congress enacted the law in order "to 'throw open the doors of the United States courts' to individuals who were threatened with, or who had suffered, the deprivation of constitutional rights." *Id.* at 504 (quoting Cong. Globe, 42nd Cong., 1st. Sess. 376 (1871) (remarks of Rep. Lowe)). Permitting an exhaustion requirement would thwart that clear statutory design.

Moreover, when Congress enacted the Civil Rights of Institutionalized Persons Act a century later, it "created a specific, limited exhaustion requirement for adult prisoners bringing actions pursuant to § 1983." *Id.* at 508; *see* 42 U.S.C. § 1997e(a). "Implicit in this decision is Congress' conclusion that the no-exhaustion rule should be left standing with respect to

other § 1983 suits." *Patsy*, 457 U.S. at 509. To hold otherwise would render the specific exhaustion provisions in § 1997e(a) "superfluous." *Id.* at 512; *see Pulsifer v. United States*, 144 S. Ct. 718, 731–732 (2024) ("When a statutory construction . . . renders an entire subparagraph meaningless, . . . the canon against surplusage applies with special force." (cleaned up)).

Accordingly, *Patsy* refused to overturn this Court's precedent and "conclude[d] that exhaustion of state administrative remedies should not be required as a prerequisite to bringing an action pursuant to § 1983." 457 U.S. at 516. In so holding, this Court "settled" the issue, *Knick v. Twp. of Scott*, 588 U.S. 180, 185 (2019), subject only to Congress' ability to revisit the statute, should it choose to do so, *see Allen v. Milligan*, 599 U.S. 1, 39 (2023) (emphasizing the importance of "statutory *stare decisis*").

B. States Cannot Undermine The Federal Right Conferred By Section 1983 Through An Exhaustion Requirement.

This Court has also made clear that § 1983's no-exhaustion rule constitutes federal law that applies with equal force in state courts. Congress has entrusted the States "with providing a forum for the vindication of federal rights violated by state or local officials acting under color of state law." *Haywood*, 556 U.S. at 735. And, although "States may establish the rules of procedure governing litigation in their own courts," the federal right created by § 1983 "'cannot be defeated by the forms of local practice.'" *Felder*, 487 U.S. at 138 (quoting *Brown v. W. Ry. Co. of Ala.*, 338 U.S. 294, 296 (1949)).

That principle derives from the Supremacy Clause, which provides that "the Laws of the United States . . . shall be the supreme Law of the Land." U.S. Const. art. VI, cl. 2. At the same time, it directs that "the Judges in every State shall be bound [by federal law], any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." *Id.* Those state judges are indeed "bound by Oath or Affirmation" to "support th[e] Constitution" and its supremacy over state law. *Id.* art. VI, cl. 3. The Supremacy Clause's structural guarantee therefore applies in federal and state proceedings alike. That is, any state law which "interferes with or is contrary to federal law . . . must yield," even if it is "clearly within a State's acknowledged power." *Free v. Bland*, 369 U.S. 663, 666 (1962); *see Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 324 (2015).

Section 1983's no-exhaustion rule reflects "the meaning of the statute." *Patsy*, 457 U.S. at 501. And it thus trumps Alabama's exhaustion requirement, *see* Ala. Code § 25-4-95, which cannot constitutionally be applied to bar relief in this suit. In fact, this Court has already held that the Supremacy Clause prohibits the States from "impos[ing] an exhaustion requirement on persons who choose to assert their federal right in state courts." *Felder*, 487 U.S. at 146.

The decision below failed to address—let alone distinguish—that controlling precedent. And it made the same mistake as the lower court did in *Felder*. As in that case, the Alabama Supreme Court believed that *Patsy* was "inapplicable to this state-court suit on the theory that States retain the authority to prescribe the rules and procedures governing suits in their

courts." *Id.* at 147; *see* Pet.App.11. But, as *Felder* explained, that state authority "does not extend so far as to permit States to place conditions on the vindication of a federal right." *Felder*, 487 U.S. at 147.

That is exactly what Alabama Code § 25-4-95 does here. Like the Wisconsin law in *Felder*, it "burdens the exercise of the federal right by forcing civil rights victims who seek redress in state courts to comply with a requirement that is entirely absent from civil rights litigation in federal courts." *Id.* at 141. It "operates as a condition precedent to recovery." *Id.* at 144. And, as a result, the statute will "predictably produce different outcomes in federal civil rights litigation based solely on whether that litigation takes place in state or federal court." *Id.* at 141. *Felder* makes clear that the "States may not apply such an outcome-determinative law when entertaining substantive federal rights in their courts." *Id.*

Unable to defend the reasoning of the decision below, Alabama tacks in a new direction, insisting that its law "is a neutral rule of judicial administration and thus a valid excuse for declining jurisdiction over Petitioners' claims." BIO.16. But that argument again runs headlong into *Felder*. The Wisconsin law in *Felder* likewise did "not discriminate between state and federal causes of action." 487 U.S. at 144. Even so, this Court recognized that the constitutional problem remained. As here, the statute "condition[ed] the right to bring suit against the very persons and entities Congress intended to subject to liability" for violations of federal law. *Id.* at 144–145. And that, as already explained, a State may not do. Indeed, it makes no sense to think that "those who sought to

vindicate their federal rights in state courts could be required to seek redress in the first instance from the very state officials whose hostility to those rights precipitated their injuries." *Id.* at 147. Such an exhaustion requirement is "utterly inconsistent with the remedial purposes" of § 1983. *Id.* at 149.

Nor does it matter that the Alabama law serves to "limit[] a court's jurisdiction." BIO.15. "The force of the Supremacy Clause is not so weak that it can be evaded by mere mention of the word 'jurisdiction.'" *Howlett*, 496 U.S. at 382–83. And the State is wrong to suggest that Alabama Code § 25-4-95 reflects concerns regarding its courts' "competence over the subject matter that jurisdictional rules are designed to protect." BIO.15 (quoting *Haywood*, 556 U.S. at 739). Alabama courts routinely exercise jurisdiction over the subject matter of this suit. In fact, they "*must* accept jurisdiction over claims brought under 42 U.S.C. § 1983, if a § 1983 plaintiff selects a state court as his forum." *Terrell v. Bessemer*, 406 So. 2d 337, 340 (Ala. 1981) (emphasis added). That the State's courts "will hear the entire § 1983 cause of action once a plaintiff complies with [Alabama Code § 25-4-95], therefore, in no way alters the fact that the statute discriminates against the precise type of claim Congress has created." *Felder*, 487 U.S. at 145. Alabama "may not alter the outcome of federal claims it chooses to entertain in its courts by demanding compliance" with an exhaustion requirement that is "inapplicable when such claims are brought in federal court." *Id.* at 152; *see Haywood*, 556 U.S. at 739–40.

Alabama thus misses the mark in trying to analogize this case to *Johnson v. Fankell*, 520 U.S. 911

(1997). *See* BIO.13–15. There, this Court held that Idaho's courts could "deny an interlocutory appeal" of a qualified immunity determination. *Johnson*, 520 U.S. at 923. But while qualified immunity may in some sense be inferred from § 1983, "the right to immediate appellate review of [a qualified-immunity] ruling in a federal case has its source in [28 U.S.C.] § 1291." *Id.* at 921. The latter is a "federal procedural right that simply does not apply in a nonfederal forum." *Id.* In addition, unlike the exhaustion requirement here, and unlike the exhaustion requirement in *Felder*, Idaho's final judgment rule was not outcome-determinative. That is, "the postponement of the appeal until after final judgment [did] not affect the ultimate outcome of the case." *Johnson*, 520 U.S. at 921. The defendants were still "able to argue their immunity from suit claim to the trial court, just as they would to a federal court," and to have the trial court's decision reviewed on appeal. *Id.*

By contrast, Petitioners' failure to comply with Alabama's exhaustion requirement in this case barred their suit entirely. The statute imposed "a substantive condition on the right to sue governmental officials and entities." *Felder*, 487 U.S. at 152. And it "resulted in a judgment dismissing a complaint that would not have been dismissed—at least not without a judicial determination of the merits of the claim—if the case had been filed in a federal court." *Johnson*, 520 U.S. at 920. That conflict confirms that the Alabama law "is preempted, and its application is unconstitutional, under the Supremacy Clause." *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 388 (2000).

* * *

In short, this Court's decisions in *Patsy* and *Felder* say everything necessary to reverse the judgment below. Those cases read § 1983 to include a no-exhaustion rule, and the Supremacy Clause requires that rule to apply equally in state as in federal courts. Section 1983 plaintiffs thus need not exhaust state administrative remedies before filing suit—whether that be in state or federal court. The Alabama Supreme Court erred in holding otherwise.

II. State Exhaustion Requirements Significantly Impede The Vindication Of Federal Rights.

Alabama also argues that there is "little practical difference for § 1983 plaintiffs" if they must comply with the State's exhaustion requirement because plaintiffs can still "sue in federal court." BIO.20. But that view contradicts the statutory scheme and this Court's precedents. Congress "enabl[ed] the plaintiff to choose the forum in which to seek relief." *Patsy*, 457 U.S. at 506. And upholding the decision below would create a variety of impediments to recovery for civil rights plaintiffs.

Those impediments would harm businesses and trade associations that face unlawful state regulation. Section 1983 is a crucial tool for businesses and trade associations to vindicate their federal rights. The Chamber itself regularly files lawsuits seeking injunctive relief against state laws that violate federal rights, and those suits often include official-capacity claims against state officers under § 1983. *See, e.g.*, *Chamber of Commerce of the United States of America v. Bonta*, 62 F.4th 473, 478 (9th Cir. 2023) (holding preempted California's criminal prohibition of certain

arbitration agreements in employment relationships). Allowing States to impose substantive conditions on those claims will limit businesses' and trade associations' ability to challenge unlawful state action.

A. State Exhaustion Requirements Will Lead To Burdensome Duplicative Litigation.

To start, Alabama's position would lead to unnecessarily duplicative litigation and risk conflicting judgments. Section 1983 is not the only mechanism for vindicating civil rights. State law and state constitutions place "independent limits on state and local power," which can provide similar or even greater protection as compared to their federal counterparts. Jeffrey S. Sutton, *51 Imperfect Solutions: States and the Making of American Constitutional Law* 173 (2018). As a result, businesses and other victims of civil rights violations that seek judicial redress often raise both state and federal claims. *See, e.g.*, Susan Herman, *Beyond Parity: Section 1983 and the State Courts*, 54 Brook. L. Rev. 1057, 1075 (1989) (noting the "substantial overlap of section 1983 actions and state tort actions").

By routing § 1983 plaintiffs to federal court, state exhaustion requirements like Alabama's will force these plaintiffs to split their claims across multiple lawsuits. That is because injunctive relief for violations of state law by state actors is generally unavailable in federal court. In *Pennhurst*, this Court held that "a claim that state officials violated state law in carrying out their official responsibilities is a claim against the State that is protected by the Eleventh Amendment." 465 U.S. at 121. And it explained that "this principle applies as well to state-law claims

brought into federal court under pendent jurisdiction." *Id.* The federal courts are consequently powerless to "instruct[] state officials on how to conform their conduct to state law" absent an "unequivocal[]" waiver of sovereign immunity. *Id.* at 99, 106; *see also Raygor v. Regents of the Univ. of Minn.*, 534 U.S. 533, 542 (2002) (holding that plaintiffs cannot invoke 28 U.S.C. § 1367(a) for pendent "claims against nonconsenting state defendants").

The net result is that a federal forum will rarely cure the harm produced by state-imposed exhaustion requirements. Following *Pennhurst*, "[p]laintiffs who claim relief against a state official under both state law and section 1983 can no longer bring a single action in federal court." Kenneth J. Wilbur, *Concurrent Jurisdiction and Attorney's Fees: The Obligation of State Courts to Hear Section 1983 Claims*, 134 U. Penn. L. Rev. 1207, 1212 (1986). And this "substantially undermines the attractiveness of the federal forum" for many types of federal civil rights claims. Erwin Chemerinsky, *Federal Jurisdiction* 474 (7th ed. 2016). Under Alabama's regime, many plaintiffs will have to split their claims between state and federal court and then pursue them in parallel litigation.

Such claim splitting "is obviously more expensive than a single proceeding" for plaintiffs seeking to enforce both federal and state civil rights. James Leonard, *A Damaged Remedy: Disability Discrimination Claims Against State Entities Under the Americans with Disabilities Act After* Seminole Tribe *and* Flores, 41 Ariz. L. Rev. 651, 751 (1999). Plaintiffs must pay duplicative filing fees, draft

separate pleadings, navigate different and sometimes conflicting procedural requirements, conduct parallel discovery, and ultimately participate in multiple trials and potential appeals. Those additional costs pose practical "burdens [on] the litigation of the federal claim in federal court." Ann Althouse, *Tapping the State Court Resource*, 44 Vand. L. Rev. 953, 975 (1991). And that harm is inconsistent with this Court's decisions holding that state exhaustion requirements are incompatible with § 1983.

Forcing § 1983 plaintiffs to split their claims similarly undermines 42 U.S.C. § 1988's fee-shifting mechanism. "Congress viewed the fees authorized by § 1988 as 'an integral part of the remedies necessary to obtain' compliance with § 1983." *Maine v. Thiboutot*, 448 U.S. 1, 11 (1980) (citation omitted). And, because of the Supremacy Clause, this "fee provision is part of the § 1983 remedy whether the action is brought in federal or state court." *Id.* Moreover, when a plaintiff pursues related state and federal claims in a single proceeding, "[m]uch of counsel's time will be devoted generally to the litigation as a whole," and he may therefore "recover a fully compensatory fee" for his overlapping efforts. *Hensley v. Eckerhart*, 461 U.S. 424, 435 (1983). But that remedy is unavailable where a plaintiff is constrained—because of a state exhaustion requirement—to split his claims between multiple lawsuits. Even if he obtains full relief from his § 1983 claim in federal court, he will need to bear his own duplicative costs from the parallel state-court litigation. *See* 42 U.S.C. § 1988(b) (limiting recovery to attorney's fees incurred in an "action or proceeding to enforce a provision of [§ 1983]").

Subjecting plaintiffs to claim splitting also creates unnecessary risks of *res judicata*. Section 1983 claims are subject to ordinary preclusion principles. *See Migra v. Warren City Sch. Dist. Bd. of Educ.*, 465 U.S. 75, 84 (1984); *Allen v. McCurry*, 449 U.S. 90, 104 (1980). And so a § 1983 plaintiff who pursues parallel litigation "risk[s] the *res judicata* bar if the state court decides first." Chemerinsky, *supra*, at 475 (italics added). To make matters worse, the preclusive effect of that decision will be dictated by "the law of the State in which the judgment was rendered." *Migra*, 465 U.S. at 81. State preclusion law and state exhaustion requirements can therefore combine to thwart the vindication of federal rights. That is contrary to the core purpose of § 1983, which is "to provide relief to victims" whenever state actors "deprive [them] of their federally guaranteed rights." *Wyatt v. Cole*, 504 U.S. 158, 161 (1992).

This is not to say that a state-court decision will always preclude the separately litigated federal claim. State preclusion law must "satisfy the applicable requirements of the Due Process Clause." *Kremer v. Chem. Constr. Corp.*, 456 U.S. 461, 482 (1982). And it would raise serious due process concerns if a State were to preclude a § 1983 claim that its courts could not hear prior to exhaustion. But States frequently treat exhaustion as an affirmative defense, not a jurisdictional bar. *See, e.g.*, *Hawthorne v. Vill. of Olympia Fields*, 790 N.E.2d 832, 839–40 (Ill. 2003); *Jones v. Vill. of Chagrin Falls*, 674 N.E.2d 1388, 1391 (Ohio 1997). And claim-splitting plaintiffs could also exhaust shortly before the state court rules on their state-law claims. In either case, the "federal claim could have been litigated in the state-court

proceeding." *Migra*, 465 U.S. at 83. And *res judicata* will likely bar relief under § 1983. *Felder* avoids that perverse result by holding that state exhaustion requirements are inconsistent with the scope of the remedy provided under § 1983.

B. State Exhaustion Requirements Create Additional Concerns.

State exhaustion requirements may pose several additional concerns by depriving § 1983 litigants of access to a state forum.

First, state exhaustion requirements undercut interests of comity and federalism by channeling claims against state actors into federal court. Indeed, "[b]ecause section 1983 provides a cause of action against state officials," "federal court adjudication of section 1983 claims is frequently seen as potentially or actually intrusive upon the states' power." Herman, *supra*, at 1073. This Court has recognized as much: "federalism concerns would be raised" if plaintiffs had "no choice but to bring their complaints concerning state actions to federal court." *Thiboutot*, 448 U.S. at 11 n.12. "There is no comity or federalism problem," however, "if a state court finds a state official guilty of a civil rights violation." Herman, *supra*, at 1074.

Not only that, but "by entertaining federal claims," state courts can also "help Congress promote the substantive policies underlying federal law while relieving the federal judiciary of the burden of adjudicating all federal claims." David McMillan, *Barring "Analogous" State Law Claims Is No Excuse:* Haywood v. Drown *and States' Obligation to Enforce Section 1983*, 36 Fordham Urb. L.J. 945, 946 (2009).

Upholding state exhaustion requirements would thus circumvent the critical role that state courts play in shaping federal law. *See* Herman, *supra*, at 1073.

Second, Congress enabled plaintiffs to weigh the pros and cons of bringing their § 1983 claims in state or federal court and to decide for themselves which forum best suits their case-specific needs. Businesses and other § 1983 plaintiffs alike recognize that federal civil litigation differs from state civil litigation, which can result in significant discrepancies in the time it takes to resolve an action, *see* Stephen N. Subrin, *The Limitations of Transsubstantive Procedure: An Essay on Adjusting the "One Size Fits All" Assumption*, 87 Denv. U. L. Rev. 377, 406 n.56 (2010), and in the costs associated with litigating the matter, *see* Virginia F. Milstead, *State Sovereign Immunity and the Plaintiff State: Does the Eleventh Amendment Bar Removal of Actions Filed in State Court?*, 38 J. Marshall L. Rev. 513, 538 (2004). Differences in accessibility and navigability may also favor litigating the case in state court rather than federal court, or vice-versa. *See* Marc E. Montgomery, *Navigating the Back Channels of Salvage Law: Procedural Options for the Small Boat Salvor*, 83 Tul. L. Rev. 1463, 1494–95 (2009). These significant differences favor letting plaintiffs choose whether to bring their § 1983 claim in a state or a federal court.

Third, state courts may provide § 1983 litigants with "equitable relief not available in federal court." Steven H. Steinglass, *The Emerging State Court § 1983 Action: A Procedural Review*, 38 U. Miami L. Rev. 381, 410 (1984). After all, "the limitations on federal equitable intervention are not inherent in a

§ 1983 cause of action." *Id.* at 504. And these "limitations on [federal courts'] injunctive power" do not apply to state courts. *Id.* at 411. As such, state courts have more leeway to fashion relief that will remedy constitutional wrongs suffered by § 1983 plaintiffs.

* * *

In all these ways, state courts play a vital role in developing federal law and vindicating federal rights through § 1983. Forcing litigants to bring their claims in federal court because of state exhaustion requirements thwarts the remedy that Congress created and the choice that Congress afforded plaintiffs to have their claims heard in state court. The Court should reaffirm that such exhaustion requirements are preempted by § 1983's contrary rule.

CONCLUSION

The Court should reverse the judgment below.

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