No. __-_____

IN THE
Supreme Court of the United States

CEDRIC EPPLE,
Petitioner,

v.

ALBANY UNIFIED SCHOOL DISTRICT, ET AL.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In *Pakdel v. City & Cty. of S.F.*, 141 S. Ct. 2226 (2021) this Court summarily reversed the Ninth Circuit's decision in *Pakdel v. City & Cty. of S.F.*, 952 F.3d 1157 (9th Cir. 2020), and held that exhaustion of state court remedies is not required to litigate a claim in federal court under 42 U.S.C. § 1983. This petition raises the same issue and should be likewise be disposed of with summary reversal. As in *Pakdel*, the Ninth Circuit will not allow a litigant to bring a claim in federal court unless he has exhausted his judicial remedies in state court. Here, the Ninth Circuit applied that rule to preclude a Section 1983 claim in a case where the plaintiff was compelled to seek exhaustion under this rule and failed to prevail in those state proceedings. The questions presented are:

1. Whether the Ninth Circuit erred in holding, in direct conflict with this Court's precedent, that litigants challenging administrative actions must exhaust their state court judicial remedies to bring a Section 1983 claim in federal court?

2. Whether issue preclusion can apply when the Ninth Circuit unlawfully requires exhaustion of state court remedies on a Section 1983 claim?

PARTIES TO THE PROCEEDING

Petitioner is Cedric Epple Petitioner was the plaintiff in the district court and the plaintiff-appellant in the court of appeals.

Respondents are the Albany Unified School District; Albany High School; Valerie Williams, in her personal and official capacities as Superintendent of the Albany Unified School District; Jeff Anderson, in his personal and official capacities as Principal of Albany High School; Melisa Pfohl, in her personal and official capacities as Assistant Principal of Albany High School; Charles Blanchard; Jacob Clark; Kim Trutane; and the Albany Unified School District Board of Education.

CORPORATE DISCLOSURE STATEMENT

Pursuant to this Court's Rule 29.6, petitioner states as follows: Petitioner Cedric Epple is an individual and not a corporation.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

- *Chen v. Albany Unified Sch. Dist.*, 56 F.4th 708 (9th Cir. 2022), *reh'g en banc denied Epple v. Albany Unified Sch. Dist.*, No. 20-16541, 2023 U.S. App. LEXIS 2464 (9th Cir. Jan. 31, 2023));

- *Shen v. Albany Unified Sch. Dist.*, No. 3:17-cv-02478-JD, 2018 U.S. Dist. LEXIS 144656 (N.D. Cal. Aug. 24, 2018), (order granting motion to dismiss, filed August 24, 2018); and

- *Epple v. Alameda County Bd. of Educ.* 2020 Cal. Super. LEXIS 72708 (state court order denying Epple's bias claim).

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 WRIT OF CERTIORARI

This petition presents the same issue on which this Court summarily reversed in *Pakdel v. City & Cty. of S.F.*, 141 S. Ct. 2226 (2021). In *Pakdel*, this Court found that the Ninth Circuit's requirement that petitioners exhaust administrative proceeding otherwise available in a challenge to actions taken by a city's department of public works was at odds with the settled rule that exhaustion of state remedies is not a prerequisite to an action under 42 U.S.C. § 1983. The Ninth Circuit has continued to impose the same requirement

In *Doe v. Regents of the Univ. of Cal.*, 891 F.3d 1147 (9th Cir. 2018), the Ninth Circuit created a requirement that any California resident seeking to challenge a government administrative decision must first file a § 1094.5 writ petition in state court. Petitioner Cedric Epple ("Epple") was compelled to comply with this requirement over his objection and failed to prevail in those proceedings. Rather than hear the merits of Mr. Epple's claim in a federal forum, the Ninth Circuit found that his claim is now barred by collateral estoppel, because he had already litigated his claim in state court. The Ninth Circuit's holdings stand in stark defiance to "the settled rule . . . that exhaustion of state remedies is *not* a prerequisite to an action under 42 U.S.C. § 1983," *Knick v. Township of Scott*, 139 S. Ct. 2162, 2167 (2019) (brackets and internal quotation marks omitted). It also contradicts this Court's precedent, which holds that fundamental unfairness bars issue preclusion. *See e.g. Blonder-Tongue Labs. v. Univ. of Ill. Found.*, 402 U.S. 313, 325

(1971). This Court should grant review to overturn the Ninth Circuit's defiance of this Court's precedent.

OPINIONS BELOW

The court of appeals' denial of Petitioner's motion for rehearing or rehearing en banc opinion affirming is reported at *Epple v. Albany Unified Sch. Dist.*, No. 20-16541, 2023 U.S. App. LEXIS 2464 (9th Cir. Jan. 31, 2023) and reproduced at Pet. App. 99. The panel opinion is reported at 56 F.4th 708 (9th Cir. 2022) and reproduced at Pet. App. 1. The district court's opinion is reported at No. 3:17-cv-02478-JD, 2018 U.S. Dist. LEXIS 144656 (N.D. Cal. Aug. 24, 2018), and reproduced at Pet. App. 51.

JURISDICTION

The jurisdiction of the district court was founded on 28 U.S.C. § 1331 and § 1343. The jurisdiction of court of appeals reviewing the final judgment of dismissal was based on 28 U.S.C. § 1291. Pet. App. 18. The decision of the three-judge panel of the court of appeals was issued on December 27, 2022. Pet. App. 1. The Plaintiff-appellant filed a timely petition for rehearing and the Ninth Circuit's order denying rehearing en banc was entered January 31, 2023. Pet. App. 99. This petition is timely filed under 28 U.S.C. § 2101 and Rule 13 of this Court's Rules. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution and relevant portions of California law are reproduced at the Appendix. Pet. App. 116-119.

STATEMENT OF THE CASE

Under Ninth Circuit precedent, a person who wishes to challenge the constitutionality of an administrative proceeding must first exhaust their state court judicial remedies. Under California law, an individual can challenge the validity of an administrative proceeding in California state court. This is done by means of a writ of mandate. With respect to a petition for writ of mandate, a California state court evaluates "whether the respondent has proceeded without, or in excess of, jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion." (Code Civ. Proc., § 1094.5, subd. (b).) "Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence." *Doe v. Univ. of S. Cal.*, 246 Cal. App. 4th 221, 239 (Cal. Ct. App. 2016).

A. Factual Background

During the 2016–2017 school year, Plaintiff Cedric Epple was a student at Albany High School, a public high school in Albany, California. Pet. App. 8. In November 2016, at the suggestion of a friend, Epple created a private Instagram account to share

comments privately with his friends. *Id.* He shared a variety of objectively offensive content on this account. *Id.* This content contained, *inter alia*, racist subject matter. Pet. App. 8. Discovery of Epple's account caused the school to publicize the matter and led to unrest in the Albany Unified School District ("AUSD") community. Pet. App. 11. On March 21, 2017, Epple was summoned to the principal's office, interrogated in the presence police officers, and subsequently suspended from school while awaiting an expulsion hearing. Pet. App. 12.

Defendant Trutane participated in a demonstration protesting Epple's Instagram page on March 26, 2017. Pet. App. 14. One local publication that covered the rally published a picture of Trutane at the event, holding a sign saying, "WE are DIVERSE & GREAT." Pet. App. 14. Defendant Trutane posted on Facebook an event notice about the March 26 demonstration, stating "has this been conceived in coordination with the Black/African American Parents Engagement Group?" and "So glad that you are joining forces! I am definitely going to both events. Looking forward to sending a strong message of support tomorrow and next Friday that we will not tolerate racism, Albany is for everyone!" Pet. App. 14.

Despite participation in a demonstration that, ostensibly, protested Epple's Instagram page and Epple himself and the obvious bias this demonstrated, Trutane failed to recuse herself from Epple's expulsion hearing panel. Epple was expelled following the expulsion hearing. Pet. App. 15. On June 22, 2017, three members of the AUSD Board, including

Trutane, voted in favor of expulsion, and two members abstained. *Id.*

Epple appealed his expulsion to the Alameda County Board of Education ("ACBE"), arguing, *inter. alia*, that he was denied a fair hearing because Trutane was biased against him. *Id.* Plaintiff Epple argued that Trutane should have recused herself from the AUSD Board's expulsion hearing because she participated in a demonstration and other advocacy against Epple and his account. *Id.* The ACBE disagreed and upheld Epple's expulsion in September 2017. *Id.*

B. Procedural History

On June 26, 2017, Epple filed this action in the district court, asserting, *inter alia*, that Trutane violated his due process rights because she was objectively biased but nonetheless participated in the panel that presided over his expulsion hearing. Pet. App. 16. Thereafter, in a decision filed August 24, 2018, (Pet. App. 51), the district court dismissed Petitioner's due process claims without prejudice, because he had not yet filed a petition for writ of mandate in California state court challenging the relevant administrative actions, they had not yet exhausted his still-available state judicial remedies. *Id*. at 87. In so holding, the district court relied on *Doe v. Regents of the Univ. of Cal.,* 891 F.3d 1147, 1154–55 (9th Cir. 2018). *Doe* held that in Section 1983 claims, in order to attempt to avoid the preclusive effect of a California state administrative decision, a party "must exhaust judicial remedies" by filing a petition for writ of mandate. *See* Pet. App. 18 (panel decision).

Shortly afterwards, Epple filed a petition for a writ of mandate in California state court. Pet. App. 16. On October 1, 2020, the state court denied his petition. Pet. App. 101-113.

Final judgment was entered in district court on July 27, 2020. Pet. App. 96. Petitioner filed a timely notice of appeal to the Ninth Circuit on August 10, 2022. Dkt. entry # 56. The case was thus already on appeal by the time the State court decided Petitioner's appeal months later, on October 1, 2020. Pet. App. 113. *See also* Pet. App. 15 & 18 n.3.

C. Decision Below

On appeal to the Ninth Circuit, the court refused to adjudicate Petitioner's due process claim. The court of appeals first rejected Petitioner's argument "that he has exhausted his judicial remedies and that we therefore must vacate the district court's dismissal of his due process claim." Pet. App. 37-38. Rather, the court held that "even if Epple is correct that his judicial remedies have now been exhausted, we affirm the dismissal of Epple's due process claim on the separate ground that the state court's decision rejecting Epple's claims of bias has preclusive effect here." *Id*. at 38. Noting that the state court had addressed the claim of bias, and that, therefore, "[h]aving litigated and lost this due process issue in state court, Epple may not now relitigate that issue in federal court." *Id*. That dismissal, the court ruled, obtained "regardless of whether we would have reached the same conclusion as the state court did." *Id*. at 41.

REASONS FOR GRANTING THE PETITION

A. REVIEW IS APPROPRIATE TO ABROGATE THE EXHAUSTION REQUIREMENT IMPOSED BY *DOE V. REGENTS UNIV. OF CAL.*, 891 F.3D 1147 (9TH CIR. 2018)

As is apparent, the Ninth Circuit's exhaustion requirement created in *Doe* has effectively barred petitioner from pursuing his due process claim in federal court under Section 1983. Petitioner has a fundamental right under the Due Process Clause to an unbiased disciplinary proceeding. This Court has made clear that ""the Due Process Clause may sometimes demand recusal even when a judge "'ha[s] no actual bias."" *Rippo v. Baker*, 580 U.S. 285, 287 (2017), *quoting Aetna Life Ins. Co. v. Lavoie,* 475 U.S. 813, 825 (1986). Thus "[r]ecusal is required when, objectively speaking, "the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable." *Id.*, *quoting Withrow v. Larkin*, 421 U.S. 35, 47 (1975). That claim is serious. Bias by a decision maker is "structural error" and is not subject to harmless-error review "even if the judge in question did not cast a deciding vote." *Williams v. Pennsylvania*, 579 U.S. 1, 14 (2016). The evident bias of Trutane simply cannot be ignored consistent with the Due Process Clause.

To date, no federal court has addressed the merits of Petitioner's due process claim. The district court dismissed Petitioner's 1983 claim under *Doe* because he had not yet pursued his state court remedies at that time. By the time those remedies had been exhausted, the district court had already issued a final judgment

and the case was then on appeal. The court of appeals below held that the state court judgment was preclusive and threw petitioner out of court. None of the state court proceedings would have occurred or would have been necessary but for the Ninth Circuit's decision in *Doe* that Section 1983 litigants must exhaust their state court remedies.

In *Patsy v. Bd. of Regents,* 457 U.S. 496, 516 (1982), this Court held that a plaintiff does not have to exhaust administrative remedies before filing a lawsuit under section 1983. In reaching this holding, the Court examined the legislative histories of both section 1983 and its precursor, section 1 of the Civil Rights Act of 1871. The Court determined that, with these statutes, Congress intended to "throw open the doors of the United States courts to individuals who" have suffered a deprivation of constitutional rights and "provide these individuals immediate access to the federal courts notwithstanding any provision of state law to the contrary." 457 U.S. at 504 (citation omitted). As *Patsy* states, the Court had "on numerous occasions rejected the argument that a § 1983 action should be dismissed where the plaintiff has not exhausted state administrative remedies." *Patsy*, 457 U.S. at 500. "Section 1983 opened the federal courts to private citizens, offering a uniquely federal remedy against" unconstitutional actions taken under the color of state law. *Mitchum v. Foster*, 407 U.S. 225, 239 (1972). Requiring a plaintiff to exhaust administrative remedies would frustrate the purposes of section 1983. *Patsy*, 457 U.S. at 511.

Relying on *Patsy* and its progeny, this Court recently *summarily* reversed the Ninth Circuit on

precisely this exhaustion requirement in *Pakdel v. City & Cty. of S.F.* In *Pakdel*, the "Ninth Circuit required petitioners to show not only that the San Francisco Department of Public Works had firmly rejected their request for a property-law exemption (which they did show), but also that they had complied with the agency's administrative procedures for seeking relief." 141 S. Ct. at 2228. The Court held that because this "latter requirement is at odds with 'the settled rule . . . that exhaustion of state remedies is not a prerequisite to an action under 42 U.S.C. §1983,' … we vacate and remand." *Id., quoting Knick v. Township of Scott*, 139 S. Ct. 2162, 2167 (2019).

As *Pakdel* recognized, it has long been the settled rule is that "exhaustion of state remedies 'is not a prerequisite to an action under [42 U.S.C.] §1983.'" *Heck v. Humphrey*, 512 U.S. 477, 480 (1994) (*quoting Patsy*, 457 U.S. at 501). Indeed, in *Knick*, this Court overruled *Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985), in part because the state-court exhaustion requirement for takings claims imposed by *Williamson* perversely created "a Catch-22" under which a takings plaintiff could not "go to federal court without going to state court first; but if he goes to state court and loses, his claim will be barred in federal court." *Knick*, 139 S. Ct. at 2167. That is exactly what happened in this case. Here, as in *Knick*, a "state-litigation requirement imposes an unjustifiable burden" on Section 1983 plaintiffs. The Ninth Circuit's exhaustion and preclusion rule "conflicts" with this Court's Section 1983 jurisprudence no less than the rule rejected in *Knick*. *Pakdel* relied on *Knick* and

these principles to summarily reverse the Ninth Circuit's exhaustion rule in that case. The same principles mandate the same result here.[1]

The Ninth Circuit's exhaustion requirement led to the preclusion result in this this case no less than the exhaustion requirement imposed by *Williamson* led to preclusion in takings cases. As *Knick* recognizes, such preclusion of Section 1983 claims is intolerable. "[T]he guarantee of a federal forum rings hollow for takings plaintiffs, who are forced to litigate their claims in state court." *Knick*, 139 S. Ct. at 2167. *See also Patsy*, 457 U.S. at 504 (§ 1983 provides "immediate access to the federal courts"). The Ninth Circuit's preclusion ruling here effectively abrogates the "no exhaustion" rule.

B. SUMMARY DISPOSITION IS APPROPRIATE

Summary disposition is appropriate in this matter for the same reason summary disposition was ordered in *Pakdel*. Summary reversals are reserved for extraordinary circumstances and are ordered only where the error is clear and further briefing unnecessary. *See* S. Shapiro, et al., *Supreme Court Practice*, ch.5.12(a) at 5-36 (11th ed. 2019) (noting that summary reversal "usual[ly] reflects the feeling … that the lower court result is so clearly erroneous …

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[1] Even in areas of law where exhaustion has been expressly required by Congress, the Section 1983 litigant is still typically entitled to bring his or her claim in federal court for de novo review after exhaustion. *See*, *e.g.*, *Woodford v. Ngo,* 548 U.S. 81 (2006); *McKart v. United States*, 395 U.S. 185, 193 (1969). The Ninth Circuit approach evident in this case bars such relief.

that full briefing and argument would be a waste of time.") (collecting cases). That standard is met here for the same reason it was met in *Pakdel*. The decision below plainly is contrary to *Patsy, Knick* and *Pakdel* and involves a clear error of great magnitude and practical importance to those who live within the Ninth Circuit.

Stated bluntly, the Ninth Circuit's imposition of an exhaustion requirement is "not just wrong," the court below "also committed fundamental errors that this Court has repeatedly admonished courts to avoid." *Sexton v. Beaudreaux*, 138 S. Ct. 2555, 2560 (2018). This Court has repeatedly and definitively held that plaintiffs need not exhaust administrative remedies before seeking relief under section 1983. As *Knick* holds, it is "clear" error to establish "an exhaustion requirement for § 1983 takings claims …." 139 S. Ct. at 2173. *See Marmet Health Care Center, Inc. v. Brown*, 565 U.S. 530, 532 (2012) (per curiam) (ordering vacatur and remand where lower court "was both incorrect and inconsistent with clear instruction in the precedents of this Court"). In imposing an exhaustion requirement on Epple and then finding that his claim was barred after he exhausted his remedies, the Ninth Circuit "egregiously misapplied settled law," *Wearry v. Cain*, 136 S. Ct. 1002, 1007 (2016), and disregarded controlling decisions of this Court. *See Thompson v. Hebdon*, 140 S. Ct. 348, 350 (2019) (per curiam) (granting vacatur and remanding where "the Ninth Circuit declined to apply [this Court's] precedent").

Therefore, summary disposition of this case is warranted to correct the failure of the Ninth Circuit to

comply with this Court's precedent. *See CNH Indus. N.V. v. Reese*, 138 S. Ct. 761, 763 (2018) (per curiam) (granting vacatur and remanding because the Sixth Circuit's decision "cannot be squared" with controlling Supreme Court precedent). The consequences of the Ninth Circuit's error extend beyond Epple's case. The decision denies everyone with a Section 1983 claim stemming from an administrative action in the Ninth Circuit immediate access to the federal courts. Summary vacatur is appropriate to correct this clear misapprehension of this Court's precedent.

CONCLUSION

For the foregoing reasons, the petition for certiorari should be granted and the decision below should be summarily reversed. Alternatively, the Court should grant the petition and set the case for briefing and argument on the merits.

Respectfully submitted,

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