No. 21-_____

In The

Supreme Court of the United States

SOUTHPOINTE PARTNERS, LLC,

Petitioner,

v.

LOUISVILLE METRO GOVERNMENT, *et al.*,

Respondents.

On Petition For A Writ Of Certiorari To The Kentucky Court Of Appeals

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Louisville Metro Planning Commission denied a developer's applications for approval of a minor plat and a related waiver after announcing their bias in favor of witnesses opposing the applications. The developer appealed to state court under a state statute, which provided judicial review of Planning Commission decisions. Though the trial court reversed the agency's decision, it also held that the state statute affording the appeal was the developer's "exclusive remedy" that precluded the developer from separately pursuing a federal claim under 42 U.S.C. § 1983 against the individual Planning Commission members for their failure to provide an impartial tribunal in violation of the Due Process Clause of the Fourteenth Amendment. The Kentucky Court of Appeals affirmed that the state statute barred § 1983 claims against Respondents as part of either the same or *separate* lawsuits.

The question presented is:

Can a state statute providing a right of appeal from an administrative decision serve as an "exclusive remedy" to bar separate federal claims under 42 U.S.C. § 1983?

PARTIES TO THE PROCEEDING

Petitioner SouthPointe Partners, LLC was the plaintiff in the Jefferson Circuit Court, the appellant in the Kentucky Court of Appeals, and the movant for discretionary review in the Kentucky Supreme Court.

Respondents were defendants in the Jefferson Circuit Court, appellees in the Kentucky Court of Appeals, and respondents to Petitioner's motion for discretionary review to the Kentucky Supreme Court. Respondents include: Louisville Metro Government, Louisville Metro Planning Commission, Vince Jarboe, in his official capacity as a member of the Louisville Metro Planning Commission and in his individual capacity, David Tomes, in his official capacity as a member of the Louisville Metro Planning Commission and in his individual capacity, Robert Peterson, in his official capacity as a member of the Louisville Metro Planning Commission and in his individual capacity, Emma Smith, in her official capacity as a member of the Louisville Metro Planning Commission and in her individual capacity, Lula Howard, in her official capacity as a member of the Louisville Metro Planning Commission and in her individual capacity, Marilyn Lewis, in her official capacity as a member of the Louisville Metro Planning Commission and in her individual capacity, Jeff Brown, in his official capacity as a member of the Louisville Metro Planning Commission and in his individual capacity, Rich Carlson, in his official capacity as a member of the Louisville Metro Planning Commission and in his individual capacity, Ruth Daniels,

PARTIES TO THE PROCEEDING—Continued

in her official capacity as a member of the Louisville Metro Planning Commission and in her individual capacity, Donald Robinson, in his official capacity as a member of the Louisville Metro Planning Commission and in his individual capacity, Emily Liu, in her individual capacity, Joe Reverman, in his individual capacity, Jeff O'Brien, in his individual capacity, Lacey Gabbard, in her individual capacity, Jody Meiman, in his individual capacity, Kelly Jones, in his individual capacity, and Beth Allen, in her individual capacity.

CORPORATE DISCLOSURE STATEMENT

Petitioner SouthPointe Partners, LLC does not have any parent corporation, and no publicly held company owns more than 10% of its stock.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

- *SouthPointe Partners, LLC v. Louisville Metro Govt., et al.*, No. 19-CI-2529, Jefferson Circuit Court. Judgment entered Nov. 4, 2019.
- *SouthPointe Partners, LLC v. Vince Jarboe, et al.*, No. 19-CI-6441, Jefferson Circuit Court. Dismissal entered Jan. 30, 2020.
- *SouthPointe Partners, LLC v. Louisville Metro Govt., et al.*, No. 2019-CA-1784 and *SouthPointe Partners, LLC v. Vince*

STATEMENT OF RELATED PROCEEDINGS
—Continued

Jarboe, et al., 2020-CA-0195, Kentucky Court of Appeals. Judgment entered July 19, 2021.

- *SouthPointe Partners, LLC v. Louisville Metro Govt., et al.*, No. 2021-SC-0309-D, Supreme Court of Kentucky. Discretionary Review denied Mar. 16, 2022.

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner SouthPointe Partners, LLC respectfully petitions for a writ of certiorari to review the judgment of the Kentucky Court of Appeals.

OPINIONS BELOW

The March 16, 2022 order of the Supreme Court of Kentucky denying discretionary review is unpublished and reproduced in the index at Pet.App.55. The Opinion of the Kentucky Court of Appeals is unpublished but available at 2021 WL 1936084 (Ky. App. May 14, 2021). Pet.App.3-33. The opinions of the Jefferson Circuit Court are unpublished and reproduced in the index at Pet.App.34-54.

JURISDICTION

On March 16, 2022, the Kentucky Supreme Court denied Petitioner's Motion for Discretionary Review of the Kentucky Court of Appeals' May 14, 2021 Judgment. Pet.App.55. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Supremacy Clause of Article VI of the United States Constitution provides:

> This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides:

> No state shall make or enforce any law which shall . . . deprive any person of life, liberty, or property, without due process of law. . . .

42 U.S.C. § 1983, entitled Civil Action for Deprivation of Rights, provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in

> such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Ky. Rev. Stat. Ann. § 100.347(2) provides:

> Any person or entity claiming to be injured or aggrieved by any final action of the planning commission shall appeal from the final action to the Circuit Court of the county in which the property, which is the subject of the commission's action, lies. Such appeal shall be taken within thirty (30) days after such action.

STATEMENT

This case concerns the extent to which state courts can construe state statutes to insulate officials from constitutional liability under 42 U.S.C. § 1983. According to the Kentucky Court of Appeals, a state statute that provides a right of appeal from a local agency's decision excludes the entire universe of additional claims—state or federal—bearing any conceivable nexus to the administrative proceeding itself. More directly, Kentucky courts held that § 1983 claims against local officials who violate a person's constitutional rights are prohibited as a matter of course when those

officials' decisions can be reversed on appeal, even if the decision is the result of unconstitutional prejudice.

In other words, the state courts below held that a state statute may preempt application of a federal civil-rights statute Congress enacted pursuant to § 5 of the Fourteenth Amendment. This simply cannot be the law. State courts of general jurisdiction are presumptively obligated to hear § 1983 claims against state and local officials. This cannot mean that a state legislature, in providing for administrative appeals in general, can abrogate application of § 1983 altogether without running afoul of the Supremacy Clause.

The message Kentucky's courts sent in this case is that no matter how flagrant the constitutional abuse, state and local officials cannot be held accountable under federal law so long as there is a state statute allowing a court to reverse an official's final decision. The decision below indirectly shields Kentucky officials with absolute immunity. It is not difficult to foresee how allowing the decision below to stand can only invite future legislative abuses. Only this Court can impose constitutional limits to prevent this novel attempt to circumvent the Supremacy Clause.

Certiorari is warranted.

A. Factual Background.

SouthPointe is a real estate developer currently in the process of constructing SouthPointe Commons, investing over $80 million to develop the underserved

Fern Creek neighborhood of Louisville, Kentucky. The development is one Louisville Mayor Greg Fischer described as "sorely, sorely needed." TR 2529: 9, 15, 118-19, 123; TR 6441: 10, 16.

The project itself began over 15 years ago. In 2010, the Louisville Metro Planning Commission irrevocably approved "Southpointe Boulevard" as the name of the new main street in the development, which the Louisville Metro Council confirmed in an ordinance and binding elements.[1] *Id.*; *see also* LMCO 124, Series 2010.

The development was then delayed for years in meritless litigation filed by a handful of anti-development neighbors, in which SouthPointe ultimately prevailed. *Mauney, et al. v. Louisville Metro Council, et al.*, 2016 WL 4255017 (Ky. App. Aug. 12. 2016). Free to proceed in 2018, SouthPointe applied for approval of a minor plat using its previously-approved street name ("the Minor Plat"). TR-2559: 14-18, 122-26; TR-6441: 13-17. When reviewing the Minor Plat, Planning Commission staffers discovered another street with a similar name elsewhere in town. Respondents admitted that they should have caught this problem before approving "Southpointe Boulevard" in 2010, but failed to do so because of their own negligence. Pet.App.49-50. Realizing that they could not reverse their prior

[1] "Binding element" means a binding requirement, provision, restriction, or condition imposed by a planning commission or its designee, or a promise or agreement made by an applicant in writing in connection with the approval of a land use development plan or subdivision plan. Ky. Rev. Stat. Ann. § 100.403.

approval, Respondents decided to hold SouthPointe's Minor Plat—and the $80 million investment—hostage until SouthPointe changed its street name. In other words, Respondents refused to approve the Minor Plat, which was entirely in order, in an attempt to force an illegal, back-door reversal of a prior decision they could not revisit.

When Respondents informed SouthPointe of the duplication, SouthPointe tried to cooperate, offering to voluntarily change the name of its main street to "SouthPointe Commons Boulevard" hoping this would resolve the Planning Commission's error and allow everyone to move on. Pet.App.50. Respondents agreed that the alternate name solved the problem, but nevertheless refused to approve the alternate name for a different reason: it was allegedly two letters too long. *Id.* Respondents chose to enforce a provision of Louisville's Land Development Code limiting *public* street names to 16 letters to SouthPointe's main street, even though it is a *private* street to which the law does not apply. *Id*. Instead of using SouthPointe's logical and cooperative solution, Respondents urged SouthPointe to misspell the name of its main street so that it was 16 letters or less to comply with a rule that plainly did not control. *Id.*

All of this might be funny if it were not true. SouthPointe naturally refused to misspell the name of its main street. Accordingly, Respondents demanded that SouthPointe apply for and obtain a waiver of the (inapplicable) 16-letter limit from the Planning Commission. TR 2559: 19, 127; TR 6441: 20. Planning

Commission staffers assured SouthPointe that this (inapplicable) regulation is not a public safety measure, and can be waived. *Id.* Needing to move the development forward and mitigate the significant losses stemming from the delay Respondents caused by failing to approve the Minor Plat, SouthPointe took Respondents at their word and applied for the waiver. TR-2559: 19-20, 127-28; TR-6441: 20-21.

SouthPointe then appeared at the Planning Commission's hearing on its waiver application and made its case. TR 2559: 21-23, 128-31; TR 6441: 22-24. Three Respondents who work for the Louisville Department of Emergency Services (LDES)—another Louisville agency—objected to the waiver in a letter, but did not show up to the hearing. *Id.* Unwilling to proceed without LDES, the Planning Commission delayed SouthPointe's waiver for yet another month, hoping that their absent city government colleagues would show up at the next meeting to explain their objection. This was done without any concern for the financial harm the delay would cause SouthPointe. Respondents consistently operate under the misconception that delay is harmless.

The following month, the objecting LDES Respondents did appear, but offered no actual basis for their objection. TR 2559: 24-25, 132-33; TR 6441: 25-26. Despite Planning Commission officials originally declaring on the record that the (inapplicable) 16-letter limit can be waived, the LDES Respondents groundlessly declared in this hearing that it cannot. *Id.* And

as a result, the Planning Commission denied SouthPointe's waiver application. *Id.*

The Planning Commission holds ultimate authority and responsibility over approval of minor plats. Immediately after its waiver application was denied, SouthPointe demanded that the Planning Commission provide an "up or down" decision on SouthPointe's Minor Plat. The Planning Commission unanimously voted to "approve" the Minor Plat on the "condition" that SouthPointe change the name of the main (private) street into its development to one other than "SouthPointe Boulevard" that is 16 letters or less. Pet.App.51. This conditional "approval" was effectively a backdoor denial that achieved nothing other than conclusively confirming that there was nothing wrong with the Minor Plat other than the street name that had already been approved for over eight years.

In doing this, the Planning Commission was not just wrong, but it also failed to provide SouthPointe with an impartial tribunal. The administrative record revealed that LMPC members were admittedly predisposed to deny any application challenged by the LDES Respondents—regardless of whether the challenge had merit.

Planning Commission Member, Jeff Brown, remarked—on the record: "I think it's [LDES] that needs to be convinced. I would not go against their recommendation in a situation like this." VR 3/21/19 at 1:08:25. This statement was stunning, since Planning Commission—not LDES—is the only body charged

with making the decision on SouthPointe's applications. It is conceptually identical to a trial judge proclaiming at a criminal trial that "I think it's the prosecutor that needs to be convinced of the defendant's innocence. I would not go against their recommendation of conviction in a situation like this." Unfortunately, these sentiments were shared by a majority of the tribunal members who voted on SouthPointe's applications. Other similar statements include:

- Planning Commission Member Robert Peterson—"I hate to go against [LDES] so I think that I would probably not vote in favor." *Id.* at 1:11:36.
- Planning Commission Member Ruth Daniels—"I respect the opinion of [LDES], who knows better than anyone else if it is a public safety and health issue, but it just doesn't seem to me like two letters can make much of a difference. But they're the experts. So if they think people are at risk, I have to go along with them. They're the experts." VR 4/21/19 at 59:59.
- Planning Commission Member Rich Carlson—"[W]e've heard from [LDES], this is a public safety thing, the fire department's weighed in on it, so that tells you it is a public safety issue." *Id.* at 1:06:00. This is particularly egregious considering that the local fire department

> with jurisdiction over SouthPointe Commons *supported* SouthPointe's position.

Each of these Planning Commission Members proceeded to vote against SouthPointe's applications after stating their bias on the record.

B. Proceedings Below.

1. After running into a bureaucratic brick wall, SouthPointe filed suit in state court. In addition to appealing the merits of the Planning Commission's decision under Ky. Rev. Stat. Ann. § 100.347, SouthPointe also pleaded a variety of additional claims, including a federal civil rights action under 42 U.S.C. § 1983, as a result of Respondents' failure to provide an impartial tribunal in violation of the Due Process Clause of the Fourteenth Amendment. Pet.App.9. These claims were initially directed at Louisville Metro Government, the Planning Commission, and the individual Planning Commission members in their official capacities.

In order to get its Minor Plat approved and recorded so that it could move forward with its development and mitigate the significant delay damages, SouthPointe quickly moved for partial summary judgment on its Ky. Rev. Stat. Ann. § 100.347 appeal, which could be decided immediately as a matter of law. The trial court granted SouthPointe's motion, finding that the Planning Commission "acted arbitrarily by exceeding its powers when it refused to recognize the street name approved in 2010 and in enforcing the 16 character limit on a private road." Pet.App.53. This

arbitrary action was the direct result of the Planning Commission's open bias and predisposition in favor of the LDES Respondents. The trial court ordered Respondents to immediately approve SouthPointe's Minor Plat, which they did. *Id.*

With the statutory appeal decided, the deck was clear for the parties to litigate SouthPointe's additional claims, for which discovery was needed and had not yet started. Respondents, however, did not want to litigate; they immediately moved for summary judgment, arguing that sovereign immunity barred SouthPointe's claims. SouthPointe disagreed, but nevertheless moved for leave to amend its Complaint to assert claims against Respondents in their *individual* capacities. This itself was appropriate under both state and federal law, given that they (1) failed to perform the ministerial duties of their offices, and (2) violated SouthPointe's constitutional rights.

2. The trial court denied SouthPointe's motion for leave to amend on futility grounds, finding that "KRS 100.347 is the exclusive remedy for one aggrieved by actions of the Planning Commission." Pet.App.39. This ruling created an awkward procedural position: it meant that SouthPointe had not actually filed its claims against the individual-capacity Defendants, but the statutes of limitations to assert those claims were ticking while Respondents' summary judgment motion on the official-capacity claims remained pending.

Therefore, in an abundance of caution, SouthPointe filed its individual-capacity claims in a separate lawsuit to ensure that they were timely asserted and guaranteeing that all necessary parties were before the trial court. Respondents moved to consolidate the cases, which SouthPointe did not oppose. But before the consolidation could take place, SouthPointe's claims in the original case were dismissed on sovereign immunity grounds. Pet.App.37-39.

The second suit was then similarly dismissed, with the trial court concluding that SouthPointe split its claims between two lawsuits, even though SouthPointe previously moved to assert the individual-capacity claims in the first lawsuit, but was denied leave to do so. Pet.App.34-36.

3. SouthPointe appealed both judgments to the Kentucky Court of Appeals, which consolidated the appeals and affirmed, echoing the trial court's finding that Ky. Rev. Stat. Ann. § 100.347 provided SouthPointe's exclusive claim and remedy: "it is not the issue of collateral attack that bars SouthPointe's tort and 42 U.S.C. § 1983 claims. Rather, the question of whether a plaintiff like SouthPointe is permitted to bring additional claims *hinges on whether a Kentucky statute* provides both the unlawful action and the remedy. KRS 100.347 does." Pet.App.25. The Court of Appeals made it abundantly clear that the state statutory scheme precludes *any* claims—including federal Section 1983 claims—against Respondents:

> SouthPointe moved to amend its complaint for the sole purpose of pursuing its tort and 42 U.S.C. § 1983 claim—in context of this case no amendment could have made those claims viable in light of the exclusive remedy offered by KRS 100.347. For the same reason, SouthPointe's damage claims against Louisville Metro and the official-capacity defendants are precluded by KRS 100.347.

Pet.App.26. Notably, nothing in the panel's opinion even hinted that SouthPointe's § 1983 claims were futile on the merits. The Court of Appeals instead relied exclusively on an overly restrictive interpretation of Ky. Rev. Stat. Ann. § 100.347 and state-specific sovereign immunity principles.

4. The Kentucky Court of Appeals denied SouthPointe's petition for rehearing. Pet.App.1-2. The Kentucky Supreme Court thereafter denied SouthPointe's motion for discretionary review. Pet.App.55.

REASONS FOR GRANTING THE WRIT

The question presented in this case is one of fundamental significance, involving federalism and the extent to which states may construe their own statues to effectively bar federal causes of action. The Kentucky Court of Appeals held that the exclusive remedy afforded in a state statute allowing for judicial review of a local governmental agency's actions categorically excludes the entire universe of other claims, including federal claims against local officials brought under 42

U.S.C. § 1983—even if those individuals declare their own bias on the record. In essence, the state courts insulated state bureaucrats from any liability for any constitutional error, intentional or unintentional. This vitiates the Supremacy Clause, making federal law subordinate to a state statute, and implicitly nullifying application of federal civil rights statutes in Kentucky courts.

The decision below also runs squarely against universal due process concepts that have been long-settled by this Court's decisions. The right to a neutral arbiter is a foundational component of any notion of due process of law, and is deeply rooted in our legal tradition. To allow a state to insulate officials that openly violate this basic principle is unfathomable. Recognizing the need for fundamental fairness and both perceived and actual legitimacy in government actions, this Court has firmly held that the fundamental right to an impartial tribunal applies at each and every step of a judicial or quasi-judicial process. The fact that a person is later given an impartial appeal is not enough. Persons are "entitled to a neutral and detached judge in the first instance." *Ward v. Village of Monroeville, O.*, 409 U.S. 57, 83-84 (1972). A state's procedure cannot "be deemed constitutionally acceptable simply because the State eventually offers a [citizen] an impartial adjudication." *Id.* But that is essentially what the Kentucky courts held—government officials can violate the Constitution with impunity so long as an aggrieved citizen is given the statutory ability to appeal their final decisions.

This case also presents a unique question because the statutory right to appeal is a uniform standard inculcated in virtually every jurisdiction across the country. Though a state statute is nominally the bar to further relief in this case, in reality it is the state court's interpretive methodology that truly runs afoul of the Supremacy Clause. Nothing in the text of Ky. Rev. Stat. Ann. § 100.347 bars any additional theories of relief. While canons of construction are valuable tools that have their place, they must be used appropriately and in context of the whole text. Antonin Scalia & Bryan A. Garner*, Reading Law: The Interpretation of Legal Texts* 59 (2012) (no canon is absolute). It should go without saying that, among the range of permissible readings of the text, an interpretation nullifying application of a federal statute should be disfavored. Allowing the decision below to stand opens the door for courts in other states to nullify the application of § 1983 to most (if not all) of administrative tribunals simply by applying the "exclusive remedy" interpretation to a *state* statute.

SouthPointe's case provides this Court the ideal vehicle for resolving the question presented, as the lower court expressly decided it, and its answer was outcome-dispositive.

I. The Kentucky Court of Appeals' Decision Conflicts With the Supremacy Clause.

A. State courts of general jurisdiction are obligated to hear federal statutory claims under 42 U.S.C. § 1983.

The Supremacy Clause makes federal law the supreme law of the land, which state courts generally are obligated to enforce. *Mims v. Arrow Fin. Servs., LLC*, 565 U.S. 368 (2012); *Smith v. O'Grady*, 312 U.S. 329 (1941); *see also Claflin v. Houseman*, 93 U.S. 130 (1876) (presumption that state courts are competent to hear federal claims). Where federal law is applicable, a "state court may not deny a federal right, when the parties and controversy are presently before it, in the absence of a 'valid excuse.'" *Howlett By and Through Howlett v. Rose*, 496 U.S. 356, 369 (1990) (quoting *Douglas v. New York, N.H. & N.R. Co.*, 223 U.S. 1, 58 (1912)). Otherwise, allowing a state court to decline to enforce federal law "disregards the purpose and effect of" the Supremacy Clause. *Testa v. Katt*, 330 U.S. 386, 389 (1947). This obligation is not because "federal courts would otherwise be burdened or that state courts might provide a more convenient forum," but because "the Constitution and laws passed pursuant to it are as much laws in the States as laws passed by the state legislature." *Id.* at 367; *see also* THE FEDERALIST NO. 82 (Alexander Hamilton) (J. Cooke ed., 1961) (federal and state law "together form one system of jurisprudence").

This principle, of course, extends to claims commenced against state actors in their individual

capacities under 42 U.S.C. § 1983. *See*, *e.g.*, *Haywood v. Drown*, 556 U.S. 729 (2009); *Gronowski v. Spencer*, 424 F.3d 285 (2d. Cir. 2004) (Supremacy Clause guarantees that state law will not preempt or otherwise erode § 1983 causes of action or immunize conduct violative of § 1983). As a Reconstruction-era statute, it has always been the case that Section 1983 was passed to "interpose the federal courts between the states and the people as guardians of the people's federal rights." *Id.* at 735; *Mitchum v. Foster*, 407 U.S. 225, 242 (1972). Because of this, "state courts as well as federal courts are entrusted with providing a forum for the vindication of federal rights violated by state or local officials acting under the color of state law." *Id.*

The end result is a basic presumption that federal § 1983 claims can and will be heard in state court. And those claims have indeed been enforced in Kentucky courts of general jurisdiction. *Sowders v. Atkins*, 646 S.W.2d 344, 347 (Ky. 1983); *Scott v. Campbell Cnty. Bd. of Educ.*, 618 S.W.2d 589, 590 (Ky. 1981).

B. Kentucky's "exclusive remedy" doctrine cannot nullify SouthPointe's ability to assert federal statutory claims under § 1983.

This Court has historically been wary of state statutes and procedures "evading federal law and discriminating against federal causes of action." *Howlett*, 496 U.S. at 366. Though they retain control over their own dockets and administrative policies, state courts are

not just constitutionally prohibited from applying rules that discriminate against federal claims, they also "cannot apply even facially neutral rules if those rules interfere[] with the vindication of federal interests." Samuel P. Jordan, *Reverse Abstention*, 92 B.U. L. REV. 1771, 1774 (2012); *Kalb v. Feuerstein*, 308 U.S. 433 (1940) (in exercise of control over local laws and practices, state courts cannot violate the supreme law of the land). A state court "is never permitted under the Supremacy Clause to discriminate against the application of substantive federal law by substituting some other law in its place." *Id.* at 1775.

Only two "narrowly defined circumstances" can defeat the strong "presumption of concurrency": (1) Congress expressly strips state courts of jurisdiction; or (2) when a state court refuses jurisdiction because of a neutral rule regarding the administration of the courts. *Haywood*, 556 U.S. at 735 (cleaned up).[2] Even then, however, a State cannot employ even a neutral rule of judicial administration "to dissociate itself from federal law because of disagreement with its content or a refusal to recognize the superior authority of its source." *Id.* at 736 (quoting *Howlett*, 496 U.S. at 371). Though States "retain substantial leeway to establish the contours of their judicial systems, *they lack*

[2] The *Howlett* Court noted three occasions recognized as sufficient "neutral rules of judicial administration": (1) if neither the plaintiff nor the defendant is a resident of the forum state; (2) if the cause of action arises outside of the state's territorial jurisdiction; or (3) if the forum state is a *forum non conveniens* so long as the State "enforces its policy impartially so as not to involve a discrimination against" the federal claim. 496 U.S. at 374-75.

authority to nullify a federal right or cause of action they believe is inconsistent with their local policies." *Id.* (emphasis added).

In refusing to allow SouthPointe to assert its federal statutory claims, the Kentucky Court of Appeals applied the interpretive rule that "where the statute both declares the unlawful action and specifies the civil remedy available to the aggrieved party, the aggrieved party is limited to the remedy provided by the statute." Pet.App.23 (quoting *Waugh v. Parker*, 584 S.W.3d 748, 753 (Ky. 2019)). Because Ky. Rev. Stat. Ann. § 100.347 "offers plaintiffs an adequate and exclusive remedy (*i.e.*, appeal to a Kentucky court) for grievances related to a planning board's decision, a court must dismiss any collateral attack that seeks solely to rehash the same complaints." *Id.* (relying on *Robbins v. New Cingular Wireless, PSC, LLC*, 854 F.3d 315, 321 (6th Cir. 2017)). Put differently, whether SouthPointe could assert additional claims "hinges on whether a Kentucky statute provides both the unlawful action and the remedy." Pet.App.25. The Kentucky Court of Appeals refused to allow SouthPointe to assert § 1983 claims because nothing "could have made those claims viable in light of the exclusive remedy offered by" Ky. Rev. Stat. Ann. § 100.347. Pet.App.26.

This is grievously wrong. First, the exclusive nature of statutory remedies is hardly a novel concept. *See Armstrong v. Exceptional Child Center, Inc.*, 575 U.S. 320, 328 (2015) ("express provision of one method of enforcing a substantive rule suggests that Congress intended to preclude others"); *Alexander v. Sandoval*,

532 U.S. 275 (2001). But this is most commonly applied to exclude additional remedies *under the statute*; it is inapplicable to collateral claims unrelated to the statute or its exclusive remedies so long as they do not conflict with the statute itself.

This is even more undoubtedly the case when Congress acts under § 5 of the Fourteenth Amendment, which it did in enacting § 1983. *Quern v. Illinois*, 440 U.S. 332, 351 n.3 (1979) (Brennan, J., concurring) ("There is no question but that § 1983 was enacted by Congress under § 5 of the Fourteenth Amendment"). Doing so "overrides any default rule or background principle applicable to the remedies available" in a given case. *Jones v. City of Detroit*, 20 F.4th 1117, 1122 (6th Cir. 2021). It simply cannot be the case that a *state's* exclusive statutory remedy can thwart the statutory right to relief Congress extended to all citizens nationwide. *Barnes v. Gorman*, 536 U.S. 181, 189 (2002) ("where legal rights have been invaded, and a federal statute provides for a general right to sue for such invasion, federal courts may use any available remedy to make good the wrong done"); *Bell v. Hood*, 327 U.S. 678 (1946). This tool of statutory interpretation cannot be wielded to allow state law to preempt a federal statutory right of action.

The Kentucky Court of Appeals likewise misunderstood the Sixth Circuit Court of Appeals' decision in *Robbins*. That case involved only state *common law* claims collaterally filed alongside a KRS 100.347 statutory appeal, and did not preclude a separate *federal*

statutory cause of action. *See*, *e.g.*, 854 F.3d 315.[3] Even still, Kentucky's analysis fails to distinguish the discrete difference between the harms underlying SouthPointe's statutory appeal and its § 1983 claims. While one claim sought reversal of the Planning Commission's decision on the merits, the other sought damages against *individuals* for willful violations of SouthPointe's constitutional entitlement to due process of law. In other words, Ky. Rev. Stat. Ann. § 100.347 simply provides for judicial review of the Planning Commission's decision; it does not account for constitutional violations or provide aggrieved citizens a remedy for same.

But beyond being obviously wrong and misunderstanding the "wrongful action" at the heart of SouthPointe's § 1983 claims, Kentucky's error more importantly threatens to effectively nullify Congress's express private right of action holding state and local bureaucrats constitutionally accountable. To qualify as a sufficiently-neutral rule of judicial administration, a state practice must "reflect the concerns of power over

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[3] *Robbins* itself does not entirely foreclose the viability of additional common law claims asserted alongside a statutory appeal, only those that are "improper." *Id.* at 320. The Sixth Circuit found those claims to be improper because the plaintiffs failed to show "that their harms arise from anything other than the Commission's decision." *Id.* at 321. While SouthPointe was harmed by the Planning Commission's decision, the decision was the result of bias, and a decision rooted in bias constitutes a deprivation of SouthPointe's constitutional rights. Thus, SouthPointe's separate § 1983 claim cannot be construed as an attempt to "attack the Planning Commission's decision through different means." *Id.* at 322.

the person and competence over the subject matter." *Haywood*, 556 U.S. at 739. Even if facially neutral, in refusing to allow SouthPointe to even *assert* § 1983 claims against Planning Commission members—whether part of the same or an entirely separate lawsuit—the Kentucky Court of Appeals effectively held that the federal statutory claim can *never* be asserted against Respondents.[4]

A federal right cannot be defeated by local forms of practice. *Brown v. Western Ry. of Ala.*, 338 U.S. 294 (1949); *see also Haywood*, 556 U.S. at 729 (jurisdictional rule cannot be used as a device to undermine federal law, no matter how evenhanded it may appear).[5] In applying its "exclusive remedy" doctrine, the

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[4] Adding insult to injury, the Kentucky Court of Appeals, in *dicta*, continued to conclude that Respondent, Louisville Metro Government is nonetheless immune to SouthPointe's collateral claims—including § 1983—under Kentucky's state-law sovereign immunity analysis. Pet.App.27-30. This is blatantly incorrect. *See Howlett*, 496 U.S. at 377 ("federal law makes governmental defendants that are not arms of the State, such as municipalities, liable for their constitutional violations"); *Monell v. Department of Soc. Servs. of City of New York*, 436 U.S. 658 (1978) (municipalities and other local government units are included among those "persons" to whom § 1983 applies); *Jefferson Cnty. Fisc. Ct. v. Peerce*, 132 S.W.3d 824 (Ky. 2004) (state treatment of sovereign immunity is irrelevant to determination of § 1983 immunity because "only federal jurisprudence is controlling on this issue").

It likewise defeats the point of § 1983 in the first place. *Monroe v. Pape*, 365 U.S. 161, 173-74 (1961) (§ 1983 exists to provide "a remedy where state law was inadequate" and "where the state remedy, though adequate in theory, was not available in practice").

[5] In addition to this, the Court has clarified that state procedural rules that produce different outcomes "based solely on

Kentucky Court of Appeals impermissibly vitiates the statutory scheme Congress enacted to specifically hold state officials accountable for violating constitutional rights.

Because application of the state "exclusive remedy" doctrine interferes with federal objectives, the decision below is inconsistent with the Supremacy Clause. Only this Court can resolve this problem before it is applied in other harmful contexts.

II. The Decision Below Conflicts With Fundamental Due Process Protections.

Few maxims in our constitutional order are more deeply rooted than the right to an impartial tribunal. As a central component of any rudimentary notion of due process of law, the right to impartial proceedings dates back to antiquity and longstanding English common law customs. Charles Gardner Geyh, *Dimensions of Judicial Impartiality*, 65 FLA. L. REV. 493, 498 (2013) (quoting Plato); Paul J. Larkin, Jr., *The Lost Due Process Doctrines*, 66 CATH. U. L. REV. 293 (2016) (Magna Carta). This naturally informed the meaning of due process enshrined in the Fifth and Fourteenth Amendments to the Constitution. 3 Joseph Story, *Commentaries on the Constitution of the United States* § 1783 (1833) (Constitution adopts and "enlarge[s]"

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whether the claim is asserted in state or federal court," would interfere with the "substantial rights of the parties under controlling federal law." *Felder v. Casey*, 487 U.S. 131, 138, 151 (1988); *Garrett v. Moore-McCormack Co.*, 317 U.S. 239, 245 (1942).

due processes guaranteed in Magna Carta). In its simplest form, due process merely requires that all adjudicators—whether state or federal or judicial or administrative in nature—be impartial. *Schweiker v. McClure*, 456 U.S. 188, 195 (1982); *Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868 (2009) (fair trial in fair tribunal is basic requirement of due process).

This Court has historically explained that the Due Process Clause "entitles a person to an impartial and disinterested tribunal in both criminal and civil cases." *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980). The neutrality requirement—which this Court has "jealously guarded"—serves dual goals: (1) preventing unjustified or mistaken deprivations; and (2) promoting participation and dialogue by affected individuals in the decision-making process. *Id.*; *Carey v. Piphus*, 435 U.S. 247, 259-62 (1978). Given the importance of both "the appearance and reality of fairness," neutrality ensures that "no person will be deprived of his interests in the absence of a proceeding in which he may present his case with the assurance that the arbiter is not predisposed to find against him." *Id. See also Joint Anti-Fascist Comm. v. McGrath*, 341 U.S. 123, 172 (1951) (Frankfurter, J., concurring) (neutrality generates "the feeling, so important to a popular government, that justice has been done").

In this case, Respondents overtly declared their bias against SouthPointe on the record, and baselessly rejected SouthPointe's applications solely because another local bureaucracy, without introducing a scintilla of evidence, told them to. The Planning Commission

based its decision against SouthPointe solely on its unwillingness to "go against" another agency and without even considering the underlying facts and law. This goes beyond deference or even comity with other agencies, which is itself impermissible in this context, but makes clear that the Planning Commission refused to even *consider* SouthPointe's (correct) position. Under no circumstances is this even close to passing constitutional muster, and this is exactly the type of procedural abuse § 1983 exists to remedy.

The Planning Commission's overt constitutional violations are not vitiated simply because SouthPointe ultimately prevailed on the merits on appeal. This Court has explicitly rejected the notion that "any unfairness at the trial level can be corrected on appeal"; instead, one is "entitled to a neutral and detached judge in the first instance." *Ward v. Village of Monroeville, Ohio*, 409 U.S. 57, 61-62 (1972); *Concrete Pipe & Prods. of California v. Construction Laborers Pension Trust for S. California*, 508 U.S. 602, 617 (1993); *see also Covington v. Commonwealth*, 2012 WL 1899782, at *3 (Ky. 2012) (endorsing *Ward*). The fact that SouthPointe eventually succeeded in overturning the Planning Commission's ruling at the cost of considerable sums of time and money does not absolve Respondents of their failure to provide SouthPointe with a fair tribunal in the first place.

If neutrality is indeed an inextricable cornerstone of due process, there must also be a means of securing that right when it has been violated. That is exactly what Congress did. To ensure constitutional liberties

are not hollow, Congress enacted § 1983 to empower individuals to hold state and local officials accountable. And § 1983 is indeed frequently applied nationwide to remedy instances where individuals have been denied an unbiased factfinder. *See Doe v. Miami Univ.*, 882 F.3d 579, 604 (6th Cir. 2018); *Digre v. Roseville Schools Ind. Dist. No. 623*, 841 F.2d 245 (8th Cir. 1988); *Stivers v. Pierce*, 71 F.3d 732 (9th Cir. 1995); *McClure v. Independent School Dist. No. 16*, 228 F.3d 1205 (10th Cir. 2000) (sustaining § 1983 claim relating to public statements from decision-maker that demonstrate actual bias); *Manecke v. School Bd. of Pinellas Cnty.*, 762 F.2d 912, 918 (11th Cir. 1985).

Public statements by a decisionmaker that "demonstrate actual bias with respect to the factual matters to be adjudicated" create genuine questions about whether an individual was "deprived of the right to an impartial tribunal." *McClure*, 228 F.3d at 1216 (quoting *Hicks v. City of Watonga*, 942 F.2d 737, 746-48 (10th Cir. 1991)). SouthPointe has stated genuine and viable due process claims, yet Kentucky state courts refused to allow those claims to be pursued in any context. This Court should accept review to ensure that § 1983 remains viable.

III. The Constitutional Issues Presented Threaten to Undermine Congress's Clear Intent to Hold State Actors Accountable for Constitutional Violations.

Statutory rights to appeal are not rare or unique, and they undoubtedly create appellate rights where none originally exist. Under Kentucky state law, the right to appeal is considered a matter of legislative "grace," with state courts beginning with the presumption that an agency's decision cannot be appealed absent a statute to the contrary. *Board of Adjustments of City of Richmond v. Flood*, 581 S.W.2d 1, 2 (Ky. 1978) ("grace to appeal is granted by statute"). It is not difficult to see how Kentucky's application of the "exclusive remedy" doctrine to bar collateral federal statutory claims can quickly render the protections afforded under § 1983 illusory.

For instance, imagine that the Planning Commission denied a minor plat application because it was openly motivated by racial animus against the applicant. While the state statutory right of appeal would provide the applicant with a claim on the merits of the decision, § 1983 would provide a companion claim to hold the state actors accountable for the separate *constitutional* injuries they cause.[6] But based on the

[6] In such a situation other federal civil rights statutes, such as Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000(e) *et seq.*), or Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 *et seq.*), might provide other companion claims that Kentucky's interpretation of Ky. Rev. Stat. Ann. § 100.347 would also preclude.

reasoning below, the applicant unlawfully discriminated against will have no recourse for the violation of their civil rights. Applying the ruling below would mean that state actors cannot be held accountable for the real and quantifiable harm their unconstitutional actions caused.

This cannot be. It is possible for an agency's actions to give rise to *both* a statutory appeal and a collateral § 1983 claim. While invidious discrimination played no role in this particular case, the Planning Commission's admitted prejudice in favor of LDES did. SouthPointe was deprived of the impartial tribunal that the United States Constitution guarantees, and it was harmed as a result. If it is truly the rule that no § 1983 claims can be asserted where, like here, a person is denied an impartial tribunal, then there is little point to § 1983 itself and the federal statute is effectively nullified.

The idea that a State can nullify federal law has, of course, been squarely rejected. *See Cooper v. Aaron*, 358 U.S. 1 (1958) (categorically rejecting attempt to amend state constitution to nullify *Brown v. Bd. of Educ.*, 347 U.S. 483 (1952)); *United States v. Peters*, 9 U.S. (5 Cranch) 115, 136 (1809) (nullification would render the Constitution "a solemn mockery"). But because state officials are entrusted to enforce federal law, states nonetheless possess a unique opportunity to influence how federal law is enforced, or in this case, even resist aspects of federal policy they do not like. *See* Ernest A. Young, *Modern Day Nullification: Marijuana and the Persistence of Federalism in an Age of*

Overlapping Regulatory Jurisdiction, 65 CASE. W. RSRV. L. REV. 769 (2015); Jessica Bulman-Pozen & Heather K. Gerken, *Uncooperative Federalism*, 118 YALE L.J. 1256, 1264, 1270 (2009) ("The fact that state officials serve two masters gives states not only a reason to challenge federal policy, but also the power to do so."). The decision below provides a new opportunity to extinguish federal statutory civil rights if states are permitted to construe state statutes in a manner that negates any meaningful effect of § 1983 in state courts.

What may begin as even innocent error can quickly morph into directed action. Not only would the Kentucky Court of Appeals' decision shield constitutional claims against state officials if connected to *existing* statutes providing a right to judicial review, observant state legislatures and local governments may enact additional provisions in innumerable other contexts to similarly bar § 1983 claims for even the most egregious constitutional violations. States should not be permitted to weaponize an interpretive tool to evade their obligation to enforce § 1983 in state courts as part of its concurrent jurisdiction. Allowing the decision below to stand allows Kentucky to opt out of § 1983. This is an extremely dangerous precedent because it will allow, if not encourage, other states to join Kentucky in doing the same. No state should be allowed to opt out of § 1983 or any other federal statutory cause of action. Congress decides whether a federal cause of action is available—not the states.

This Court should accept review to address the serious threat to our federal system that this case represents.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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