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 FOR RESPONDENT

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QUESTION PRESENTED

Under 42 U.S.C. §1983, state officials who deprive a person of a federal right "shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." Under Alabama's unemployment-compensation scheme, disputes over unemployment benefits—whether grounded in state or federal law—must be adjudicated by state administrative officials before a state court judge has jurisdiction to adjudicate them. Does §1983 preempt that structure?

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INTRODUCTION

In the 1930s, the Alabama Legislature created a comprehensive scheme to provide unemployment compensation and to adjudicate eligibility. First, an examiner reviews the claim and renders a decision. Second, an employee or employer may appeal to an appeals tribunal and raise substantive issues like eligibility or procedural issues. Third, after the intermediate appeal, a party may seek a discretionary appeal before a three-member board of appeals. Fourth, if the board denies review or renders a decision, the case may be appealed to a circuit court judge for de novo review. Fifth, that decision may be reviewed by state appellate courts.

Does 42 U.S.C. §1983 prohibit this structure? No. Section 1983 makes certain persons liable "in an action at law, suit in equity, or other proper proceeding for redress." The State's structure does not defeat liability, and it is one of many ways the State can offer a "proper proceeding for redress."

Does it matter that some adjudicators are agency employees, some are appointed officers, and some are elected judges? Again, no. Section 1983 does not speak to the sequence and structure of state adjudication—matters historically left to state discretion. The State can channel review through five levels, or none. If the State treats like claims alike and makes the right persons liable, there is no conflict with §1983. The counterargument is pointless formalism—forcing the State to first adjudicate some claims only in a place it calls "court" even if its system of adjudication satisfies in substance the Platonic ideal of constitutional process.

There is no express preemption here, so Petitioners resort to the more nebulous assertion that §1983 preempts Alabama's law by implication. But the unemployment benefits system does not hinder §1983's clear purpose; rather, it facilitates prompt adjudications of claims before administrative adjudicators and then (if needed) before state courts. Alabama's law is nothing like the laws this Court has found preempted by §1983. It applies equally to state and federal law claims, and it does not function like a grant of "immunity" to "further the State's interest in minimizing liability." *Felder v. Casey*, 487 U.S. 131, 143 (1988); *see also Haywood v. Drown*, 556 U.S. 729, 742 (2009) ("Correction Law § 24 is effectively an immunity statute cloaked in jurisdictional garb."); *Howlett v. Rose*, 496 U.S. 356, 377-78 (1990) ("[T]he Florida law of sovereign immunity … cannot override the dictates of federal law."). There is no conflict, so there is no preemption.

Moreover, this Court has made clear that §1983 does not preempt neutral jurisdictional rules that reflect concerns of competence over the subject matter. *See, e.g.*, *Haywood*, 556 U.S. at 739; *Howlett*, 496 U.S. at 381. Alabama's exhaustion requirement is such a rule. The law operates jurisdictionally by dismissing unexhausted claims *without* prejudice, so it is not an outcome-determinative procedural rule, *cf. Felder*, 487 U.S. at 150-52, or a defense on the merits, *cf. Howlett*, 496 U.S. at 375-76. Like a requirement that plaintiffs present claims to trial courts before they can be heard by courts of appeals, exhaustion requirements are familiar ways to allocate subject-matter jurisdiction. Alabama's law, devised in the 1930s to facilitate expert review of unemployment claims, is no different.

Because Petitioners cannot prevail under this Court's preemption precedents, they rely on the untenable notion that *Patsy* and *Felder* established a categorical rule preempting all administrative exhaustion requirements. But *Patsy* was not a preemption case. And the Court's detailed analyses of the challenged laws in *Felder*, *Haywood*, and other cases show that a "case-by-case analysis is needed." *Contra* Br.37. Under that analysis, because Alabama law provides "an action at law, suit in equity, or other proper proceeding for redress," it does not conflict with §1983.

By asking the Court to find preemption of a truly neutral and jurisdictional rule, Petitioners raise constitutional questions the Court has carefully avoided. It would be a serious intrusion on state sovereignty if §1983 compelled state courts to take cognizance of claims beyond their jurisdiction. The Court should read §1983 to pose no conflict with Alabama law and avoid confronting these constitutional difficulties for the first time here.

STATEMENT

A. Alabama Law Creates a Comprehensive Unemployment-Compensation Scheme to Benefit Citizens in Need.

1. At the height of the Great Depression, Congress enacted the Social Security Act, and States began to create unemployment-compensation funds to ameliorate the crisis. *See* Edwin E. Witte, *Development of Unemployment Compensation*, 55 Yale L.J. 21, 32-34 (1945). In 1935, Alabama was among the first to create such a comprehensive scheme. *Tenn. Coal, Iron & R.R. v. Martin*, 36 So. 2d 547, 548 (Ala. 1948). As

"humanitarian and remedial" legislation (*id.*), the law's "evident and well recognized purpose" was to "insure the diligent worker against the vicissitudes of enforced unemployment," *Dep't of Indus. Relations v. Drummond*, 1 So. 2d 395, 398 (Ala. Ct. App. 1941).

At the same time, the Alabama Legislature created several new administrative agencies, including the Unemployment Compensation Commission—now a division of the Alabama Department of Labor (ADOL). The State raised funds through an employer payroll tax, which was controversial at the time. This Court sustained Alabama's statutes against constitutional attack, finding them to "embody a cooperative legislative effort by state and national governments." *Carmichael v. S. Coal & Coke Co.*, 301 U.S. 495, 526 (1937).

Today, Alabama's unemployment-compensation scheme continues to provide temporary benefits to help unemployed people get back on their feet. The statute broadly defines "unemployment," excluding those who quit work voluntarily or who are fired for misconduct. *See* Ala. Code §§25-4-71, 25-4-78(2)-(3).

As unemployment benefits are statutory entitlements unknown to common law, the procedure for claiming them is "completely governed by statute." Pet.App.7a. And under Alabama law, the procedures "for seeking, challenging, or appealing from any 'determinations with respect to claims for unemployment compensation benefits'" are "exclusive." *Id.* at 8a-9a (quoting Ala. Code §25-4-96).

The first step in the process is a claimant's application with ADOL. Unless additional evidence is needed, an examiner shall make a benefits determination "promptly." Ala. Code §25-4-91(a). This

promptness requirement may be enforced by court order. *See, e.g.*, *Vance v. Montgomery Cnty. Dep't of Human Res.*, 693 So. 2d 493, 495 (Ala. Civ. App. 1997) ("[A] petition for a writ of mandamus to compel [the agency] to make its decision would be appropriate."). The examiner's determination states the amount of benefits due to the claimant or, if benefits are denied, the "reasons" for the denial. Ala. Code §25-4-91(a).

The statute provides for "appeals tribunals," which are "separate and apart from the direction and control of other divisions" of the agency. *Id.* §25-4-92(a). A claimant or an "interested employer" can appeal. *See id.* §25-4-91(d)(1)(b). Employers may (and do) contest determinations of benefits because "under Alabama law the payment of unemployment benefits increases an employer's contribution rate" for the state program. *Evans v. Nat'l Microsystems, Inc.*, 576 So. 2d 207, 210 (Ala. 1991) (citing Ala. Code §25-4-54); *see also Ala. Dep't of Labor v. Barnett*, 341 So. 3d 1096, 1099 (Ala. Civ. App. 2021) ("[T]he issue of disqualification based on an employee's misconduct is an affirmative defense to an unemployment-compensation claim, as to which the employer bears the burden of proof after the employee has established a prima facie case of eligibility."). In addition, the ADOL Secretary may reconsider any determination until it becomes final. Ala. Code §25-4-91(d).

Appeals tribunals have the authority to hear and decide "all 'disputed claims and other due process cases' involving the examiner's administration of unemployment benefits." Pet.App.8a (quoting Ala. Code §25-4-92(a)). Tribunals may compel witnesses to sit for depositions, to appear at hearings, and to produce documents. Ala. Code §25-4-97.

The hearing on appeal is flexible and accommodating. Ala. Admin. Code §480-1-4-.04(1); *see also* Ala. Code §25-4-92(a). A hearing should be scheduled "promptly" and conducted via "teleconferencing" or at the "regular hearing location most accessible to the claimant." Ala. Admin. Code §480-1-4-.09(2). The parties may represent themselves or obtain representation, *id.* at §480-1-4-.05, and tribunals are obligated to "afford all parties every assistance" consistent with fairness, *id.* at §480-1-4-.04(1). Tribunals may dispense with the requirement to object to evidence and instead consider only evidence that is "relevant, material, competent, and legal." *Id.* at §480-1-4-.04(10). Accommodation is made for late or absent parties. *Id.* at §480-1-4-.04(12). A reasoned decision must issue "within 30 days" of the hearing. *Id.* at §480-1-4-.11(1).

From there, parties may obtain further review from the board of appeals, whose members are appointed by the Governor and confirmed by the Senate. Ala. Code §§25-2-12, 25-4-94(a). The board has 10 days to grant a request for review. *Id.* §25-4-94(b). Upon review, the board may conduct hearings, take evidence, and consolidate cases with common legal issues. *See* Ala. Admin. Code §§480-1-3-.08(1), 480-1-3-.10(1), (6), (10), (12), 480-1-3-.11(1).

Once the process is exhausted, an aggrieved party can appeal to circuit court. Ala. Code §25-4-95. An aggrieved party could be a claimant who disagrees with the amount of an award, the claimant's former employer whose taxes could increase based on the award, or the ADOL Secretary seeking recoupment due to fraud or overpayment. In any case, the circuit court lacks jurisdiction "unless the person filing [the] appeal has exhausted his administrative remedies." *Id.*

The circuit court receives an administrative record from the agency, but cases are reviewed de novo; there is no requirement under the statute to file exceptions to the agency rulings. *Id.* In circuit court, unemployment cases have "precedence over all other civil cases" except those involving workers' compensation. *Id.*

2. The federal government provides funding for state unemployment-compensation programs. *See* 42 U.S.C. §§501, 502, 1101(c)(1). Such programs must meet certain federal criteria. *Id.* at §§501 to 503. The U.S. Secretary of Labor is empowered to determine whether those criteria are met and, if so, to certify to the U.S. Secretary of Treasury to make payments to qualifying States. *Id.* at §502.

One criterion requires that state law provide "methods of administration ... found by the [U.S.] Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due." *Id.* at §503(a)(1). The U.S. Department of Labor interprets §503(a)(1) to require "the greatest promptness that is administratively feasible." 20 C.F.R. §640.3. If a State fails to comply with §503(a), the U.S. Secretary of Labor may suspend payments to the State pursuant to §503(b). The statute provides no other means to enforce compliance with §503(a).

B. Alabama Faces Record Unemployment.

For years, Alabama was one of the top-performing States in its region on numerous measures of efficiency for processing requests for unemployment benefits. *See* C.195-204.[1] But COVID-19 fundamentally

[1] "C." refers to the clerk's record filed with the court below.

altered the landscape. ADOL received a flood of applications—over five times the normal amount. C.62-63; Pet.App.2a. From April 2020 to March 2022, ADOL received almost 1.5 million claims. C.63; Pet.App.2a. At the same time, ADOL faced a staffing shortage that slowed its progress. C.63.

C. Petitioners Sue Before Exhausting Their Administrative Remedies, so Their Claims Are Dismissed for Lack of Jurisdiction.

Petitioners—21 individual unemployment claimants—filed applications for unemployment compensation. By February 2022 they had reached various stages of the agency process when they sued the Alabama Secretary of Labor for alleged violations of due process and the Social Security Act. None had exhausted the available administrative remedies.

Petitioners allege that ADOL provided inadequate notice and opportunity to be heard to claimants whose applications were not processed quickly enough or whose benefits were terminated. JA42. Petitioners also alleged that ADOL violated the Social Security Act because its procedures were not "reasonably calculated to insure full payment … when due." 42 U.S.C. §503(a)(1). They sought injunctive relief and attorney's fees. JA42-44. They asked the court to enter injunctions forcing the Secretary to decide all applications promptly, to pay all claims within two days of their approval, to schedule requested hearings

within 90 days, and to make notices comprehensible to a person with an eighth-grade education. JA42-43.[2]

The Secretary moved to dismiss the complaint on several grounds, including that the circuit court lacked jurisdiction because Petitioners had not exhausted their administrative remedies. C.274-75. Petitioners responded that Alabama law did not require exhaustion. C.118, 289. The circuit court dismissed without specifying the grounds for its decision. Pet.App.5a.

Petitioners appealed to the Alabama Supreme Court. They asserted that only "*substantive* decisions" must be exhausted, not claims about "delays in *processing*." Op.Br.37. The Secretary responded that both types of claims can and must be raised at the agency before they can be heard in court. Resp.Br.44-45. In reply, Petitioners raised for the first time a sweeping—but one paragraph—argument based solely on this Court's decision in *Patsy v. Board of Regents of the State of Florida*, 457 U.S. 496 (1982). According to Petitioners, *Patsy* "categorically rejected" the application of any state-law "administrative exhaustion" requirements to §1983 claims. Reply.Br.16.

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[2] The amended complaint included affidavits from several plaintiffs, not all of whom are still parties. JA46-71. The director of ADOL's unemployment compensation division submitted a competing declaration disputing many of the allegations in these affidavits. JA3-13. For example, one plaintiff had reapplied for benefits despite the agency's prior adjudication that he had been fired for cause. *Compare* JA36-37, 57-60 *with* JA4-6. Another plaintiff who alleged delay had failed to verify her identify; once she did, ADOL sent payment, and she dropped her claims. *Compare* JA49-50 *with* JA6-7.

The Alabama Supreme Court affirmed dismissal because "the Legislature ha[d] prohibited courts from exercising jurisdiction over unexhausted claims." Pet.App.6a-10a. Thus, the court had "no power to address the merits." *Id.* at 12a. Rejecting the view "that §1983 preempts any and all … exhaustion requirements found in State law," the court explained that "*Patsy* held only that the text of 42 U.S.C. §1983 … lacks an exhaustion requirement." *Id.* at 11a. *Patsy* "did not interpret the text of any State law, and certainly did not hold that State laws requiring administrative exhaustion as a prerequisite to State-court jurisdiction are unconstitutional." *Id.* The court added that §1983 could not "compel *State* courts to adjudicate federal claims" outside their jurisdiction. *Id.*

Justice Cook dissented. In his view, state law did not require Petitioners to exhaust their claims because they sought only "procedural relief." *Id.* at 15a-19a. He was also "not convinced" that state courts have the authority to apply exhaustion requirements to §1983 claims. *Id.* at 20a.

This Court granted certiorari.

SUMMARY OF ARGUMENT

Section 1983 does not preempt the exhaustion provision in Alabama's unemployment benefits statute.

I. There is no express preemption. As the Court has observed, the text of 42 U.S.C. §1983 is silent with respect to the exhaustion of state remedies. If anything, the text permits a role for agency adjudication: Section 1983 creates liability "in an action at law, suit in equity, or *other proper proceeding* for redress." 42 U.S.C. §1983 (emphasis added). Likewise, Congress

has not occupied the entire field of rules regarding the structure and jurisdiction of state courts. And, even if there were a colorable argument under these preemption theories, Petitioners waived reliance on them.

II.A. There is no implied preemption under a straightforward application of the Court's preemption framework. This Court applies a strong presumption against implied preemption, especially when the state law lies within a historic area of state authority, such as the power to regulate state courts. Preemption is an exercise in statutory interpretation, but Petitioners fail to ground their argument in text and rely heavily on legislative history. Petitioners insist on a categorical rule, but preemption analysis must proceed on a statute-by-status basis. With these principles in mind, there is clearly no conflict between §1983 and Alabama's exhaustion provision, which serves to facilitate a public-benefit program and does not defeat liability or single out civil-rights claims.

II.B. Application of the Court's §1983 preemption jurisprudence produces the same result. The Court has always afforded States the latitude to regulate their courts through neutral rules. Alabama's exhaustion provision bars claims related to unemployment disputes regardless of their state or federal character. And it requires exhaustion of administrative remedies for claimants, employers, and the government.

Moreover, the Alabama law operates jurisdictionally, not as an outcome-determinative procedural rule, *cf. Felder*, 487 U.S. at 150-52, or as a defense on the merits, *cf. Howlett*, 496 U.S. at 375-76. Crucially, dismissal under the exhaustion provision is *without prejudice*, so the law does not produce different

outcomes depending on the forum, and it does not defeat liability. This Court has never applied §1983 to preempt this sort of standard jurisdictional rule.

III. With preemption doctrine and the Court's §1983 precedents against them, Petitioners settle on the sweeping argument that §1983 "categorically" preempts *all* state-law exhaustion requirements. Their reading of the cases is incorrect. *Patsy* was not a preemption case and held only that exhaustion ought not be *judicially imposed* on §1983 claims. *Felder* dealt with a discriminatory and outcome-determinative rule designed to minimize state liability. Petitioners string together strands of legislative history to form a "categorical" rule that is neither supported by nor reconcilable with this Court's §1983 decisions.

IV. The Court should not read §1983 to preempt Alabama's neutral jurisdictional rule. Preemption here would mean forcing state courts to adjudicate claims beyond their jurisdiction. Intrusion on such a core aspect of state sovereignty raises grave constitutional problems, which the Court has studiously avoided. This is not the case to raise and resolve serious doubts about the constitutionality of §1983.

ARGUMENT

States "have great latitude to establish the structure and jurisdiction of their own courts." *Howlett v. Rose*, 496 U.S. 356, 372 (1990). The Court has been "quite clear" that these are "matter[s] for each State to decide." *Johnson v. Fankell*, 520 U.S. 911, 922 n.13 (1997). While state courts must "enforce federal prescriptions," the Constitution "obviously" left to the States the power to "regulate the 'ordinary

jurisdiction' of their courts." *Printz v. United States*, 521 U.S. 898, 906 n.1, 907 (1997).

Yet Petitioners contend that 42 U.S.C. §1983 silently abrogated the traditional state power to define state-court jurisdiction. On their view, "the rule in federal court … should be the rule in state court." Br.34. Even a "neutral rule of judicial administration," Br.31, might make state court less "viable," undermining "§1983's central purpose of providing compensatory relief," Br.3 (cleaned up). Because adjudication by a state's administrative law judge is a "hurdle" to seeking relief from the state's circuit court judge (Br.26), Petitioners infer that state-law exhaustion requirements are "categorically" foreclosed (Br.33). The question presented is "one of pre-emption" (Br.22): Does 42 U.S.C. §1983 preempt Alabama Code §25-4-92 *et seq*.?

It does not, and the basic principles of preemption (unmentioned in Petitioners' briefs here and below) confirm as much. Broadly, a state law may be preempted in one of three ways. First, "Congress may preempt state authority by so stating in express terms." *Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n*, 461 U.S. 190, 203 (1983). Second, Congress may "supersede state law altogether" through a "scheme of federal regulation so pervasive as to make reasonable the inference that Congress left no room to supplement it." *Id.* at 203-04. Finally, a state law may be impliedly "preempted to the extent that it actually conflicts with federal law," such as "when compliance with both federal and state regulations is a physical impossibility" or "state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."

Id. at 204 (cleaned up); *see also Kansas v. Garcia*, 589 U.S. 191, 202-03 (2020).

The Court has used many labels over the years, but "all preemption arguments[]" have this in common: They "must be grounded 'in the text and structure of the statute at issue.'" *Garcia*, 589 U.S. at 208 (quoting *CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 664 (1993)). Thus, if a challenger to state law posits an "implicit intent" of Congress, but the statute's text "says no such thing," that is a "fundamental problem" for the challenger. *Oklahoma v. Castro-Huerta*, 597 U.S. 629, 642 (2022). Further, Congress must "make its intention 'clear and manifest' if it intends to preempt the historic powers of the States." *Gregory v. Ashcroft*, 501 U.S. 452, 461 (1991) (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)).

In view of the Court's preemption framework, §1983 does not preempt the way Alabama handles claims related to unemployment compensation—let alone all possible administrative exhaustion requirements nationwide.

I. Section 1983 Does Not Expressly Preempt Alabama's Law or Preempt the Field of State Court Jurisdiction.

Section 1983 provides that any person acting under color of state law who violates another person's federal rights "shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." 42 U.S.C. §1983. Nothing in that text hints at preemption of state laws that require claims to be adjudicated first by an administrative officer before being adjudicated by a judicial officer. If anything, the text expressly *permits* administrative

process when it provides for "other proper proceeding for redress." *Cf., e.g.*, *FERC v. Vitol*, 79 F.4th 1059, 1067-68 (9th Cir. 2023) (deeming a FERC penalty assessment to be an "action, suit or proceeding" under 28 U.S.C. §2462 because "the agency's process under its regulations fits comfortably within the ordinary meaning of 'proceeding'"). If a "proper proceeding" is just one that provides due process, agency adjudication may suffice. *See, e.g.*, *Reetz v. Michigan*, 188 U.S. 505, 507-09 (1903). In any event, the text supports flexibility for States in structuring how claims are adjudicated and does not discount "the importance of state control of state judicial procedure." *Howlett*, 496 U.S. at 372.

Likewise, on field preemption, this is clearly not one of those "rare cases" where "Congress 'legislated so comprehensively' in a particular field that it 'left no room for supplementary state legislation.'" *Garcia*, 589 U.S. at 208 (quoting *R. J. Reynolds Tobacco Co. v. Durham County*, 479 U.S. 130, 140 (1986)). "[F]ederal law does not create a comprehensive and unified system regarding" the structure and jurisdiction of state courts. *Id.* at 210.

Even if there were a response to these points, Petitioners never raised express or field preemption and have waived reliance on them. Petitioners' opening brief engages in no textual analysis of §1983, relying exclusively on this Court's citations to legislative history and other extratextual sources. *See, e.g.*, Br.19 (citing congressional debates and the views of "many legislators"); Br.23-24. Throughout their preemption argument, Petitioners never quote the statute.

Only once do Petitioners reference "§1983's text" and then only to note that "exhaustion is not an element of §1983's cause of action." Br.20 (citing *Patsy v. Bd. of Regents*, 457 U.S. 496 (1982)). But the argument from *Patsy* is a red herring. True, the text of §1983 does not *require* exhaustion, but neither does the text *forbid* any exhaustion requirement. As *Patsy* itself recognized, "the 1871 Congress did not expressly contemplate [] exhaustion" and "was not presented with the question." 457 U.S. at 502, 507. Nor was Congress "aware of the potential role of state administrative agencies." *Id.* at 507; *Felder v. Casey*, 487 U.S. 131, 147 n.4 (1988) ("exhaustion requirements [] were unheard of at the time of §1983's enactment"). The Court swiftly departed from the text of §1983, resorting to "the legislative history" and "the tenor of the debates." *Patsy*, 457 U.S. at 502. Whatever purchase these "abstract and unenacted legislative desires" may have in other contexts, they do not support express preemption of state law. *Va. Uranium, Inc. v. Warren*, 587 U.S. 761, 778 (2019) (lead op.).

Even if it could be said that *Patsy* "authoritatively interpreted §1983" (Br.2, 14, 15, 16, 26, 28), the Court held only that exhaustion "should not be *judicially* imposed." 457 U.S. at 502 (emphasis added). If that holding "applies equally to §1983 suits brought in state court" (Br.28), it still means nothing for exhaustion that is *legislatively* imposed by state law. The Alabama Supreme Court got it right. Pet.App.11a. The argument that §1983 "lacks an exhaustion requirement," so §1983 claims "need not be exhausted" is a *non sequitur*. Br.28. At best for Petitioners, the text is silent, so the "assumption that the historic police powers of the States were not to be superseded" remains

intact. *Wyeth v. Levine*, 555 U.S. 555, 565 (2009); *see also, e.g.*, *Castro-Huerta*, 597 U.S. at 639-40 (rejecting express preemption where statutory text "le[ft] untouched the background principle" permitting the exercise of state power); *Va. Uranium*, 587 U.S. at 765 (no preemption where "Congress conspicuously chose to leave untouched the States' historic authority").

II. Section 1983 Does Not Impliedly Preempt Alabama's Law.

A. Under general preemption principles, there is no conflict between §1983 and Alabama's exhaustion provision.

1. Alabama's law likewise does not conflict with §1983 by implication. *Contra* Br.26 (arguing the exhaustion provision "'conflicts in both its purpose and effects with the remedial objectives of §1983'" because it is a "procedural hurdle"). While the implied-preemption test may seem more malleable, the Court has disciplined the inquiry in several important ways.

First, the Court applies a strong presumption against preemption. Even in areas the federal government has regulated, "respect for the States as independent sovereigns in our federal system leads [courts] to assume that Congress does not cavalierly pre-empt" state law. *Wyeth*, 555 U.S. at 565 n.3. (cleaned up). Preemption is "a serious intrusion" not only into "state sovereignty" but also "Congress's authority to delimit the preemptive effect of its laws." *Va. Uranium*, 587 U.S. at 774. The presumption "applies with particular force" when the challenged law relates to "a field traditionally occupied by the States." *Altria Grp. v. Good*, 555 U.S. 70, 77 (2008).

Accordingly, any preemption analysis must "assume" that historic state powers—like the discretion to define state-court jurisdiction—"are not superseded 'unless that was the clear and manifest purpose of Congress.'" *Arizona v. United States*, 567 U.S. 387, 399 (2012) (quoting *Rice*, 331 U.S. at 230); *N.Y. State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 654-55 (1995). The presumption remains among the "cornerstones of [the Court's] pre-emption jurisprudence." *Wyeth*, 555 U.S. at 565.

Second, even implied preemption "must be grounded 'in the text and structure of the statute at issue.'" *Garcia*, 589 U.S. at 208 (quoting *CSX Transp.*, 507 U.S. at 664). "As this Court has repeatedly stated, the text of a law controls over purported legislative intentions unmoored from any statutory text." *Castro-Huerta*, 597 U.S. at 642. The Court will begin and end with "text and structure" in a preemption case just as in any other case involving statutory interpretation. *Id.* at 643. As always, the Court is loath to "rewrite a constitutionally valid statutory text" in the name of congressional purposes. *Id.*; *Chamber of Com. of U.S. v. Whiting*, 563 U.S. 582, 599 (2011) ("Congress's authoritative statement is the statutory text, not the legislative history." (cleaned up)). And the constitutional dimensions of any preemption case *heighten* the need for restrained statutory interpretation. *Va. Uranium*, 587 U.S. at 773, 775-76, 778-79; *cf. N.J. Payphone Ass'n v. Town of W. N.Y.*, 299 F.3d 235, 248-49 (3d Cir. 2002) (Alito, J., concurring); *see also infra* §IV (discussing the canons of constitutional avoidance and constitutional doubt).

Third, any preemption analysis must be conducted "under the circumstances of th[e] particular case."

Geier v. Am. Honda Motor Co., 529 U.S. 861, 873 (2000) (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)); *see also Wyeth*, 555 U.S. at 589 (Thomas, J., concurring in judgment) (similar). The Supremacy Clause provides "'a rule of decision' for determining whether federal or state law applies in a particular situation." *Garcia*, 589 U.S. at 202; *accord* Caleb Nelson, *Preemption*, 86 Va. L. Rev. 225, 260 (2000). "This inquiry requires [the Court] to consider the relationship between state and federal laws as they are interpreted and applied, not merely as they are written." *Jones v. Rath Packing Co.*, 430 U.S. 519, 526 (1977); *see also Arizona*, 567 U.S. at 425 (Scalia, J., concurring in part and dissenting in part).

The demand for statute-by-statute analysis is particularly acute in implied preemption cases like this one. The crux of Petitioners' claim is that Alabama law "conflicts in both its purpose and effects with the remedial objectives of §1983." Br.26. Implied preemption therefore cannot be "categorical" (*contra* Br.33-37) because it turns on the "purpose and effects" of Alabama law (Br.26). *Cf. Haywood v. Drown*, 556 U.S. 729, 741 (2009) ("Our holding addresses only the unique scheme adopted by the State of New York…."). Petitioners are wrong to suggest—and this Court has never held—that "no case-by-case analysis is needed" in a preemption case. Br.37. To determine whether a federal statute conflicts (even impliedly) with a state statute, the Court must consult both preemption doctrine and "traditional tools of statutory interpretation." *Va. Uranium*, 587 U.S. at 767, 774; *accord Perez v. Campbell*, 402 U.S. 637, 644 (1971).

A granular analysis is also consistent with the Court's reticence to raise and resolve constitutional

problems. Beyond the intrusion on state sovereignty that attends any preemption of state law, this case implicates the core power of States to define the jurisdiction of their own courts. *See infra* §IV. The Court should analyze the circumstances of this case, rather than extend "questionable judicial gloss," *Va. Uranium*, 587 U.S. at 773, to create a new categorical rule preempting unknown swaths of state legislation.

2. When those principles are applied to Alabama's law, it is clear there is no conflict with §1983. Alabama's unemployment-compensation statute is designed to help unemployment claimants like the petitioners, not present an obstacle. The statute creates agency adjudicators to hear claims. Among them are administrative appeals tribunals that "hear and decide disputed claims and other due process cases involving a division of the Department of Labor." Ala. Code §25-4-92. The statutory procedure for "making [] determinations with respect to claims for unemployment compensation benefits" is "exclusive." *Id.* §25-4-96. But the Department's decisions may be reviewed on appeal to state circuit court (and higher appellate courts), so long as "the person filing such appeal has exhausted his administrative remedies." *Id.* §25-4-95. "Trial in the circuit court shall be de novo." *Id.*

This state scheme to provide prompt adjudication of claimants' rights before agency adjudicators and then judicial adjudicators does not even remotely conflict with §1983's purpose that state officials who violate federal law be held "liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." 42 U.S.C. §1983.

3. Petitioners' responses are unavailing. They first contend that Alabama's law "'conflicts in both its purpose and effects with the remedial objectives of §1983' because it forces petitioners to seek redress from 'offending state officials before they [can] assert a federal action in state court.'" Br.26 (quoting *Felder*, 487 U.S. at 138, 149). But the law in *Felder* required a plaintiff to try to settle with his alleged tortfeasor before he could access a "proper proceeding for redress." Here, the ADOL appeals process is a means of adjudicating Petitioners' claims, not an obstacle to doing so.

Petitioners retort that their challenge was to their inability to exhaust their claims. Br.38. But the State's process provided additional means Petitioners could have used to exhaust their claims. *See Vance*, 693 So. 2d at 495 (referencing "mandamus to compel [the agency] to make its decision"). They simply skipped that process without explanation, making their reference (at 37) to Joseph Heller misplaced. Accordingly, their argument has never been that the exhaustion requirement itself violates due process or that §1983 preempts only exhaustion requirements that violate due process. Rather, to the extent they presented a preemption argument below, it was only that *Patsy* "categorically rejected" the application of *any* administrative exhaustion requirement in state court. Pet.App.11a. Thus, any new conflict preemption arguments are both waived and meritless. *See F. Hoffmann-La Roche Ltd. v. Empagran S.A.*, 542 U.S. 155, 175 (2004) ("The Court of Appeals … did not address this argument, and, for that reason, neither shall we.") (citation omitted).

B. Alabama's exhaustion provision is a neutral rule that reflects concerns of competence over the subject matter.

The Court has repeatedly sustained state rules that would not apply to federal claims heard in federal court. *See, e.g.*, *Douglas v. N.Y., New Haven & Hartford R.R.*, 279 U.S. 377 (1929) (residency requirement); *Minneapolis & St. Louis R.R. v. Bombolis*, 241 U.S. 211 (1916) (non-unanimous jury verdicts); *Chesapeake & Ohio Ry. v. Carnahan*, 241 U.S. 241 (1916) (seven-member juries). And in §1983 cases specifically, the Court has recognized that "a state law" creating "a neutral rule of judicial administration" provides "a valid excuse for refusing to entertain a federal cause of action." *Haywood*, 556 U.S. at 738; *see also Howlett*, 496 U.S. at 371-73. Alabama's unemployment-compensation statute is a neutral jurisdictional rule that properly reflects concerns of competence over the subject matter of this and similar cases. For this reason too, the law is not preempted.

1. Alabama's exhaustion provision is neutral. The question is whether it treats §1983 claims on the same terms as analogous state-law claims, and the answer is undoubtedly yes. Absent exhaustion, Alabama courts are closed to "disputed claims and other due process cases," Ala. Code §25-4-92, regardless of whether they arise under federal law or "spring[] from a different source," *Miles v. Ill. Cent. R.R.*, 315 U.S. 698, 703 (1942). Alabama's law does not permit state courts to "dismiss [a] federal claim 'because it is a federal one.'" *Howlett*, 496 U.S. at 375 (quoting *Herb v. Pitcairn*, 324 U.S. 117, 123 (1945)).

Nor does the provision "target civil rights claims" (under §1983 or otherwise) for special mistreatment. *Johnson*, 520 U.S. at 918 n.9. "Alabama's unemployment-compensation scheme was first enacted in 1935." Pet.App.7a. The decision below, as well as the text and structure of the statute, make clear that its object is the administration of unemployment benefits. Exhaustion, which applies to all related claims, serves those neutral aims. Accordingly, the State may "bar adjudication of a [federal cause of action] if the State 'enforces its policy impartially so as not to involve a discrimination against [such] suits.'" *Howlett*, 496 U.S. at 375 (quoting *Missouri ex rel. S. Ry. Co. v. Mayfield*, 340 U.S. 1, 4 (1950)). There is no evidence that the State policy is enforced unfairly.

On its face, the exhaustion provision applies broadly to bar unexhausted claims whether they're brought by the agency, an employer, or a claimant seeking benefits. Petitioners do not dispute the law's scope, arguing instead that the requirement is "meaningless when applied to the Secretary because [he] would not have any reason to proceed directly to court." Br.31. Not true. If claimants procure benefits by fraud or are otherwise overcompensated, the State is entitled to recoup those wrongly awarded funds. In that scenario, the government must exhaust too. And so must employers, who have tax incentives to secure prompt reversal of benefits erroneously granted. *See* Ala. Code §25-4-54. Like the rule that survived preemption in *Johnson*, Alabama's statute applies "without regard to the identity of the party." 520 U.S. at 918 n.9.

Petitioners also argue that the law is not neutral because "it applies *only* to unemployment benefits

disputes with the Department of Labor." Br.31. But this argument was rejected in *Haywood*, which involved a law applying *only* to disputes against correction officers. The neutrality criterion was satisfied because New York had "divest[ed] its courts of jurisdiction over a [] federal claim in addition to an identical state claim." 556 U.S. at 737-38. To be sure, the Court rejected the argument that "equal treatment" alone would save the law from preemption. *Id.* But it was "conceded" by all that the State's rule, despite applying only to "a particular class of claims," did so "on terms that treat federal and state actions equally." *Id.* at 768 (Thomas, J., dissenting).

The Alabama law does not discriminate against §1983 or any other federal cause of action despite its limited subject matter. A rule need not "be monolithic to be neutral." *Johnson*, 520 U.S. at 918 n.9.

2. As the Alabama Supreme Court explained, Alabama Code §25-4-92 *et seq*. withdraws jurisdiction over unexhausted claims related to unemployment compensation. State courts do not have power to hear them or to adjudicate the merits before the agency process is complete. The government cannot waive the exhaustion requirement for itself or anyone else.

The Alabama law operates jurisdictionally, not as an outcome-determinative procedural rule, *cf. Felder*, 487 U.S. at 150-52, or as a defense on the merits, *cf. Howlett*, 496 U.S. at 375-76. When Alabama courts lack subject-matter jurisdiction, the result is dismissal without prejudice. *See, e.g.*, *Pontius v. State Farm. Mut. Auto. Ins. Co.*, 915 So. 2d 557, 564-65 (Ala. 2005). Plaintiffs are free to reassert their claims in an appropriate forum. *See, e.g.*, *Marrese v. Am. Acad. of Ortho.*

Surgeons, 470 U.S. 373, 382 (1985). Petitioners have no basis for asserting that the Alabama law is only "purportedly" jurisdictional (Br.29).

The jurisdictional nature of Alabama's exhaustion provision sets it apart from procedural rules that may be more readily preempted by §1983. *Contra* Br.30. In *Felder*, it mattered that the State sought to "alter the outcome of federal claims *it chooses to entertain* in its courts by demanding compliance with outcome-determinative rules." 487 U.S. at 152 (emphasis added). *Felder*'s limitation to rules that apply *after* state courts exercise jurisdiction is crucial for two reasons.

First and foremost, forcing States to hear federal claims is a unique intrusion on their power to define the very "structure and jurisdiction of their own courts." *Howlett*, 496 U.S. at 372. As opposed to a federal law that specifies certain procedures needed to protect federal rights, a law forcing state courts to adjudicate federal claims would be highly unusual. Thus, even when the Court has found that a federal cause of action restricts state power, it has been careful to note that state courts first must have "jurisdiction, as prescribed by local laws, [] adequate to the occasion." *Mondou v. N.Y., New Haven & Hartford R.R.*, 223 U.S. 1, 59 (1912); *see also infra* §IV.

Second, a procedural rule is more likely to operate as a "substantive" burden on federal rights, disrupting "intrastate uniformity." *Felder*, 487 U.S. at 152-53. In *Felder*, the notice-of-claim statute licensed dismissal *with prejudice* for failure to comply. The State thus usurped the role of federal law by "defining and characterizing the essential elements of a federal cause of action." 487 U.S. at 144 (quoting *Wilson v. Garcia,* 471

U.S. 261, 269 (1985)). In contrast, statutes that prevent courts from applying §1983 at all cannot undermine its "uniform application." *Id.* at 153.[3]

Petitioners are mistaken that exhaustion produces "different outcomes" just because their "suit could be heard immediately in federal court." Br.26-27 (citing *Felder*). The same argument was rejected in *Johnson*. There, the denial of interlocutory appeal was "not 'outcome determinative' in the sense that [*Felder*] used that term." 520 U.S. at 920. By "outcome," *Felder* meant "the ultimate disposition of the case." *Id.* at 921. If the *Johnson* petitioners had a winning defense, they would win in state court despite "postponement of the appeal until after final judgment." *Id.* Likewise, if Petitioners here have winning §1983 claims, postponing state-court adjudication until after the administrative process "will not affect the ultimate outcome of the case." *Id.*[4]

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[3] *Felder* drew on cases like *Garrett v. Moore–McCormack, Co.*, 317 U.S. 239 (1942), which involved outcome-determinative procedural rules, not jurisdictional ones. In *Garrett*, the Court held that state courts could not impose a higher burden of proof than a plaintiff would face in federal court because "the burden of proof 'inhered in his [federal] cause of action,' 'was part of the very substance of his claim and cannot be considered a mere incident of a form of procedure.'" *Am. Dredging Co. v. Miller*, 510 U.S. 443, 454 (1994) (quoting *Garrett*, 317 U.S. at 249).

[4] Petitioners have not alleged that completing the administrative process is somehow prejudicial; if exhausted, claims like theirs are reviewed de novo in circuit court. Petitioners did complain about delay in their cases, but that is not a reason the requirement to exhaust "frequently and predictably produce[s] different outcomes." *Felder*, 487 U.S. at 138. Mandamus is also available to compel unduly delayed agency action. *Vance,* 693 So. 2d at 495.

3. Petitioners rely on *Haywood* to suggest that Alabama's law is preempted even if it is "denominated" as "'jurisdictional.'" Br.28. But Petitioners fail to grasp *Haywood*'s reasoning, which left intact the state power to adopt neutral jurisdictional rules that "reflect the concerns" of "competence over the subject matter." 556 U.S. at 739. New York's "immunity-from-damages provision" was preempted because it did not relate to any concerns "that jurisdictional rules are designed to protect." 556 U.S. at 737 n.5, 739.

Alabama's jurisdictional rule is nothing like New York's immunity statute. Requiring exhaustion does not render any officials immune from disputes over unemployment compensation. Official actions may be reviewed in "due process cases" before administrative law judges at the labor department, and such cases are subject to judicial review as soon as the agency process is complete.

Unlike New York, Alabama merely defers state-court jurisdiction; it does not "defeat" liability. *See Johnson*, 520 U.S. at 920 & n.11. Thus, the better analogy for this case is *Johnson*, not *Haywood*, because exhaustion rules exist for the "very same reasons" as "rules sharply limiting interlocutory appeals." *McKart v. United States*, 395 U.S. 185, 194 (1969); *accord Fair Assessment in Real Estate Ass'n v. McNary*, 454 U.S. 100, 136 (1981) (Brennan, J., concurring) ("deferral … pending exhaustion" is not "displacement of the §1983 remedy"). Section 1983 has impliedly preempted efforts to immunize officials to reduce "expense," *Felder*, 487 U.S. at 144, and to avoid "frivolous" lawsuits, *Howlett*, 496 U.S. at 379-80; *Haywood*, 556 U.S. at 733. *See infra* §III. Those laws "interfere[d] with §1983's 'central purpose' of 'provid[ing]

compensatory relief.'" Br.3 (quoting *Felder*, 487 U.S. at 141). Alabama's law bears no resemblance to those laws, and Petitioners seek only injunctive relief here.

Haywood is distinguishable too because New York's law evinced hostility to the content of §1983. 556 U.S. at 736. A policy disagreement with federal law does not concern "competence over the subject matter." *Id.* at 741. New York courts had competence, the Court said, because they "regularly sit to entertain analogous suits." *Id.* at 740. In fact, they could hear a suit over the same facts between the same parties, so long as the plaintiff sought equitable relief and not damages. *Id.* at 740 n.6; *see also Howlett*, 496 U.S. at 373. New York courts could even hear §1983 damages suits against correction officers if the defendant acted beyond the scope of his duties. *See, e.g.*, *Murray v. Reif*, 36 A.D.3d 1167, 1168 (N.Y. App. Div. 2007) (reversing dismissal of §1983 claim because "it cannot be concluded that defendant was acting within the scope of his employment and Correction Law § 24 would not divest Supreme Court of jurisdiction of these claims").

Petitioners cannot show that Alabama courts hear claims similar to unexhausted disputes related to unemployment benefits. They complain that the rule "applies *only* to unemployment benefits disputes with the Department of Labor," but they propose no comparators. Br.31. If discrimination is what strips a rule of its jurisdictional character, Petitioners must show "a failure to treat similarly situated [cases] alike." *Ala. Dep't of Revenue v. CSX Transp., Inc.*, 575 U.S. 21, 27 (2015); *cf. McKnett v. St. Louis & S.F. Ry.*, 292 U.S. 230, 232-33 (1934). Alabama requires exhaustion because the agency has superior competence over this

subject matter. That is a valid reason that cannot be extended to other kinds of claims.

Petitioners suggest that a satisfactory rule must "appl[y] to all suits," Br.31 (quoting *Felder*, 487 U.S. at 145), but that is not the law for jurisdictional rules. If it were, a state court that hears *any* claim must hear *every* claim. There could be no jurisdictional rules. *Cf. Haywood*, 556 U.S. at 741-42. Moreover, the demand that every rule be universal cannot be reconciled with *Howlett* or *Haywood*. In both cases, the Court endeavored to find precise comparators—a gratuitous exercise if jurisdictional rules must apply to all suits.

To see that Alabama's exhaustion provision furthers valid jurisdictional concerns, look no further than the text and structure of the statute. Its design is to facilitate the efficient and accurate provision of public benefits. To that end, the system relies on experts, specialized administrative law judges, whose initial work is what enables the courts to have competence over unemployment cases.

Statutes like Alabama's are now wholly familiar at the federal and state level. But it is worth recalling that unemployment laws "create[d] rights where none existed before" based on "a condition for which no one ha[d] heretofore been held legally liable." J. Roland Pennock, *Unemployment Compensation and Judicial Review*, 88 Penn. L. Rev. 137, 138, 139-40 (1939). At the time, some thought that "legislatures might deny all right to judicial review" and that it would be wise "to protect this sphere … from intervention by the courts." *Id.* at 151, 155; *see also* Pet.App.7a-8a.

Against this backdrop, Alabama Code §25-4-92 *et seq*. has everything to do with the subject matter—the

fair adjudication of unemployment claims—and nothing to do with "hiding" from civil-rights laws. Br.29. The exhaustion provision looks like an exhaustion provision, not a contrived immunity designed to limit liability. On many occasions, the Court has explained that the "basic purpose" of exhaustion "is to allow an administrative agency to perform functions within its special competence." *Parisi v. Davidson*, 405 U.S. 34, 37 (1972).[5] For these reasons, Congress often requires exhaustion of remedies prior to judicial review,[6] and courts do not deride these laws as "purportedly 'jurisdictional'" (Br.29). There is nothing unusual about a policy that gives courts the "benefit" of earlier "opinions to guide [their] analysis." *Cf. Zivotofsky v. Clinton*, 566 U.S. 189, 201 (2012).

The Court should not extend and calcify snippets of legislative history cited in *Patsy* to find hostility behind a neutral administrative process. To the extent that *Haywood* referenced the state legislature's

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[5] *Accord McNary*, 454 U.S. at 134 (Brennan, J., concurring) ("considerations of sound judicial administration" support exhaustion rules); *Myers v. Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 50-51 (1938) (similar); *see also McCarthy v. Madigan*, 503 U.S. 140, 145 (1992); *McKart*, 395 U.S. at 193-95; *FCC v. RCA Commc'ns, Inc.*, 346 U.S. 86, 96 (1953); *Deltona Corp. v. Alexander*, 682 F.2d 888, 893 (11th Cir. 1982); *Converse v. Massachusetts*, 101 F.2d 48, 51 (2d Cir. 1939) (Hand, J.), *aff'd*, 308 U.S. 79 (1939).

[6] *See, e.g.*, *Brown v. Gen. Servs. Admin.*, 425 U.S. 820, 832-34 (1976) (Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e-16 (1970 ed.)); *Preiser v. Rodriguez*, 411 U.S. 475, 489 (1973) (federal habeas corpus statute, 28 U.S.C. §2254 (1948 ed.)); *Henderson v. Bank of New Eng.*, 986 F.2d 319, 320-21 (9th Cir. 1993) (Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C. §1821(d)(13)(D)).

subjective intent, *see* 556 U.S. at 736 & n.5,[7] Petitioners have not shown evidence that the Alabama Legislature had any improper motive. Today, federal courts grant state agencies "the widest latitude in the dispatch of [their] own internal affairs." *Rizzo v. Goode*, 423 U.S. 362, 378-79 (1976) (cleaned up). And they afford state legislatures a presumption of good faith. *Cf. Alexander v. S.C. Conf. of NAACP*, 144 S. Ct. 1221, 1236 (2024). Petitioners can disagree with initial agency adjudication as a matter of policy (Br.38-39), but their objections do not remove the exhaustion requirement from the realm of jurisdictional rules concerned with competence over the subject matter.[8]

Because the exhaustion provision reflects jurisdictional concerns, it does not matter whether it benefits plaintiffs or defendants in the typical case; the law is not preempted. Even so, Petitioners offer no reason to think that the provision favors the government. Br.31-32. All parties benefit from agency adjudication, and all parties must wait to bring their claims to court.

If anything, the use of administrative process in the unemployment context makes more sense for claimants than forcing them into courts that may be

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[7] *But see Shady Grove Ortho. Assocs. v. Allstate Ins. Co.*, 559 U.S. 393, 404 (2010); *Pac. Gas*, 461 U.S. at 216 (doubting the propriety of a search for the state legislature's "true motive"); *cf. Va. Uranium*, 587 U.S. at 775-78.

[8] It is hard to see what hostile motive the State could have in this context. For one, deferring state-court jurisdiction does not reduce the State's liability. For another, unemployment compensation is funded primarily by employer taxes, not state coffers. And finally, the exhaustion requirement applies equally to the State when it seeks to recoup wrongly awarded funds.

slower, more formal, and less flexible. *See, e.g.*, *Woodford v. Ngo*, 548 U.S. 81, 89, 103 (2006). And in procedural challenges like this one, mandatory exhaustion may benefit plaintiffs by prompting them to exhaust when they otherwise might not. Unexhausted procedural claims are much less likely to succeed because due process is not denied "unless and until the State fails to provide [it]." *Zinermon v. Burch*, 494 U.S. 113, 126 (1990). A court must "ask what process the State provided," including any "safeguards built into the statutory or administrative procedure …, and any remedies for erroneous deprivations." *Id.* The availability of adequate but unused process can defeat a §1983 plaintiff's due-process claim. *See, e.g., Cotton v. Jackson,* 216 F.3d 1328, 1330-31 (11th Cir. 2000). After all, a claimant who challenges state procedures "without trying them … can hardly complain that they do not work in practice." *Dist. Attorney's Off. for Third Jud. Dist. v. Osborne*, 557 U.S. 52, 71 (2009).

In sum, Alabama's requirement that cases related to unemployment benefits be heard by agency tribunals before judicial tribunals is just the sort of neutral rule of judicial administration this Court has blessed in its §1983 precedents. If Petitioners had filed their claims directly in the Alabama Supreme Court, no one would doubt that the law denying that court original jurisdiction over such claims could be enforced consistent with §1983. The same is true for Alabama's law requiring Petitioners to submit their claims to agency adjudicators before proceeding to state circuit court. Both laws provide "a valid excuse for refusing to entertain a federal cause of action." *Haywood*, 556 U.S. at 738.

III. There is No Rule Categorically Preempting State Exhaustion Requirements.

With little to say about this Court's general preemption doctrine or precedent specifically approving neutral rules of judicial administration, Petitioners are left with the sweeping argument that §1983 impliedly and "categorically" preempts *all* state-law exhaustion requirements. Br.33. As explained above, this is a nonstarter under the Court's preemption jurisprudence. Petitioners thus confine their analysis primarily to two decisions from the 1980s, *Patsy v. Board of Regents* and *Felder v. Casey*.

Their reading of those opinions is wrong. *Patsy* stands for the unremarkable proposition that *courts* ought not invent their own administrative exhaustion requirements for §1983 claims. *Felder* involved a discriminatory and outcome-determinative law designed to minimize state liability. Neither decision established a "categorical no-exhaustion rule" that would render unconstitutional every possible state-law exhaustion requirement. Br.35. And, as discussed above, later decisions confirmed that §1983 does not preempt (at a minimum) neutral jurisdictional rules that reflect concerns of competence over the subject matter. *See Haywood*, 556 U.S. at 739; *Johnson*, 520 U.S. at 918-21, 918 n.9, 920 n.11; *Howlett*, 496 U.S. at 372-74. Thus, Petitioners' categorical argument fails.

A. *Patsy* and *Felder* do not support a categorical rule of preemption.

1. Petitioners' argument is based on the premise that "*Patsy v. Board of Regents* resolves this case." Br.14. To that end, they devote many pages of their brief to proving that *Patsy* "binds both state and

federal courts." Br.18; *see id.* at 18-21, 27-28, 30-31, 33-35. But whether *Patsy* applies in state court is utterly irrelevant because this case does not involve "judicially imposed exhaustion." *Cf. Patsy*, 457 U.S. at 508, 509, 513, 514 n.17. Section 1983 *itself* does not contain an exhaustion requirement, so *Patsy* held expressly and repeatedly that "exhaustion of administrative remedies … should not be *judicially* imposed." *Id.* at 502 (emphasis added); *see also supra* §I.

One reason for *Patsy*'s holding was that exhaustion raises complicated policy questions—questions better "answered swiftly and surely by legislation" than "incrementally by the judiciary." *Id.* at 514. Finding that "legislative not judicial solutions are preferable," *id.* at 513, the Court did not address—and had no occasion to address—whether §1983 permits *state* legislative solutions in addition to federal ones.

Petitioners infer §1983's preemptive effect not from *Patsy*'s holding but from its citations to the legislative history of §1983 and 42 U.S.C. §1997e. *See* Br.19-20. For starters, Petitioners never justify their reliance on legislative history, and even implied preemption must be grounded in the statutory text. *See supra* §II.A. The Court described its own use of legislative history as "somewhat precarious," 457 U.S. at 507, and did not forever transform the disparate remarks of legislators into "the substantive meaning of §1983." Br.18. Even less plausibly, Petitioners say that "what §1983 means" may be informed by the legislative history of a *different* law *passed in 1976*. Br.20. That is an unserious method of statutory interpretation—the kind of "freewheeling judicial inquiry" the Court has long rejected. *Whiting*, 563 U.S. at 607. Section 1983 means what it has always meant.

Petitioners would have this Court "comb" its prior recitals of legislative history "and stretch them beyond their context—all to justify an outcome inconsistent with this Court's reasoning and judgments and with Congress's instructions." *Brown v. Davenport*, 596 U.S. 118, 141 (2022); *see also Reiter v. Sonotone Corp.*, 442 U.S. 330, 341 (1979) (opinions not to be read like statutes). Simply put, legislative history is not the law, and this Court's dicta cannot make it so. *See Va. Uranium*, 587 U.S. at 779; *Wyeth*, 555 U.S. at 603-04 (Thomas, J., concurring in judgment); *cf. Quern v. Jordan*, 440 U.S. 332, 365 (1979) (Brennan, J., concurring in judgment) (criticizing the Court for ignoring the "eloquent and pointed legislative history of §1983").

In any event, *Patsy*'s discussion of legislative history does not help Petitioners motivate their "categorical" approach. Yes, some legislators understood §1983 to permit concurrent jurisdiction, Br.19, but they also knew that state judicial procedures would differ from those of the federal courts. The "very purpose of §1983 was to interpose the federal courts" *because* state courts were "unable or unwilling" to enforce federal law. *Patsy*, 457 U.S. at 503, 505 (collecting legislators' remarks); *accord* Br.19-20. Congress well understood that state courts would apply their own procedural rules, yet "Congress saw no need to alter" them. *Felder*, 487 U.S. at 147 n.4. Thus, the mere fact of concurrent jurisdiction—that §1983 *permits* plaintiffs to choose state court—"seems a strange basis for the inference that Congress overrode State procedural arrangements." *Dice v. Akron, Canton &*

Youngstown R.R., 342 U.S. 359, 368 (1952) (Frankfurter, J., concurring in judgment).[9]

Petitioners' next argument from legislative history—that congressmen mistrusted state "factfinding processes" (Br.19-20)—fails too. The committee testimony and remarks cited in *Patsy* and quoted by Petitioners had nothing to do with state agencies. *See Patsy*, 457 U.S. at 506 & n.9. Rather, the mistrusted factfinders were local courts and local juries. *Id.* For a Court interested in legislative history, it made some sense to infer that *federal* courts should not "compel[]" victims to seek *state* relief "in every case." *Id.* at 507. But it cannot be inferred from the mistrust of state courts that Congress also preempted laws deferring state-court adjudication in favor of initial state-agency adjudication. Both are forms of state adjudication, and the legislative record does not distinguish between them. *See id.*; *Felder*, 487 U.S. at 147 n.4.

In sum, *Patsy* stands only for "the general rule" that Congress did not include an exhaustion requirement in §1983, so courts should not add their own. 457 U.S. at 512. The Court need not disturb *Patsy*'s central holding nor deny its application to state courts to resolve this case, which asks the different question of whether §1983 preempts a particular state statute. The simple fact is that *Patsy* is *not* a preemption case,

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[9] While Congress may impose procedural rules by making them "part and parcel of the remedy," *see, e.g.*, *Bailey v. Cent. Vt. Ry.*, 319 U.S. 350, 354 (1943), Congress did not do so silently in §1983, which is not even "a source of substantive rights," *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979). By default, States may apply "procedural rather than substantive" rules to federal causes of action. *See Am. Dredging Co.*, 510 U.S. at 452-54.

and this Court has never understood it the way Petitioners misunderstand it now.[10]

Indeed, Petitioners' other case, *Felder v. Casey*, supports Respondent's reading of *Patsy*. *Felder* would have been a short and simple decision if *Patsy* stood for a "categorical no-exhaustion rule" (Br.35). But *Patsy* does not, so *Felder* analyzed the Wisconsin statute in detail—the kind of "case-by-case analysis" Petitioners insist was not needed after *Patsy* (Br.33-37).

2. Nor did *Felder* establish a categorical rule that §1983 preempts all state exhaustion requirements. There, the Court considered a state statute that barred §1983 suits in state court unless the plaintiff had (1) provided "written notice of the claim within 120 days of the alleged injury"; (2) submitted "an itemized statement of the relief sought to the governmental subdivision or agency"; (3) waited 120 days to

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[10] Petitioners invoke various recitations of *Patsy*'s holding, which merely corroborate their fundamental error. Br.34-35. For example, in *Heck v. Humphrey*, the Court made clear that rules "relating to exhaustion of state remedies" cannot be "judge-made." 512 U.S. 477, 488 n.9 (1994). In *Reed v. Goertz*, 598 U.S. 230, 260 (2023), Justice Alito's dissenting opinion cited *Edwards v. Balisok*, in which the Court "reemphasize[d] that §1983 contains no *judicially imposed* exhaustion requirement." 520 U.S. 641, 649 (1997) (emphasis added). Two other cases raised by Petitioners decided whether Congress intended the mere existence of state remedies to foreclose §1983 claims. *Wilder v. Va. Hosp. Ass'n*, 496 U.S. 498, 523 (1990); *Wright v. City of Roanoke Redev. & Hous. Auth.*, 479 U.S. 418, 427-28 (1987). These cases are not relevant. Other cases cited (at 34-35) offer loose descriptions of *Patsy*'s holding, but "general language in judicial opinions should be read as referring in context to circumstances similar to [those] then before the Court." *Turkiye Halk Bankasi A.S. v. United States*, 598 U.S. 264, 278 (2023).

see whether the government would grant relief; and (4) sued within six months of learning the government had denied relief. 487 U.S. at 136-37. Failure to comply meant dismissal of the action. *Id.* at 134.

Although "the notice provision operate[d], in part, as an exhaustion requirement," the *Felder* Court did not find preemption based on that fact alone. *Id.* at 142. Instead, the Court examined the statute as a whole, which it deemed to be a discriminatory "substantive burden" adopted "to minimize governmental liability." *Id.* at 141. The "predominant objective of the statute" was "judicial immunity" for governmental defendants. *Id.* at 142-43. Summarizing, the Court found the statute to be preempted because it conflicted "in both its purpose and effects" with §1983 and because its enforcement would "frequently and predictably produce different outcomes in §1983 litigation based solely" on the forum. *Id.* at 138.

It bears repeating that none of *Felder*'s analysis makes sense if *Patsy* had already forbidden all state-law exhaustion requirements. Nor would a "categorical" rule make sense under *Felder*'s logic. First, not all exhaustion requirements defeat §1983 claims by "design and effect." Br.22 (quoting *Felder*, 487 U.S. at 141). Wisconsin had admitted that its goal was to control liability and defense costs. 487 U.S. at 143. Thus, the law's "purposes … mirror[ed] those of [] judicial immunity." *Id.* Petitioners have not shown that Alabama's law was enacted for an illicit purpose. *See supra* §II.B.

Second, not all exhaustion requirements discriminate against §1983 claims. *Felder*, 487 U.S. at 145. Wisconsin's law was not neutral, the Court

emphasized, because it was "imposed only upon a specific class of plaintiffs" based on "policies … directly contrary to[] the substantive cause of action provided those plaintiffs." *Id.* at 144-45. As explained above, Alabama's law is one that does not share these features.

Third, not all exhaustion requirements "produce different outcomes." Br.22 (quoting 487 U.S. at 141). Wisconsin adopted an outcome-determinative "affirmative defense" on the merits. 487 U.S. at 144. Given the "abbreviated time period" for notice, many plaintiffs would "frequently fail" to comply, so they would frequently lose suits they might have won in federal court. *Id.* at 146 & n.3, 152. The law required a showing that was "not easily made." *Id.* at 146. Alabama's statute is an example of an exhaustion provision that does not set up claimants to fail in this way.

Fourth, not all exhaustion requirements work to compel informal settlement negotiation between victim and tortfeasor—*i.e.*, the same person "whose hostility … precipitated the[] injuries." Br.24 (quoting 487 U.S. at 147). Wisconsin did just that by imposing mandatory settlement periods, which would have forced Bobby Felder to ask for relief from the very police officers he alleged beat him up. If relevant, whether Congress also "would have rejected" a system of administrative appeals for unemployment cases is a very different question. 487 U.S. at 149.

Only by divorcing the judgment in *Felder* from its reasoning can Petitioners conclude that it established a categorical rule. *Felder* found several features unique to Wisconsin's statute—or at least not shared by every possible exhaustion regime. More than that, *Felder* described a kind of law that could survive

preemption: "a neutral and uniformly applicable rule of procedure," as opposed to Wisconsin's "substantive burden" on the federal right. *Id.* at 141. It was and remains an "unassailable proposition … that States may establish the rules of procedure governing litigation in their own courts." *Id.* at 138. What States cannot do, per *Felder*, is design "local practice" to "defeat[]" federal claims on the merits. *Id.* at 138, 152. *Felder* did not establish a categorical rule preempting all state-law exhaustion requirements.

B. A categorical rule would not fit within this Court's preemption precedents.

When a party argues that a federal cause of action preempts a state law, the Court does not reason by categories. The Court decides whether a particular state law presents a "valid excuse" for declining jurisdiction. *Douglas*, 279 U.S. at 388; *see supra* §II.B. Section 1983 cases are no different. The post-*Felder* caselaw discloses no special categorical rules for §1983 preemption cases. Instead, the Court has reaffirmed a line between state laws that discriminate or create immunities, on the one hand, and truly neutral rules of jurisdiction and procedure on the other.

Not two years after *Felder*, the Court decided *Howlett v. Rose*, which dealt with a rule that waived sovereign immunity for state tort actions while conferring "blanket immunity on governmental entities from federal civil rights actions under §1983." 496 U.S. at 364. Drawing on cases like *Douglas*, the Court noted at the outset that a State may "refuse[] jurisdiction because of a neutral state rule regarding the administration of the courts." *Id.* at 372. By default,

"States [] have great latitude to establish the structure and jurisdiction of their own courts." *Id.*

The problem with Florida's law was that it gave municipalities absolute immunity from §1983 liability based on substantive disagreement with federal law. *Id.* at 375-77. The State tried to bar §1983 claims while allowing claims based on the same facts to proceed under state tort law. Because the rule discriminated, the State lacked a "valid excuse" for refusing to hear §1983 claims. *Id.* at 379-80. Moreover, because the law created "an immunity over and above those already provided in §1983," the State had effectively modified "the essential elements of a federal cause of action." *Id.* at 375, 378. That result was "flatly inconsistent" with *Felder* because a State cannot "override" the liability prescribed by §1983. *Id.* at 377-78.

The State had argued that the immunity's jurisdictional nature saved it from preemption. But there was "no question" that Florida courts "ha[d] jurisdiction over the subject" because they heard highly similar claims. *Id.* at 379. Thus, the law did "not reflect the concerns of power over the person and competence over the subject matter that jurisdictional rules are designed to protect." *Id.* at 381. Labeled "jurisdictional," the law was, in truth, "based only" on "disagreement with substantive federal law." *Id.* at 380.

While Petitioners applaud *Howlett*'s willingness to look past a State's characterization of its own rule as jurisdictional (Br.28-29), they ignore the implication that §1983 does not preempt neutral rules *properly* characterized as jurisdictional, including at least those related to "competence over the subject matter." 496 U.S. at 381.

In *Johnson v. Fankell*, for example, the Court held that §1983 did not preempt an Idaho rule barring interlocutory appeals—even from the denial of qualified immunity in §1983 cases. Though §1983 claims would be litigated differently in Idaho courts than in federal court, the rule was neutral. It did not "target civil rights claims" or "discriminate[]" against them "compared with other types of appeals." *Id.* at 918 n.9. The rule's neutrality was the primary "barrier" to preemption. *Id.* at 919; *accord Haywood*, 556 U.S. at 738.

As noted above (at Part II.B), *Haywood* reemphasized that a State's "neutral jurisdictional rule" may be a "valid excuse" for declining jurisdiction over federal claims. 556 U.S. at 735. More than once, the Court framed the question as whether the challenged law should be "deemed a neutral rule of judicial administration and therefore a valid excuse for refusing to entertain a federal cause of action." *Id.* at 738.

New York had barred claims for damages against prison officers or employees based on its policy view that such suits had become "too numerous or too frivolous." *Id.* at 736. As in *Howlett*, the Court found that the law "operate[d] more as an immunity-from-damages provision than as a jurisdictional rule." *Id.* at 736 n.5. The State had carved out "only a particular species of suits" not to be heard. *Id.* at 739-40. But because the State allowed analogous §1983 actions (*e.g.*, against police officers for damages or against correction officers for injunctive relief), its courts had "power over the person and competence over the subject matter." *Id.* at 739-41.

The *Haywood* majority dismissed "the dissent's fear that 'no state jurisdictional rule will be upheld as

constitutional.'" *Id.* at 741. "Our holding addresses only the unique scheme adopted by the State of New York—a law designed to shield a particular class of defendants (correction officers) from a particular type of liability (damages) brought by a particular class of plaintiffs (prisoners)." *Id.* at 741-42. New York's scheme was "effectively an immunity statute cloaked in jurisdictional garb." *Id.* at 742.

Here, Petitioners have no argument that Alabama created any kind of immunity for state officials or employees. Petitioners are thus forced to assert that the entire post-*Felder* "line of cases is inapplicable here." Br.17. Wrong. *Felder* never held that no exhaustion requirement can be a neutral jurisdictional rule or that every exhaustion requirement is an immunity from suit. *Felder* had no reason to ask those questions because the Wisconsin statute was not neutral and effectively created an immunity. As it has done many times before, the Court must conduct a "case-by-case analysis." Br.37. And as explained above, that analysis confirms that Alabama's law is not preempted.

IV. Preemption of Alabama's Exhaustion Law Raises Serious Constitutional Problems.

The Court treads "with utmost caution" when "a state refuses jurisdiction because of a neutral state rule." *Howlett*, 496 U.S. at 372. But Petitioners throw caution to the wind in arguing that §1983 forces Alabama courts to adjudicate their claims "regardless of whether Alabama's exhaustion requirement is a neutral rule of judicial administration." Br.31. Alabama's exhaustion provision is preempted, they argue, because it would "result in a judgment dismissing a case that would not have been dismissed in federal court."

Br.32. That is another way of saying that state and federal jurisdiction must be coextensive; whatever "the rule in federal court … should be the rule in state court." Br.34.

This Court has never gone so far. Instead, "federal law takes the state courts as it finds them," giving States "great latitude to establish the structure and jurisdiction of their own courts." *Howlett*, 496 U.S. at 372. This "general rule" is "bottomed deeply" in the Court's respect for state sovereignty and federalism. *Id.* And the Court's "respect is at its apex when [it] confront[s] a claim that federal law requires a State to undertake something as fundamental as restructuring the operation of its courts." *Johnson*, 520 U.S. at 922. In exercising powers "within their proper sphere of authority," state sovereigns "remain independent and autonomous." *Printz v. United States*, 521 U.S. 898, 928 (1997). "These principles are fundamental to a system of federalism in which the state courts share responsibility for the application and enforcement of federal law." *Howlett*, 496 U.S. at 372-73.

Perhaps for these reasons, the Court has carefully avoided deciding "whether Congress may compel a State to offer a forum, otherwise unavailable under state law, to hear suits brought pursuant to §1983." *Haywood*, 556 U.S. at 739; *see also Nat'l Priv. Truck Council, Inc. v. Okla. Tax Comm'n*, 515 U.S. 582, 587 n.4 (1995) ("We have never held that state courts must entertain §1983 suits."); *Martinez v. California,* 444 U.S. 277, 283, n.7 (1980) (same); *cf. Ark. Writers' Project, Inc. v. Ragland,* 481 U.S. 221, 234 & n.7 (1987).

In *Haywood*, the Court had no need to pass upon the constitutionality of compelled state jurisdiction

because the "unique scheme" at issue was "effectively an immunity statute cloaked in jurisdictional garb." 556 U.S. at 741-42. But Alabama's exhaustion provision *is* jurisdictional, so Petitioners are forced to argue that §1983 preempts some truly neutral jurisdictional rules. Petitioners do not grapple with the constitutional consequences of their argument. If this Court indulges their limitless theory of preemption, it will confront serious constitutional issues.

There is good reason to doubt that the Constitution gave Congress the power to force state courts to adjudicate claims beyond their jurisdiction. Several early cases reflect the view that state-court jurisdiction was left up to the States. In *Prigg v. Pennsylvania*, the Court interpreted a federal statutory right to include a remedy in federal court on the ground that state courts would be unreliable. 41 U.S. 539, 614-16 (1842) (Story, J.). Why? Because "every state is perfectly competent, and has the exclusive right, to prescribe the remedies in its own judicial tribunals …, and to deny jurisdiction over cases." *Id.* at 614; *see also Osborn v. Bank of U.S.*, 22 U.S. 738, 821 (1824) (Marshall, C.J.) (noting that "the government of the Union has no adequate control" over state courts, "which may be closed to any claim asserted under a law of the United States").

The Court repeatedly affirmed that when Congress relies on state courts to enforce federal law, it does so "with the consent of the states." *United States v. Jones*, 109 U.S. 513, 519 (1883); *see also id.* at 520. For example, in *Claflin v. Houseman*, the Court stated that concurrent jurisdiction is proper if state courts "by their own constitution, … are competent" "to decide rights of the like character and class." 93 U.S.

130, 136-37 (1876); *accord Huntington v. Attrill*, 146 U.S. 657, 672 (1892); Michael G. Collins, *Article III Cases, State Court Duties, and the Madisonian Compromise*, 1995 Wis. L. Rev. 39, 49-52, 158-60, 168 n.363 (1995). In *Holmgren v. United States*, the Court did not reach whether States could be required to enforce federal laws "against their consent," but remarked, once again, that state courts "may exercise the powers conferred by Congress" "[u]nless prohibited by state legislation." 217 U.S. 509, 517 (1910).

For over a century, the Court thus preserved the state power to define state-court jurisdiction notwithstanding the creation of new federal causes of action. Historical scholarship suggests that the Court's position was shared by the Framers. *See, e.g.*, Ann Woolhandler & Michael G. Collins, *State Jurisdictional Independence and Federal Supremacy*, 72 Fla. L. Rev. 73, 92 (2020) (finding, as an original matter, "little support for an obligation on the part of state courts to hear unwanted judicial business; indeed, precisely the opposite seems more likely"); Samuel P. Jordan & Christopher K. Bader, *State Power to Define Jurisdiction*, 47 Ga. L. Rev. 1161, 1215 (2013) (concluding, as an original matter, that "the Constitution does not restrict a state's power to define the jurisdiction of its courts" and that Congress lacks "the power to obligate state courts to hear federal claims").

If the best reading of the Constitution's original meaning is the Court's early one, then the power to regulate state courts was thought to be "an attribute of state sovereignty" reserved to the States under the Tenth Amendment. *New York v. United States*, 505 U.S. 144, 156 (1992); *Missouri v. Lewis*, 101 U.S. 22, 30-31 (1879). That makes sense because "the

structure of its government" is how "a State defines itself as a sovereign." *Gregory*, 501 U.S. at 460. "A power to press a State's own courts into federal service to coerce the other branches of the State, furthermore, is the power first to turn the State against itself and ultimately to commandeer the entire political machinery of the State against its will and at the behest of individuals." *Alden v. Maine*, 527 U.S. 706, 749 (1999).

This is not to say that the Constitution put a firewall around state courts: "Congress may legislate in areas traditionally regulated by the States," but the Court "must assume Congress does not exercise [this power] lightly." *Gregory*, 501 U.S. at 460. Petitioners turn that assumption on its head by reading §1983 to compel state jurisdiction without identifying an express statutory command or an enumerated power of Congress to do so. The Court cannot accept this suggestion, for a federal law has *no* preemptive effect unless it was first "made in Pursuance" of the Constitution. U.S. Const. art. VI, cl. 2; *see* Raoul Berger, Congress v. The Supreme Court 242-50 (Bantam ed. 1975); *see also* Jordan & Bader*, supra*, 1170, 1176.

In this case, the Court should follow its "settled policy" of avoiding interpretations of federal statutes that place their constitutionality in doubt. *Gomez v. United States*, 490 U.S. 858, 864 (1989); *see also Rust v. Sullivan*, 500 U.S. 173, 190-91 (1991). Of all the acts the Court "is called on to perform," assessing the constitutionality of federal legislation is "the gravest and most delicate." *Citizens United v. FEC*, 558 U.S. 310, 373 (2010) (Roberts, C.J., concurring); *accord Nicol v. Ames*, 173 U.S. 509, 514 (1899). Doing so pits the duty to "give effect" to congressional statutes against the "duty to enforce" constitutional guarantees. *Wilson v.*

New, 243 U.S. 332, 359 (1917). Therefore, unless "forced" by "unambiguous" language, the Court assumes that Congress did not "mean[] to exercise or usurp any unconstitutional authority." *United States v. Coombs*, 37 U.S. 72, 74 (1838).

In light of this "cardinal principle" of statutory interpretation, *Jennings v. Rodriguez*, 583 U.S. 281, 296 (2018), the Court should again avoid answering whether §1983 can constitutionally override a State's neutral jurisdictional rule. The only way to do that is to reject Petitioners' theory of coextensive and mandatory state court jurisdiction over §1983 claims.

CONCLUSION

The Court should affirm the decision below.

Respectfully submitted,

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