No. 23-191

IN THE
Supreme Court of the United States

NANCY WILLIAMS, ET AL.,
Petitioners,

v.

FITZGERALD WASHINGTON,
ALABAMA SECRETARY OF LABOR,
Respondent.

On Writ of Certiorari to the
Supreme Court of Alabama

REPLY BRIEF OF PETITIONERS

MICHAEL FORTON
LAWRENCE GARDELLA
FARAH MAJID
CHISOLM ALLENLUNDY
LEGAL SERVICES ALABAMA
2567 Fairlane Drive, Suite 200
Montgomery, AL 20787
(256) 551-2671
mforton@alsp.org

DAVID A. STRAUSS
SARAH M. KONSKY
JENNER & BLOCK SUPREME
COURT & APPELLATE CLINIC
AT THE UNIVERSITY OF
CHICAGO LAW SCHOOL
1111 E. 60th Street
Chicago, IL 60637

ADAM G. UNIKOWSKY
Counsel of Record
ARJUN R. RAMAMURTI
EMANUEL POWELL III
JENNER & BLOCK LLP
1099 New York Ave., NW
Suite 900
Washington, DC 20001
(202) 639-6000
aunikowsky@jenner.com

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Patsy v. Board of Regents, 457 U.S. 496 (1982), and *Felder v. Casey*, 487 U.S. 131 (1988), resolve this case. *Patsy* holds that under 42 U.S.C. § 1983, plaintiffs may go directly to court without exhausting state administrative remedies. *Felder* confirms that *Patsy* applies with equal force in state court. These precedents establish that Alabama's exhaustion requirement is preempted.

Even if *Patsy* and *Felder* were not dispositive, Alabama's arguments would fail. Alabama's exhaustion requirement is incompatible with § 1983. It is not a neutral rule of judicial administration, nor is it insulated from preemption simply because it is considered "jurisdictional." At a bare minimum, exhaustion should not be required on the facts of this case, where petitioners seek to challenge respondent's extreme delay and inadequate notice in processing petitioners' unemployment compensation benefits claims. To protect the ability of civil rights plaintiffs to seek immediate vindication of their federal claims in state court, the Court should reverse the judgment below.

ARGUMENT

I. *PATSY* AND *FELDER* SUPPORT A CATEGORICAL RULE THAT § 1983 PLAINTIFFS NEED NOT EXHAUST STATE ADMINISTRATIVE REMEDIES BEFORE BRINGING SUIT IN STATE COURT.

A. *Patsy* Compels the Conclusion that Exhaustion of State Administrative Remedies Is Not Required in State Court.

Patsy conclusively established that "exhaustion of state administrative remedies should not be required as a prerequisite to bringing an action pursuant to § 1983." 457 U.S. at 516. That interpretation of § 1983 applies in both federal and state court. Just as this Court authoritatively decides the *elements* of a federal cause of action, this Court authoritatively decides the availability of *affirmative defenses* (like administrative exhaustion) to a federal cause of action. *See Howlett ex rel. Howlett v. Rose*, 496 U.S. 356, 375 (1990) ("The elements of, and the defenses to, a federal cause of action are defined by federal law."). If this Court decides that an affirmative defense is or is not available, then it simply is or is not available, period, regardless of whether the adjudicator is a federal judge or a state judge. *See id.* (noting that when a state court determines that "governmental entities subject to § 1983 liability enjoy an immunity over and above those already provided in § 1983, that holding directly violates federal law"); *Martinez v. California*, 444 U.S. 277, 284 (1980) ("It is clear that the California immunity statute does not control this [§ 1983] claim even though the federal cause of action is

being asserted in the state courts."); *Wilson v. Garcia*, 471 U.S. 261, 269 (1985) ("Congress surely did not intend to assign to state courts and legislatures a conclusive role in the formative function of defining and characterizing the essential elements of a federal cause of action.").

Respondent contends that "*Patsy* is *not* a preemption case." Resp. Br. 36. But the fact that the word "preemption" does not appear in *Patsy* is irrelevant. When state courts dismiss federal claims based on defenses that this Court has declared unavailable, their decisions inherently conflict with federal law. For example, *Monell v. New York City Department of Social Services*, 436 U.S. 658 (1978), which rejected certain municipal defenses to § 1983 liability, was not a preemption case. But *Howlett* subsequently made clear that *Monell* bars state courts from applying municipal defenses that, under *Monell*, do not exist. *Howlett*, 496 U.S. at 376 ("[S]ince the Court has held that municipal corporations and similar governmental entities are 'persons,' a state court entertaining a § 1983 action must adhere to that interpretation." (internal citations omitted)). Likewise, *Patsy* bars Alabama from applying an exhaustion defense that, under federal law, is unavailable.

Respondent also seeks to cabin *Patsy*'s holding to "judicially imposed" exhaustion requirements. Resp. Br. 34, 36. But *Patsy* on its own terms dealt with exhaustion requirements imposed by state statutes: the Court rejected the lower court's "flexible" test, which would have permitted imposing an exhaustion

requirement when "an orderly system of review or appeal is provided by statute or agency rule." 457 U.S. at 499.

Rather, *Patsy*'s occasional references to "judicially imposed" exhaustion defenses stem from the fact that § 1983 is a federal statute, and so any exhaustion defense must also be expressly required by a *federal* statute—as is the case, for example, in 42 U.S.C. § 1997e. 457 U.S. at 508 (stating that a "judicially imposed exhaustion requirement would be inconsistent with *Congress*' decision to adopt § 1997e and would usurp policy judgments that *Congress* has reserved for itself" (emphases added)). And that remains true regardless of whether the case is heard in state or federal court. For this reason, only *Congress* can carve out an exception to § 1983's no-exhaustion rule. *See, e.g.*, 457 U.S. at 501, 502 n.4, 505, 515; *see also id.* at 517 (O'Connor, J., concurring) ("[F]or the reasons set forth in the Court's opinion, this Court already has ruled that, in the absence of additional *congressional* legislation, exhaustion of administrative remedies is not required in § 1983 actions." (emphasis added)). Later cases interpreting *Patsy* also confirm that any exception to § 1983's no-exhaustion rule is "best left to 'Congress' superior institutional competence.'" *Felder*, 487 U.S. at 149 (citation omitted); *id.* (Wisconsin's "dispute resolution system may have much to commend it, but that is a judgment the current Congress must make"); *id.* (noting *Patsy* "refused to engraft an exhaustion requirement onto another type of § 1983 action where Congress had not provided for one"); *Howlett*, 496 U.S. at 383 (noting that additional, state requirements conflicting with § 1983 would allow States

to "nullify for their own people the legislative decisions that Congress has made on behalf of all the People").

Respondent offers the creative argument that a state administrative proceeding constitutes a "proper proceeding for redress" as that term is used in § 1983. Resp. Br. 1, 10, 14-15. This argument is incompatible with *Patsy*, which characterizes state administrative proceedings as *barriers* to accessing § 1983's remedy, not as proceedings to *vindicate* § 1983's remedy. Moreover, respondent misconstrues § 1983's text. As originally set forth, this phrase plainly referred to a judicial proceeding. *See* Civil Rights Act of 1871, ch. 22, § 1, 17 Stat. 13 (referring to "other proper proceeding for redress; *such proceeding* to be prosecuted in the several district or circuit courts of the United States" (emphasis added)). Moreover, § 1983 also states that the defendant "*shall be liable to the party injured* in an action at law, suit in equity, or other proper proceeding for redress." The phrase "shall be liable" contemplates that a third-party neutral will hold the defendant liable to the plaintiff. This does not occur in a state administrative proceeding, in which the agency itself decides whether to grant benefits to the claimant.

Finally, respondent criticizes *Patsy*'s reasoning at length. The Court should decline to entertain respondent's effort to unsettle that landmark precedent. *Patsy* itself reaffirmed decades of this Court's prior precedent. 457 U.S. 500; *see also id.* at 517 (White, J., concurring in part). This Court perceived *Patsy*'s rule as sufficiently well-settled that it very recently issued a summary reversal in *Pakdel v. City & County of San*

Francisco, 594 U.S. 474 (2021) (per curiam). And not only has the Court repeatedly reaffirmed *Patsy*, but it has also relied on *Patsy* to justify substantial bodies of its case law. For example, *Patsy*'s guarantee of a federal forum without an exhaustion requirement was the basis of this Court's decision overruling prior precedent in *Knick v. Township of Scott*, 588 U.S. 180, 185 (2019). As another example, *Heck v. Humphrey*, 512 U.S. 477 (1994), which has spawned a large body of law, was largely premised on the need to establish a legal standard that accommodated *Patsy*'s no-exhaustion requirement, *id.* at 480-81.

Respondent's specific objections regarding *Patsy* do not warrant a new approach. Respondent criticizes petitioners for drawing on *Patsy*'s reliance on legislative history. Resp. Br. 16, 34. But *Patsy* itself made clear that it "d[id] not rely exclusively on this legislative history in deciding the question presented." 457 U.S. at 507.

Respondent also argues that the distrust of state factfinding processes *Patsy* gleaned from § 1983's legislative history refers only to a distrust of local courts and local juries, not state agencies. Resp. Br. 36. But the primary lesson that *Patsy* drew from that history was congressional distrust of state *administrative* exhaustion provisions, stating that the "perceived defect in the States' factfinding processes" is "particularly relevant to the question of exhaustion of *administrative* remedies" because "exhaustion rules are often applied in deference to the superior factfinding ability of the relevant administrative agency." 457 U.S. at 506

(emphasis added). Given that conclusion, respondent's suggestion that Congress would be agnostic as between state agencies and state courts does not withstand scrutiny—particularly when Congress has ensured plaintiffs can choose to pursue their § 1983 claims in state court. *See* 457 U.S. at 506 (noting that a "feature of the debates *relevant to the exhaustion question* is the fact that many legislators [in 1871] interpreted the bill to provide dual or concurrent forums in the state and federal system, enabling the plaintiff to choose the forum in which to seek relief" (emphasis added)). And, contra respondent's assertion (Resp. Br. 35), the fact that the enacting Congress recognized state courts may apply differing procedures than federal courts "in no way suggests that all *future* state-court procedures, including exhaustion requirements that were unheard of at the time of § 1983's enactment and which apply only to injuries inflicted by the very targets of that statute, would similarly be consistent with the purposes and intent of the federal civil rights laws." *Felder*, 487 U.S. at 147 n.4.

Respondent also objects to petitioners' reliance on the text of § 1997e to discern § 1983's meaning. Resp. Br. 34. But that was an element of *Patsy*'s reasoning, and an entirely reasonable one: the Court examined a statutory exception to determine the otherwise applicable no-exhaustion rule. *Cf. Felder*, 487 U.S. at 148-49 (noting that in § 1997e, "Congress established an exhaustion requirement for a specific class of § 1983 actions," and "in so doing, Congress expressly recognized that it was working a change in the law"). This technique for determining statutory meaning is

hardly unusual. *See, e.g.*, *Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018) (holding that the "express exception to detention" outlined in 8 U.S.C. § 1182(d)(5)(A) "implies that there are no *other* circumstances under which aliens detained under [8 U.S.C.] § 1225(b) may be released").

In sum, the Court should adhere to *Patsy*—and *Patsy*'s binding interpretation of § 1983 categorically forbids exhaustion requirements in § 1983 suits.

B. *Felder* Confirms that State Administrative Exhaustion Requirements Are Preempted by § 1983.

In *Felder*, this Court confirmed that *Patsy*'s categorical rule applies to preempt exhaustion requirements in state court. Much of respondent's brief reflects an effort to avoid *Felder*'s result by discussing preemption from first principles. Resp. Br. 14-21. But this Court has already conducted that first-principles analysis: *Felder* explicitly frames the inquiry as "one of pre-emption." 487 U.S. at 138. And *Felder* expressly holds that § 1983 *does* preempt state law in a range of circumstances that easily encompass this case.

An analysis of *Felder*'s structure confirms this point. The bulk of *Felder*'s reasoning is located in Part II-B, which is divided into three parts. Part II-B-1 explains that Wisconsin's notice-of-claim scheme is "incompatible with the compensatory goals of the federal legislation." *Id.* at 143. Part II-B-2 responds to the argument that Wisconsin's notice-of-claim requirement is justified by "[s]ound notions of public administration." *Id.* at 145.

Finally, Part II-B-3 concludes that Wisconsin's notice-of-claim requirement imposes an exhaustion requirement and is hence subject to *Patsy*'s rule. *Id.* at 146-50.

Part II-B-3 holds, without any qualification whatsoever, that *Patsy*'s no-exhaustion rule applies in state court. Respondent's theory is that state courts should apply a kind of skim-milk version of *Patsy*: according to respondent, *all* exhaustion requirements are preempted in federal court, but only some limited class of exhaustion requirements are preempted in state court. But there is simply no way to read this dilution of *Patsy*'s rule into Part II-B-3. Every single sentence in Part II-B-3 applies with *identical* force to this case as it did to the statute at issue in *Felder*.

Specifically, in Part II-B-3, the Court observed that the notice-of-claim provision "imposes an exhaustion requirement." 487 U.S. at 146. The Court then cited *Patsy* for the proposition that "plaintiffs need not exhaust state administrative remedies before instituting § 1983 suits in federal court." *Id.* at 147. The Court acknowledged the Wisconsin Supreme Court's theory—identical to respondent's theory—that *Patsy* is "inapplicable to this state-court suit" because "States retain the authority to prescribe the rules and procedures governing suits in their courts." *Id.* But, the Court categorically held, "that authority does not extend so far as to permit *States* to place conditions on the vindication of a federal right." *Id.* (emphasis added).

Felder then explained, quoting *Patsy*, that "there is simply no reason to suppose that Congress meant 'to provide … individuals immediate access to the federal courts notwithstanding any provision of state law to the contrary,' yet contemplated that those who sought to vindicate their federal rights in state courts could be required to seek redress in the first instance from the very state officials whose hostility to those rights precipitated their injuries." *Id.* (quoting *Patsy*, 457 U.S. at 504).

That reasoning ends this case: it applies to *all* exhaustion requirements that States impose, not just the specific requirement at issue in *Felder*. As recounted in the petition for certiorari, nearly every state high court faced with the question understood this consequence in the years after *Patsy* and *Felder*, and applied those cases to find state administrative exhaustion requirements preempted with respect to § 1983 suits. *See* Pet. for Cert. 20-23 (collecting cases from 11 States and the District of Columbia); *see also* Pet. App. 22a-23a (dissent below citing cases from Montana, Connecticut, Alaska, Kansas, and Colorado).

To the extent *Felder* was a difficult case, it was because there was a threshold debate over whether the notice-of-claim requirement even *was* an exhaustion requirement within *Patsy*'s meaning. In particular, the *Felder* defendants argued that the exhaustion requirement was "*de minimis*" and entailed "none of the additional expense or undue delay typically associated with administrative remedies." 487 U.S. at 148. This argument resembles respondent's argument that

Patsy's no-exhaustion rule should not always apply in state court. *Felder*'s reasoning in rejecting that argument is dispositive in this case as well. The Court explained that the "dominant characteristic of civil rights actions" is that "*they belong in court*." *Id.* (quotation marks omitted). "These causes of action … exist independent of any other legal or administrative relief that may be available as a matter of federal or state law. They are judicially enforceable *in the first instance*." *Id.* (quotation marks omitted). And, the Court continued, the "dominant characteristic of a § 1983 action, of course, does not vary depending upon whether it is litigated in state or federal court." *Id.* There is simply no wiggle room in this reasoning that allows respondent to exempt Alabama's exhaustion requirement from *Felder*'s holding. In any case, as petitioners—almost all of whom have been trapped in administrative purgatory for four years and counting—can recount, Pet. Br. 6-10, Alabama's exhaustion requirement is not "*de minimis*."

Respondent's remaining arguments seek to leverage other aspects of the Wisconsin scheme that are not present in the Alabama scheme. Resp. Br. 38-39. This Court addressed those features of Wisconsin's law in Parts II-B-1 and II-B-2 of its opinion, which did not turn on characterizing Wisconsin's law as an exhaustion requirement. And those features have no effect on the reasoning of Part II-B-3 of *Felder*, which, again, commands that civil rights actions "belong in court" and are "judicially enforceable *in the first instance*." 487 U.S. at 148 (quotation marks omitted). The fact that the Wisconsin statute included additional inconsistencies

with § 1983 does nothing to mitigate the core fact that state administrative exhaustion requirements are preempted by § 1983.

In short, *all* exhaustion requirements share the features that *Felder* identified as determining the preemption question: they burden federal rights and produce different outcomes based solely on where the suit is filed. *Id.* at 141. For this reason, a categorical rule with respect to exhaustion is warranted. This is not to say that case-by-case analysis is not warranted as a general matter in preemption cases, *cf.* Resp. Br. 19, nor that case-by-case analysis is not warranted with respect to novel state laws that raise other potential conflicts with § 1983, *cf.* Resp. Br. 40-43. But exhaustion is one such case, and the Court has already categorically concluded that § 1983 preempts such requirements.

II. EVEN IF ALL STATE ADMINISTRATIVE EXHAUSTION REQUIREMENTS ARE NOT PREEMPTED, ALABAMA'S STATUTE IS PREEMPTED.

Patsy and *Felder* hold that *all* state administrative exhaustion requirements are preempted. But even if some state administrative exhaustion requirements could survive preemption, Alabama's could not.

A. Alabama's Exhaustion Provision Is Not a Neutral Rule Reflecting Concerns of Competence Over the Subject Matter.

Respondent argues that Alabama's exhaustion provision is a "neutral rule that reflects concerns of

competence over the subject matter," and therefore provides a "'valid excuse for refusing to entertain a federal cause of action.'" Resp. Br. 22 (quoting *Haywood v. Drown*, 556 U.S. 729, 738 (2009)). According to respondent, Alabama's provision is neutral because it "applies broadly to bar unexhausted claims whether they're brought by the agency, an employer, or a claimant seeking benefits." Resp. Br. 23.

This argument fails at the outset because the Court has already made clear that States cannot apply "their own neutral procedural rules to federal claims," if "those rules are pre-empted by federal law." *Howlett*, 496 U.S. at 372; *see also id.* at 371 ("An excuse that is inconsistent with or violates federal law is not a valid excuse."). And here, *Felder* establishes that the precise kind of state law at issue (an administrative exhaustion requirement) is preempted by § 1983.

In any case, Alabama's exhaustion provision is *not* a neutral rule of judicial administration. The premise of Alabama's argument—that the exhaustion requirement applies equally to the claimant, the employer, and the government—is false. Even if it were true, Alabama's provision would not be neutral for purposes of § 1983. Alabama's exhaustion requirement is nothing like *Felder*'s examples of neutral rules: "rules governing service of process or substitution of parties," which are "uniformly applicable to all suits." 487 U.S. at 145.

1. Alabama's exhaustion requirement protects only governmental defendants.

To begin, Alabama's exhaustion requirement is non-neutral for the same reason that Wisconsin's notice-of-claim requirement was non-neutral: its protection impermissibly "extends only to governmental defendants." *Felder*, 487 U.S. at 144. As applied to the Secretary, the purported "exhaustion" requirement is meaningless.

When a claimant seeks benefits, he is seeking benefits *from the Secretary*. As respondent explains, "the ADOL Secretary"—*i.e.*, respondent himself—"may reconsider any determination until it becomes final." Resp. Br. 5. Alabama's scheme also allows respondent, within the same benefit year, to "reconsider a determination which has become final" when, among other things, "he finds … an error or omission in … [the] computation of benefits." Ala. Code § 25-4-91(b)(1). Thus, the whole concept of exhaustion is incoherent as applied to respondent: he personally has the unilateral authority to reconsider any benefits determination.

Respondent observes that Alabama's statute then provides for "appeals tribunals." Resp. Br. 5 (citing Ala. Code § 25-4-92(a)). But the "appeals tribunals" are "a separate division *reporting to the secretary*." Ala. Code § 25-4-92(a) (emphasis added). Again, this is not a remedy the Secretary must *exhaust*; the Secretary's direct reports are the *decisionmakers*.

If the claimant is dissatisfied with the appeals tribunal's decision, the claimant may appeal to the Board

of Appeals. *Id.* § 25-4-94. True, if the claimant prevails in the Board of Appeals, the Secretary can take the claimant to court. *Id.* § 25-4-95. But that is not an "exhaustion" requirement as applied to the Secretary. Before the Board of Appeals rules, the Secretary would never have any reason to appeal anything, given that the Secretary himself is in control of benefits determinations up until the very last step. Thus—as petitioners' opening brief explained, and as respondent does not meaningfully dispute—"the Secretary would have a reason to sue only if the claimant prevails in the very administrative process the claimant is required to exhaust." Pet. Br. 31.

Apparently recognizing this point, respondent illustrates the Secretary's exhaustion obligation in two sentences: "If claimants procure benefits by fraud or are otherwise overcompensated, the State is entitled to recoup those wrongly awarded funds. In that scenario, the government must exhaust too." Resp. Br. 23. No citation to state law is provided, and for good reason. State law explicitly provides that if the Secretary detects fraud, then the Secretary may *unilaterally* withdraw benefits. Ala. Code § 25-4-145(a)(3) ("If *the Secretary* finds that any fraudulent misrepresentation has been made by a claimant with the object of obtaining benefits under this chapter to which he or she was not entitled," then "*the Secretary* may make a determination that [certain benefits may be deducted]."); *see also id.* § 25-4-91(b)(1) ("[T]he Secretary may, within one year after the end of such benefit year, reconsider any determination which has become final and issue a redetermination upon a finding that the determination

was based on false statements or misrepresentation of material facts, whether or not intentional."). Alabama law further states that the "*claimant*" may appeal a decision to withdraw benefits based on fraud. Ala. Code § 25-4-145(a)(3). This is a *completely* one-sided exhaustion requirement: the Secretary acts unilaterally, but the claimant must exhaust.

In short, the purportedly "neutral" nature of this exhaustion requirement is smoke and mirrors. For all practical purposes, it *never* applies to the Secretary.

2. Even if the Secretary had to exhaust, the exhaustion requirement still would be non-neutral.

Even if there were some theoretical scenario in which the Secretary would have to exhaust, Alabama's law still would not be "neutral." Alabama's law has the same basic characteristic as the notice-of-claim statute in *Felder*: the claimant must present his claim to the Secretary, but not vice versa. Remember how it works: The claimant asks the Secretary for benefits, and if he does not receive them after exhausting administrative remedies, he sues the Secretary. The Secretary never asks a claimant for anything. This is not "neutral." The claimant clearly faces obligations that the Secretary does not.

Additionally, Alabama's exhaustion requirement flunks the requirement that the rule "generally" apply "without regard to the identity of the party … or the subject matter of the suit." *Johnson v. Fankell*, 520 U.S. 911, 918 n.9 (1997). Alabama's statute applies *only* to one

narrow category of cases arising when citizens seek benefits from the government. As such, the statute is not remotely comparable to *Felder*'s examples of neutral rules: "rules governing service of process or substitution of parties," which are "uniformly applicable to all suits." 487 U.S. at 145. Respondent's own examples of residency requirements, non-unanimous jury verdicts, and seven-member juries also apply uniformly across all suits, which Alabama's requirement emphatically does not. Resp. Br. 22; *see generally Howlett*, 496 U.S. at 374-75 (describing such cases).[1]

Johnson is unhelpful to respondent. In *Johnson*, this Court held that Idaho Appellate Rule 11(a)(1)—a general provision regarding the availability of interlocutory appeal—was a neutral rule. 520 U.S. at 918. The Court emphasized that the bar on interlocutory appeals applied "without regard to … the subject matter of the suit," *id.* at 918 n.9—which is plainly not the case here. *Johnson* is further distinguishable for the reasons set forth in petitioners' opening brief: (1) the source of the federal right to interlocutory appeal comes from 28 U.S.C. § 1291, not § 1983; and (2) application of Idaho's rule did not result in dismissal, whereas application of Alabama's rule does. 520 U.S. at 920-22.

Respondent emphasizes that Alabama's law "applies equally to state and federal law claims" and does not "'target civil rights claims.'" Resp. Br. 2, 23 (quoting *Johnson*, 520 U.S. at 918 n.9). That was also true in

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[1] Another example is a general rule requiring suits be filed in the trial court before the Supreme Court of Alabama. Resp. Br. 2, 32; *cf. Herb v. Pitcairn*, 324 U.S. 117, 123 (1945).

Felder, in which the notice-of-claim requirement applied to all claims against local governments, whether state or federal. 487 U.S. at 145 (noting that the notice-of-claim requirement applies to all plaintiffs "who sue governmental defendants"). *Felder* disposes of Alabama's argument: "Although it is true that the notice-of-claim statute does not discriminate between state and federal causes of action against local governments, the fact remains that the law's protection extends only to governmental defendants and thus conditions the right to bring suit against the very persons and entities Congress intended to subject to liability." *Id.* at 144-45. *Haywood* reached the same conclusion: "Ensuring equality of treatment is … the beginning, not the end of the Supremacy Clause analysis," and "equality of treatment does not ensure that a state law will be deemed a neutral rule of judicial administration and therefore a valid excuse for refusing to entertain a federal cause of action." 556 U.S. at 738-39. Thus, Alabama's exhaustion requirement is not a neutral rule exempt from § 1983 preemption.

B. The Jurisdictional Label Neither Insulates Alabama's Scheme Nor Raises Constitutional Concerns.

Respondent also claims that the "jurisdictional nature of Alabama's exhaustion provision sets it apart from procedural rules that may be more readily preempted by § 1983." Resp. Br. 25. But as this Court has recognized, "[t]he force of the Supremacy Clause is not so weak that it can be evaded by mere mention of the word 'jurisdiction.'" *Howlett*, 496 U.S. at 382-83. This Court specifically recognized that this principle holds

true in the context of *Felder*'s state exhaustion requirement. As the Court explained, if this principle did not apply, the "State of Wisconsin could overrule our decision in *Felder* … by simply amending its notice-of-claim statute to provide that no state court would have jurisdiction of an action in which the plaintiff failed to give the required notice." *Id.* at 383.

More generally, the "fact that a rule is denominated jurisdictional does not provide a court an excuse to avoid the obligation to enforce federal law if the rule does not reflect the concerns of power over the person and competence over the subject matter that jurisdictional rules are designed to protect." *Id.* at 381. Alabama's law is neither; rather, it reflects the State's own policy assessment of when plaintiffs should be permitted access to a judicial forum, in conflict with the categorical rule Congress set forth. *Cf. Haywood*, 556 U.S. at 739 (noting that a "jurisdictional rule cannot be used as a device to undermine federal law, no matter how evenhanded it may appear").

Respondent also argues that "statutes that prevent courts from applying § 1983 at all cannot undermine its 'uniform application,'" contrasting Alabama's scheme with a "procedural rule [that] is more likely to operate as a 'substantive' burden on federal rights," and be disruptive to "'intrastate uniformity.'" Resp. Br. 25-26 (quoting *Felder*, 487 U.S. at 152-53). This amounts to saying that Alabama's exhaustion requirement is justified precisely because its effect is so drastic. A regime in which *all* § 1983 suits may be brought in federal court without exhaustion and *no* § 1983 suits may

be brought in state courts within the same State without exhaustion is plainly disruptive to "intrastate uniformity."

Respondent further defends his "jurisdictional[]" rule on the ground that "[p]laintiffs are free to reassert their claims in an appropriate forum." Resp. Br. 24. On that basis, respondent insists that the exhaustion requirement is not "outcome-determinative." *Id.*

That argument fails. If this suit had been filed in federal court, it would not have been dismissed. Because the suit was filed in state court, it was dismissed. Because those are different outcomes, the exhaustion requirement is outcome-determinative. *Felder*'s reasoning is again dispositive: although dismissals for failure to satisfy Wisconsin's notice-of-claim statute were without prejudice,[2] this Court had no difficulty characterizing Wisconsin's statute as outcome-determinative. 487 U.S. at 151. So too here.

In attempting to distinguish *Felder*, respondent states that "[g]iven the 'abbreviated time period' for notice" in *Felder*, "many plaintiffs would 'frequently fail' to comply, so they would frequently lose suits they might have won in federal court." Resp. Br. 39. But the time periods here are more abbreviated than in *Felder*: *Felder*'s notice-of-claim requirement imposed a 120-day

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[2] *See Orthmann v. Apple River Campground, Inc.*, 757 F.2d 909, 911, 916 (7th Cir. 1985); *Felder*, 487 U.S. at 151 (citing *Orthmann*, 757 F.2d at 911). Respondent offers no citation for his assertion that in *Felder*, "the notice-of-claim statute licensed dismissal *with prejudice* for failure to comply." Resp. Br. 25.

deadline, while Alabama requires disappointed claimants to appeal a claim within the agency within 7 days after delivery or 15 days after mailing of an adverse decision, and seek judicial review within 30 days after the board of appeals decision has become final. Ala. Code §§ 25-4-91(d)(1), 25-4-95. Any claimant who misses these deadlines is forever barred from suing the Secretary in state court. Indeed, petitioner Raymond Williams contends that his Due Process right was violated because the administrative deadline came and went while he was on a ventilator—yet the Supreme Court of Alabama dismissed that claim for failure to exhaust. Pet. Br. 38-39.

In any event, "[t]hat state courts will hear the entire § 1983 cause of action once a plaintiff complies with" the state statute "in no way alters the fact that the statute discriminates against the precise type of claim Congress has created." *Felder*, 487 U.S. at 145. Although respondent emphasizes that Alabama's exhaustion requirement does not defeat liability, it does "condition[] the federal right to recover for violations of civil rights" in a manner this Court's precedents forbid. *Id.* at 144.

Haywood, too, rejects the contention that "jurisdictional" rules escape preemption, emphasizing that such a workaround "would provide a roadmap for States wishing to circumvent" the Court's prior § 1983 preemption decisions. 556 U.S. at 742 n.9. Respondent insists that *Haywood* is "distinguishable" because New York's law "evinced hostility to the content of § 1983" and thus reflected a "policy disagreement with federal law" rather than "competence over the subject matter."

Resp. Br. 28 (internal quotation marks omitted). But Alabama's law *does* reflect a "policy disagreement with federal law." Congress enacted § 1983 to ensure "immediate access" to court, *Felder*, 487 U.S. at 147 (quotation marks omitted), with any deviations from that categorical rule left to Congress' policy judgment, *Patsy*, 457 U.S. at 515. Yet here respondent defends Alabama's law by touting the policy benefits of exhaustion, suggesting, for example, that administrative remedies are "designed to help unemployment claimants." Resp. Br. 20. That policy judgment is not one for the State to make.

Finally, contrary to the contentions of respondent and his *amici*, preemption would raise no constitutional concerns. Petitioners are not asking the Court to decide in the first instance "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. Alabama's courts are courts of general jurisdiction open to § 1983 claims as a general matter. *See, e.g.*, *Terrell v. City of Bessemer*, 406 So. 2d 337, 340 (Ala. 1981) ("It has not been decided by … the United States Supreme Court … whether a state court must accept an action under 42 U.S.C. § 1983. … [W]e hold this day that henceforth, courts of this state must accept jurisdiction over claims brought under 42 U.S.C. § 1983, if a § 1983 plaintiff selects a state court as his forum."). Indeed, as respondent emphasizes, Alabama's courts would entertain § 1983 claims against the Secretary, so long as claimants exhaust administrative remedies.

In other words, just as the statute in *Haywood* was "effectively an immunity statute cloaked in jurisdictional garb," *Haywood*, 556 U.S. at 742, Alabama's statute is effectively an exhaustion statute cloaked in jurisdictional garb. Indeed, Alabama's statute says nothing about jurisdiction; it merely directs claimants to exhaust remedies, and the Supreme Court of Alabama has labeled that exhaustion requirement "jurisdictional." Ala. Code § 25-4-95; *cf.* Pet. App. 20a (Cook, J., dissenting) ("The main opinion provides no explanation for why *Patsy*'s direct and broad holding should be overridden without, at least, express statutory language stripping jurisdiction from Alabama courts.").

Therefore, the Court should simply proceed as it has in previous cases. As this Court explained in *Howlett*, cases like the present appeal "do[] not present the question[] whether Congress can require the States to create a forum with the capacity to enforce federal statutory rights." 496 U.S. at 378. Rather, the Court has held that "having made the decision to create courts of general jurisdiction that regularly sit to entertain analogous suits, [states] [are] not at liberty to shut the courthouse door to federal claims" pursuant to discriminatory state laws. *Haywood*, 556 U.S. at 740. Here, having decided to hear every type of § 1983 claim under the sun—including *exhausted* claims against the Secretary—Alabama courts cannot shut their doors to *unexhausted* claims when this Court has already rejected an exhaustion defense. This Court can hold that Alabama's law is preempted without needing to address the more fundamental issue respondent and *amici* raise.

III. AT A MINIMUM, ALABAMA'S EXHAUSTION REQUIREMENT IS PREEMPTED AS APPLIED TO PETITIONERS' CLAIMS.

For the reasons explained in Parts I and II, Alabama's administrative exhaustion defense is preempted in § 1983 cases.

But at a bare minimum, Alabama's administrative exhaustion defense is preempted in *this* § 1983 case. Alabama's application of its administrative exhaustion defense in this case is positively Kafkaesque.[3]

Respondent took months to make determinations on petitioners' claims for unemployment compensation benefits and stopped or denied benefits for some claimed weeks without notice. The absurdity of requiring exhaustion here is apparent: respondent has barred petitioners from challenging his failure to timely resolve petitioners' unemployment compensation claims until that very same untimely process has been completed. Alabama's law therefore "conditions th[e] right to recovery upon compliance with a rule designed to

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[3] Contrary to respondent's claim (Resp. Br. 21), petitioners made this point below. In petitioners' reply brief below, immediately after arguing that Alabama's law was preempted under *Patsy*, petitioners elaborated: "That some plaintiffs might raise due process arguments in a challenge to a final administrative decision does not preclude Plaintiffs from filing this action. [Respondent] suggests that Plaintiffs wait years for ADOL to make those administrative decisions before then challenging the delays and the lack of proper notice through the administrative appeal process. No statute or case law compels this absurd result." Reply Br. 16-17.

minimize governmental liability" because it does not permit petitioners to bring suit until respondent decides to complete the administrative process. *Felder*, 487 U.S. at 153.

Respondent suggests that petitioners could have sought a writ of mandamus to vindicate their state-law right to a prompt determination of their claims. Resp. Br. 4-5, 26 n.4 (citing *Vance v. Montgomery Cnty. Dep't of Human Res.*, 693 So. 2d 493, 495 (Ala. Civ. App. 1997)). This suggestion underscores the lack of neutrality in Alabama's exhaustion requirement: the Secretary would never have any reason to seek mandamus against himself. In any event, mandamus would not have allowed petitioners to assert federal claims; it would only have directed the agency to rule. And mandamus would have been useless for claimants like Raymond Williams, whose claim centers on the fact that he received inadequate notice from the Secretary, not that the Secretary was stalling. Pet. Br. 38-39. Section 1983 is the proper mechanism for petitioners' suit, and they should be permitted to vindicate their federal rights without further delay.

CONCLUSION

The judgment of the Supreme Court of Alabama should be reversed.

Respectfully submitted,

MICHAEL FORTON
LAWRENCE GARDELLA
FARAH MAJID
CHISOLM ALLENLUNDY
LEGAL SERVICES ALABAMA
2567 Fairlane Drive, Suite 200
Montgomery, AL 20787
(256) 551-2671
mforton@alsp.org

DAVID A. STRAUSS
SARAH M. KONSKY
JENNER & BLOCK SUPREME COURT & APPELLATE CLINIC AT THE UNIVERSITY OF CHICAGO LAW SCHOOL
1111 E. 60th Street
Chicago, IL 60637

ADAM G. UNIKOWSKY
Counsel of Record
ARJUN R. RAMAMURTI
EMANUEL POWELL III
JENNER & BLOCK LLP
1099 New York Ave., NW
Suite 900
Washington, DC 20001
(202) 639-6000
aunikowsky@jenner.com