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 Petition for Writ of Certiorari to the Supreme Court of Alabama

BRIEF IN OPPOSITION

Steve Marshall
Alabama Attorney General

Edmund G. LaCour Jr.
Solicitor General
Counsel of Record

Brenton M. Smith
Assistant Attorney General

Dylan Mauldin
Assistant Solicitor General

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL
501 Washington Ave.
Montgomery, AL 36130
(334) 242-7300
Edmund.LaCour@AlabamaAG.gov

Counsel for Respondent

QUESTION PRESENTED

Alabama courts lack original jurisdiction over claims related to eligibility for unemployment benefits. Courts may hear only appeals from final rulings of the Alabama Department of Labor appeals tribunals, whether the party seeking review is a claimant or the State. The state court then conducts a trial de novo.

Petitioners sought unemployment benefits from the State of Alabama and filed claims under 42 U.S.C. § 1983 directly in state court challenging the State's procedures for handling their benefits claims. The State argued that the trial court lacked jurisdiction because the claims could have been, but were not, first adjudicated through the Alabama Department of Labor's administrative process. Petitioners responded that "administrative exhaustion" requirements have been "categorically rejected" by this Court, citing only one authority, *Patsy v. Board of Regents of the State of Florida*, 457 U.S. 496 (1982).

Patsy considered "the question whether exhaustion of state administrative remedies is a prerequisite to an action under 42 U.S.C. § 1983." 457 U.S. at 498. Some federal courts had introduced a "judicially imposed exhaustion requirement" for § 1983 actions, *id.* at 508, but this Court held that because Congress had not imposed that requirement, federal courts could not either. *Patsy* never mentioned preemption.

The question presented is:

Whether *Patsy* requires Alabama courts to exercise jurisdiction over Petitioners' § 1983 claims.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Federal Regulations

Statutes

STATEMENT

A. Alabama's Comprehensive Scheme Governing Claims for Unemployment Benefits and the Federal Government's Funding of State Unemployment Programs.

1. Alabama has created an unemployment compensation scheme that provides temporary benefits to eligible unemployed individuals so long as they are not disqualified for certain reasons like, for example, having voluntarily quit their jobs or been fired for misconduct. Ala. Code § 25-4-78(2)-(3). "[F]irst enacted in 1935," Alabama's unemployment compensation scheme was "among the first" in the nation. Pet.App.7a (citing *Tenn. Coal, Iron & R.R. Co. v. Martin*, 251 Ala. 153, 154 (1948)). It is "a creature of statute alone; it does not correspond to any traditional private right and was unknown at common law." *Id.* (cleaned up).

"[T]he procedure for pursuing" unemployment benefits "is completely governed by statute," *id.* (citation and punctuation omitted), and the following procedures are the "exclusive" methods "for seeking, challenging, or appealing from any 'determinations with respect to claims for unemployment compensation benefits.'" *Id.* at 8a-9a (quoting Ala. Code § 25-4-96). Those benefits are obtained by filing an application with the Alabama Department of Labor (ADOL) and then "await[ing] [a] 'determination … by an examiner ….'" *Id.* at 8a (quoting Ala. Code § 25-4-91). The examiner has an obligation to "promptly" make a determination. Ala. Code § 25-4-91(a). A claimant can then appeal that determination to an ADOL "appeals

tribunal." Ala. Code § 25-4-92(a). The tribunals may resolve "all 'disputed claims and due process cases' involving the examiner's administration of unemployment benefits." Pet.App.8a (quoting Ala. Code § 25-4-92(a)).

Additionally, an applicant who believes that ADOL has unreasonably delayed processing her claim may demand a court order compelling a prompt determination. *See Vance v. Montgomery Cnty. Dep't of Hum. Res.*, 693 So. 2d 493, 495 (Ala. Civ. App. 1997) ("[A] petition for a writ of mandamus to compel DHR to make its decision would be appropriate.").

"Only *after* the appeals tribunal has issued a final 'decision allowing or disallowing a claim for benefits' can the losing party appeal that decision to a circuit court"—the trial court of general jurisdiction in Alabama. Pet.App.8a (quoting Ala. Code § 25-4-95). The Labor Secretary must provide the circuit court all "documents and papers introduced in evidence before the Board of Appeals or appeals tribunal, together with the findings of fact and the decision of the Board of Appeals or the appeals tribunal, as the case may be." Ala. Code § 25-4-95.

The circuit court may not consider the appeal unless the appellant "has exhausted his administrative remedies." *Id.* If she has, she is entitled to a trial de novo. *Id.* That trial "shall be given precedence over all other civil cases except" those involving workers' compensation. *Id.* Appeals are available "in the same manner as is provided in civil cases." *Id.*

2. The federal government provides funds for use by state unemployment compensation programs. *See*

42 U.S.C. §§ 501, 502, 1101(c)(1). These funds are conditioned on States' unemployment compensation laws meeting certain criteria. *Id.* §§ 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 payment to those States. *Id.* § 502.

The U.S. Secretary of Labor is likewise prohibited from certifying payments to be made to States with unemployment compensation laws that do not meet those criteria. *Id.* § 503. One criterion requires that the state law provide for "[s]uch methods of administration ... as are found by the [U.S.] Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due." *Id.* § 503(a)(1). The U.S. Department of Labor interprets § 503(a)(1) to require "the greatest promptness that is administratively feasible," acknowledging that such determination depends upon circumstances that may be beyond a State's control. 20 C.F.R. § 640.3.

If a State fails to comply with § 503(a), § 503(b) provides a procedure by which the U.S. Secretary of Labor may (after notice and a hearing) suspend payments to the State. The State may seek review of such suspension by filing a petition in either its geographic circuit court of appeals or the D.C. Circuit Court of Appeals, and may subsequently seek further review from the U.S. Supreme Court. 42 U.S.C. § 504. The statute provides no other means for enforcing compliance with the criteria provided in § 503(a).

B. Unemployment Claims Skyrocket Because of the COVID-19 Pandemic.

Data from the U.S. Department of Labor show that in 2018 and 2019, Alabama was one of the top performing states in its region on numerous core measures of efficiency for processing requests for unemployment benefits. *See* C.195-200.[1] ADOL's job was easier before the pandemic. In May 2019, for example, ADOL received 737 claims for unemployment benefits. Pet.App.2a. But in May 2020, with the COVID-19 pandemic raging, ADOL received more than five times that amount. C.62-63. From April 1, 2020, to March 14, 2022, ADOL received almost 1.5 million unemployment claims, over 1 million of which were COVID related. C.63; *see also* Pet.App.2a. "Unsurprisingly, the Department struggled to process the additional million-plus applications in a timely fashion." Pet.App.2a.

Making matters worse, ADOL faced staffing shortages. C.63. ADOL struggled to replace retired employees. *Id.* And it struggled to hire additional, temporary employees to help ADOL catch up on the extra claims. *Id.*

C. Petitioners Sue Before Completing ADOL's Administrative Process.

Petitioners sued Alabama's Secretary of Labor in February 2022. Petitioners were at various stages of the administrative process, and they sought numerous forms of relief:

---

[1] "C." refers to the clerk's record filed with the Alabama Supreme Court.

(1) a permanent injunction directing Secretary Washington to "promptly make decisions on all applications" for unemployment compensation; (2) a preliminary injunction directing Secretary Washington to "issue an initial nonmonetary decision within the next ten days to every plaintiff who has not yet received a decision"; (3) a permanent injunction directing Secretary Washington to "pay every [unemployment-benefit] claim that has been approved within two days of the date of approval"; (4) a permanent injunction requiring Secretary Washington to provide any claimants who request a hearing confirmation of the request and to "schedule a date not more than 90 days later than the request for the hearing"; (5) a preliminary injunction directing Secretary Washington to "provide within ten days a hearing date for each of the plaintiffs who have requested a hearing"; (6) a permanent injunction directing Secretary Washington to provide "all information about the unemployment compensation program and all notices to claimants using language and format making them easily read and understood by people with an eighth grade education"; (7) a preliminary injunction compelling Secretary Washington "within two weeks to file a plan for rewriting notices and information sheets to ensure that they can be easily read and understood by people with an eighth grade

> education"; and (8) an order awarding the plaintiffs attorney fees.

Pet.App.3a-4a.

Petitioners sued under 42 U.S.C. § 1983, alleging procedural due process and Social Security Act violations. *Id.* at 3a-4a.

Their due process claims appear to have been founded primarily on allegations that ADOL provided inadequate notice and opportunity to be heard to claimants whose applications were not processed quickly enough or whose benefits were terminated. *See* C.35-36. Petitioners' Social Security Act claims alleged that Secretary Washington's delays in processing their claims violated 42 U.S.C. § 503(a)(1)'s requirement that ADOL's procedures be "reasonably calculated to insure full payment of unemployment compensation when due." *See* C.35-36.

D. The Alabama Trial Court Dismisses Petitioners' Complaint and the Alabama Supreme Court Affirms.

The Secretary moved to dismiss Petitioners' complaint on several grounds, including that the court lacked jurisdiction because Petitioners did not exhaust administrative procedures and appeal to the circuit court from an appeals tribunal final ruling. C.50. Petitioners' sole response was that Alabama law did not require them to exhaust procedural challenges to ADOL's actions. C.118. The trial court dismissed Petitioners' complaint without specifying the grounds for its decision. Pet.App.5a.

Petitioners appealed to the Alabama Supreme Court. Their opening brief raised only one argument regarding the unemployment statute's exhaustion requirement: that the exhaustion requirement applies only "to ADOL's *substantive* decisions," not Petitioners' challenge "to ADOL's delays in *processing* plaintiffs' claims." Op. Br. 37.

The Secretary responded that both sorts of claims could be and must be raised in administrative proceedings, and that Petitioners' decision to skip administrative steps meant that the state courts lacked jurisdiction to hear their claims. Resp. Br. 44-45.

Only then, in reply, did Petitioners assert a short but sweeping argument based solely on this Court's decision in *Patsy v. Board of Regents of the State of Florida*, 457 U.S. 496 (1992). In Petitioners' view, *Patsy* "categorically rejected" any state-law "administrative exhaustion" requirement for § 1983 claims, whether the claims were filed in federal or state court. Reply Br. 16.

The Alabama Supreme Court affirmed the dismissal of Petitioners' claims. The bulk of the majority opinion addressed whether "the Legislature ha[d] prohibited courts from exercising jurisdiction over unexhausted claims related to a plaintiff's pursuit of unemployment-compensation benefits." Pet.App.6a. The court concluded that the Petitioners' claims were barred by state law. *Id.* at 6a-10a.

The court then addressed Petitioners' *Patsy* argument. *Id.* at 11a. The court rejected Petitioners' contention that *Patsy* "'categorically rejected'" "any and all independent exhaustion requirements found in

State law" as "unconstitutional." *Id.* The court noted that "*Patsy* held only that the text of 42 U.S.C. § 1983, a federal statute, lacks an exhaustion requirement." *Id.* And the court noted that *Patsy* did not involve "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 then opined that even if § 1983 were to "preempt[] any and all independent exhaustion requirements found in State law," it would not follow that state courts could be forced "to adjudicate federal claims that lie outside the State courts' jurisdiction." *Id.* The Alabama Supreme Court thus affirmed the dismissal of Petitioners' complaint because the court had "no power to address the merits of those claims." *Id.* at 12a.

Justice Cook dissented. In his view, Petitioners' claims did not have to first be adjudicated in the administrative process because they sought only "procedural relief." *Id.* at 15a-19a. Under his interpretation of § 25-4-95, the statute did not "strip jurisdiction from Alabama's circuit courts" for Petitioners' claims, and he was "not convinced that it could do so." *Id* at 20a.

REASONS FOR DENYING THE WRIT

I. The *Patsy* Question Petitioners Presented To The Alabama Supreme Court Does Not Warrant Review.

Before the Alabama Supreme Court, Petitioners presented a simple, sweeping, and flawed argument: That *Patsy v. Board of Regents of the State of Florida*, 457 U.S. 496 (1992), "categorically rejected" the notion

that state-law administrative exhaustion requirements could limit a state court's jurisdiction over § 1983 claims. Reply Br. 16. The Alabama Supreme Court correctly recognized that *Patsy* held no such thing. Petitioners assert that *Patsy* created a "general rule that exhaustion of state administrative remedies is not required for § 1983 suits," which "applies equally to suits brought in state court." Pet.13. But *Patsy* focused solely on "the paramount role Congress has assigned to the *federal* courts to protect constitutional rights" through § 1983. 457 U.S. at 500 (emphasis added) (quoting *Steffel v. Thompson*, 415 U.S. 452, 472-473 (1974)). Thus, there can be no quibbling with the Alabama Supreme Court's conclusion that *Patsy* "did not hold that State laws requiring administrative exhaustion as a prerequisite to State-court jurisdiction are unconstitutional." Pet.App.11a.

In *Patsy*, the Court considered the text and history of § 1983 to determine whether federal courts had erred when they "judicially imposed" an exhaustion requirement on § 1983 plaintiffs. 457 U.S. at 502. The court of appeals had looked to "policy arguments in favor of an exhaustion requirement" when concluding that "a 'flexible' exhaustion rule" could be imposed on a § 1983 plaintiff filing in federal court. *Id*. at 499.

This Court reversed, refusing to "judicially impose[]" such a requirement. *Id.* at 502. The Court reached that conclusion for a few reasons. First, the "recurring themes in the debates" around the enactment of § 1983's precursor showed that the statute, born out of distrust of state courts, was supposed to allow these claims in federal court immediately and allow plaintiffs to avoid state processes if they desired.

See id. at 503-07. Second, Congress expressly required exhaustion for certain § 1983 claims, implying that courts shouldn't create additional exhaustion requirements for others. *See id.* at 507-12 (discussing 42 U.S.C. § 1997e). Third, the "difficulty of the[] policy considerations" around exhaustion requirements and "Congress' superior institutional competence" to weigh them "suggest[ed] that legislative not judicial solutions are preferable." *Id.* at 513. In short, "[b]ased on the legislative histories" of § 1983 and § 1997e, the Court decided it should not itself require § 1983 plaintiffs to seek state relief before going to federal court. *Id.* at 516.

Nothing in *Patsy* "suggested that the same result would apply in § 1983 litigation brought in state court." Pet.13. To the extent *Patsy* mentioned state courts at all, it was to emphasize that § 1983's proponents wanted § 1983 cases adjudicated *outside* state courts on the belief "that federal courts would be less susceptible to local prejudice and to the existing defects in the factfinding processes of the state courts." *Patsy*, 457 U.S. at 506; *see also id.* at 505 n.7 (noting that opponents of § 1983 complained that it "does not even give the State courts a chance to try questions"). Preemption of state laws was never at issue in *Patsy*. And the Alabama Supreme Court was correct to conclude that a decision that has nothing to do with preemption did not preempt Alabama's law. Petitioners have not identified an error in the court's consideration of their original argument or a meaningful divide of authority on the issue that would require this Court's review.

II. The Preemption Question Petitioners Now Present To This Court Was Not Presented Below And Does Not Warrant Review.

A. Having failed on their *Patsy* argument below, Petitioners present this Court a new question. They now appear to assert that decisions from this Court since *Patsy* have established that § 1983 preempts any requirement that a plaintiff first submit her claim for agency review before obtaining judicial review in state court. *See* Pet. 14-18.

But because this Court typically does "not decide in the first instance issues not decided below," *Zivotofsky ex rel. Zivotofsky v. Clinton*, 566 U.S. 189, 201 (2012), it should not grant certiorari here. Petitioners never even mentioned the word "preemption" in their lower court briefing, much less this Court's decisions in *Felder v. Casey*, 487 U.S. 131 (1988), *Howlett ex rel. Howlett v. Rose*, 496 U.S. 356 (1990), or *Haywood v. Drown*, 556 U.S. 729 (2009). And due to the late-breaking nature of Petitioners' arguments, the Court is "without the benefit of thorough lower court opinions" assessing those decisions "to guide [the Court's] analysis of the merits." *Zivotofsky*, 566 U.S. at 201. If that is reason not to pass on an argument *after* certiorari has been granted, then it is also reason not to grant certiorari in the first place. *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. In any event, the post-*Patsy* decisions from this Court that Petitioners now rely on do not establish a categorical preemption rule. Quite the contrary.

States "have great latitude to establish the structure and jurisdiction of their own courts." *Howlett*, 496 U.S. at 372. Thus, "[w]hen a state court refuses jurisdiction because of a neutral state rule regarding the administration of the courts," this Court "act[s] with utmost caution before deciding that it is obligated to entertain the claim." *Id.* This Court has not "decide[d] 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, but the "normal presumption against pre-emption" shows that Congress has not rendered every administrative exhaustion requirement a dead letter, *Johnson v. Fankell*, 520 U.S. 911, 918 (1997). Rather, when this Court has considered whether state procedural or jurisdictional rules may apply to § 1983 claims, the Court has engaged in a careful analysis of the challenged law to determine whether it is preempted.

For example, in *Felder v. Casey*, the Court considered a Wisconsin statute governing suits "against any state governmental subdivision, agency, or officer." 487 U.S. at 136. Before suing, "the claimant" was required to (1) provide "written notice of the claim within 120 days of the alleged injury," or show the defendant "had actual notice of the claim and was not prejudiced by the lack of written notice"; (2) "the party seeking redress" had to "submit an itemized statement of the relief sought to the governmental subdivision or agency, which then ha[d] 120 days to grant or disallow the requested relief"; and (3) the plaintiff must have sued the defendant within six months of being notified that the government was not granting

the request. *Id.* at 136-137. This Court considered whether Wisconsin state courts could apply the notice-of-claims statute in § 1983 cases. *Id.* at 137-138.

Instead of determining whether to "judicially impose[]" an exhaustion requirement, *Patsy*, 457 U.S. at 502, the question before the Court was "essentially one of pre-emption": whether the notice-of-claims statute was "an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Felder*, 487 U.S. at 138 (cleaned up).

It was, the Court held, for essentially two reasons. First, the notice-of-claim statute's "purpose and effects" burdened the "remedial objectives of § 1983." *Id.* The statute placed conditions on the availability of a federal remedy to try to "minimize governmental liability." *Id.* at 141. Thus, the "purposes" were the same as those of a "judicial immunity" statute. *Id.* at 142. Second, applying the notice-of-claims statute would "frequently and predictably" yield different outcomes "based solely" on whether the case was in federal or state court. *Id.* at 141.

Felder did not announce a *per se* rule forbidding state courts from requiring exhaustion of state remedies in § 1983 cases. It concluded that the specific notice-of-claims statute at issue in that case was preempted after conducting a granular analysis of the state law and § 1983.

This law-by-law analysis has continued since *Felder*. In *Johnson v. Fankell*, this Court held that federal law did not preempt an Idaho law that, unlike federal law, did not allow officers denied immunity in § 1983 cases to take an interlocutory appeal. 520 U.S.

at 913-914. Idaho's law was "a neutral state Rule regarding the administration of the state courts." *Id.* at 918. It generally permitted appeals only of final judgments, "without regard to the identity of the party seeking the appeal or the subject matter of the suit," although it allowed interlocutory appeals "in certain limited circumstances." *Id.* at 918 n.9.

And the Court reached the opposite conclusion in *Haywood*. There, New York did not allow its trial courts of general jurisdiction to hear damages claims against state corrections officers, including § 1983 claims. 556 U.S. at 733. The rule was not a neutral rule of judicial administration "principally on th[e] basis" that § 1983 made the corrections officers liable for their torts, but New York prevented them from being liable with a statute that—instead of relating to the administration of courts—merely reflected the State's view that those officers should not face personal liability. *Id.* at 736-37. The rule 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 739, because New York would hear other § 1983 claims if they were against a police officer or against a corrections officer for declaratory or injunctive relief. *Id.* at 739-41. The Court deemed the law to be "effectively an immunity statute cloaked in jurisdictional garb." *Id.* at 742.

Thus, this Court's decisions since *Patsy* do not support a categorical rule that all administrative exhaustion requirements have been preempted. As the *Haywood* Court was sure to clarify, any "fear that no state jurisdictional rule will be upheld as

constitutional is entirely unfounded." *Id.* at 741 (internal quotation marks omitted).

C. Alabama Code § 25-4-95 is a "valid excuse" to decline jurisdiction over Petitioners' § 1983 claims. *Haywood*, 556 U.S. at 738. "[A] neutral rule of judicial administration" is "a valid excuse for refusing to entertain a federal cause of action." *Id.* The rule must "reflect the concerns of power over the person and competence over the subject matter that jurisdictional rules are designed to protect." *Id.* at 739 (quoting *Howlett*, 496 U.S. at 381).

Like the final judgment rule in *Johnson*, § 25-4-95 is a neutral rule of judicial administration that coexists alongside § 1983. It limits a court's jurisdiction to hear claims about unemployment benefits whether brought by the Secretary or a claimant. Either way, the court will hear a claim only if the "losing party" appeals a final decision from the appeals tribunal or board of appeals. Pet.App.8a. *See also* Ala. Code § 25-4-95 ("any party" aggrieved by a final decision from the appeals board, including the Secretary, may obtain judicial review). The state law applies to all claims regarding unemployment compensation, *see* Pet.App.8a-10a, instead of "target[ing] civil rights claims against the State." *Johnson*, 520 U.S. at 918 n.9. And it reflects concerns of power over the person and competence over the subject matter to the same extent as the final judgment rule in *Johnson*.

Thus, unlike the statute in *Felder* that was designed to "further the State's interest in minimizing liability and the expenses associated with it," 487 U.S. at 143, Alabama's process for unemployment claimants is designed to promote more efficient review for

claimants by potentially obviating the need for judicial review of simple claims and ensuring that judicial review does not occur in a piecemeal fashion. Moreover, by allowing the agency that processes thousands of unemployment claims to first develop a record before appeal to the generalist circuit court, § 25-4-95 "reflect[s] [the] concerns … of competence over … subject matter that jurisdictional rules are designed to protect." *Haywood*, 556 U.S. at 739 (quoting *Howlett*, 496 U.S. at 381). Unlike the rules at issue in *Haywood* and *Howlett*, § 25-4-95 is a neutral rule of judicial administration and thus a valid excuse for declining jurisdiction over Petitioners' claims.

D. Petitioners assert that state courts have been divided for more than three decades over whether § 1983 preempts state laws that require claims to first be adjudicated by agencies before being considered by state courts. Petitioners point (at 20-23) to several decisions since *Felder* in which state courts have held that state administrative exhaustion requirements were preempted by § 1983, and recognize (at 24) the South Dakota Supreme Court's decision affirming dismissal of a § 1983 claim where the claimant did not follow "the only statute that grants state courts jurisdiction to review school board decisions." *Reiff v. Avon Sch. Dist. No. 4-1*, 458 N.W.2d 358, 360 (S.D. 1990).

But any divergence in how state courts have understood *Felder* does not warrant this Court's review for at least three reasons.

First, as cases like *Felder*, *Johnson*, and *Haywood* demonstrate, the preemption inquiry requires taking each case as it comes, assessing whether the "state law … under the circumstances of the particular case

stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Geier v. Am. Honda Motor Co.*, 529 U.S. 861, 873 (2000) (cleaned up). Whatever a different State's court may have said about a different State's law, this case turns on how the Alabama Supreme Court has interpreted Alabama Code § 25-4-95 alongside § 1983.

Second, the nature of § 1983 claims affects whether an exhaustion requirement would lead to different outcomes for those claims when brought in state versus federal court. For claims like Petitioners', which rest on "procedural, not substantive, grounds," Reply Br. 16, application of an administrative exhaustion requirement will not "frequently and predictably produce different outcomes in federal civil rights litigation based solely on whether that litigation takes place in state or federal court." *Felder*, 487 U.S. at 141. That is because "the existence of state remedies *is* relevant" for "procedural due process claims." *Zinermon v. Burch*, 494 U.S. 113, 125 (1990). There isn't even a cognizable § 1983 claim "unless and until the State fails to provide due process." *Id.* So too for Petitioners' Social Security Act "when due" claims because at most 42 U.S.C. § 503(a)(1) requires States to pay claimants once the State determines they are eligible.

Thus, to determine whether the State violated the Due Process Clause, "it is necessary to ask what process the State provided, and whether it was constitutionally adequate," which includes "examin[ing] the procedural safeguards built into the statutory or administrative procedure of effecting the deprivation, and any remedies for erroneous deprivations provided by statute or tort law." *Zinermon*, 494 U.S. at 126.

Courts time and again have concluded that the availability of additional state process that a § 1983 plaintiff has bypassed can doom his due process claim *See, e.g.*, *Wax 'n Works v. City of St. Paul*, 213 F.3d 1016, 1019 (8th Cir. 2000) ("Under federal law, a litigant asserting a deprivation of procedural due process must exhaust state remedies before such an allegation states a claim under [42 U.S.C.] § 1983.").[2] Here, had Petitioners filed their challenges in federal court, instead of state court, the result would have been the same—their claims would have failed. *See Cotton v. Jackson*, 216 F.3d 1328, 1331 (11th Cir. 2000) ("If adequate state remedies were available but the plaintiff failed to take advantage of them, the plaintiff cannot rely on that failure to claim that the state deprived him of procedural due process."). Thus, in procedural challenges like this one, the question presented is purely academic and not worth this Court's review.

Third, the purported split among state courts is stale. According to Petitioners, the split first opened up thirty-three years ago. Yet this Court has declined to intervene, likely for many of the reasons stated

---

[2] *See also, e.g.*, *Alvin v. Suzuki*, 227 F.3d 107, 116 (3d Cir. 2000) ("[A] procedural due process violation cannot have occurred when the governmental actor provides apparently adequate procedural remedies and the plaintiff has not availed himself of those remedies."); *Mora v. The City of Gaithersburg*, 519 F.3d 216, 230 (4th Cir. 2008) (Section 1983 plaintiff "cannot plausibly claim that Maryland's procedures are unfair when he has not tried to avail himself of them.") *Veterans Legal Def. Fund v. Schwartz*, 330 F.3d 937, 941 (7th Cir. 2003) ("While a plaintiff is not required to exhaust state remedies to bring a § 1983 claim, this does not change the fact that no due process violation has occurred when adequate state remedies exist.").

above. There is no urgent need to address the issue here, particularly where Petitioners raised only *Patsy* below and brought only procedural challenges to the State's administrative procedures.

III. This Case Is A Poor Vehicle For Considering These Largely Academic Questions.

Many of Petitioners' claims are moot, and others will likely become moot before the Court can resolve this case. "[T]his mare's nest could stand in the way of" this Court "reaching the question presented …, or at the very least, complicate [its] resolution of that question." *Arizona v. City & Cnty. of San Francisco, California*, 142 S. Ct. 1926, 1928 (2022) (Roberts, C.J., concurring).

And the practical effect of the Alabama Supreme Court's decision is minimal. Federal courts still hear federal claims, and state courts do too, so long as challenges to the administrative procedures for processing unemployment benefits are first adjudicated by the agency before de novo review by the state courts. Finally, the decision below merely dismissed for lack of jurisdiction, which does not prevent plaintiffs from suing again or from pursuing relief through the procedural mechanisms they skipped over when they instituted this suit.

A. Petitioners' Claims Suffer from Justiciability Problems.

"The Constitution permits this Court to decide legal questions only in the context of actual 'Cases' or 'Controversies.'" *Alvarez v. Smith*, 558 U.S. 87, 92 (2009). The controversy must continue throughout "all stages of review." *Id.* "If an intervening circumstance

deprives the plaintiff of a personal stake in the outcome of the lawsuit, at any point during litigation, the action can no longer proceed and must be dismissed as moot." *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 72 (2013) (citation and punctuation omitted).

As of July 2022, the claims of at least 17 of the original 26 plaintiffs in this lawsuit were moot because they did not have pending administrative proceedings. Seven had already been paid in full; eight had not appealed adverse determinations; and two had hearings scheduled. *See* C.314-18. Without pending administrative proceedings, a court cannot grant them "any effectual relief." *Uzuegbunam v. Preczewski*, 141 S. Ct. 792, 796 (2021).

That was over a year ago. And more are likely to become moot before this Court could decide this case.

B. The Question Presented Has Little Practical Significance.

There will be little practical difference for § 1983 plaintiffs whether they are allowed to skip past administrative law judges and head straight to state courts or whether they must follow state law.

First, anyone in Alabama seeking to sue under § 1983 may sue in federal court, and when enacting § 1983, "the principal remedy Congress chose to provide injured persons was immediate access to *federal* courts." *Felder*, 487 U.S. at 147.

Second, the decision below does not prevent plaintiffs who first bring their claims in state court from getting into federal court. It directs lower courts to dismiss § 1983 claims for lack of jurisdiction, which is

not preclusive. *See Smith v. Neil*, 20 So. 3d 1271, 1276 (Ala. 2009) (dismissal for lack of subject matter jurisdiction is without prejudice). So, after the dismissal, plaintiffs could file in federal court. Or they can wait until the administrative process runs and then appeal a final decision to a state trial court for de novo review. This case is thus not like *Felder* where failure to comply with the rule meant the case was over once and for all.

Third, for procedural challenges like the claims at issue here, failure to exhaust state administrative remedies often will lead to a loss on the merits of the federal claims. *See supra* 17-18. That is so whether the case is in federal or state court.

* * *

In sum, Petitioners ask this Court to grant review of a correct judgment and to extend precedent on issues raised for the first time either in their reply brief to the court below or in their petition for certiorari, and in a case likely to become moot before this Court could resolve the merits. The question presented does not warrant this Court's review—especially not in this case.

CONCLUSION

The Court should deny the petition.

Respectfully submitted,

Steve Marshall
Attorney General
Edmund G. LaCour Jr.
Solicitor General
Counsel of Record
Brenton M. Smith
Assistant Attorney General
Dylan Mauldin
Assistant Solicitor General
STATE OF ALABAMA
OFFICE OF THE
ATTORNEY GENERAL
501 Washington Avenue
P.O. Box 300152
Montgomery, AL 36130-0152
(334) 242-7300
Edmund.LaCour@
AlabamaAG.gov
Counsel for Respondent

NOVEMBER 17, 2023