No. 23-191

In the Supreme Court of the United States

NANCY WILLIAMS, ET AL.,

Petitioners,

v.

FITZGERALD WASHINGTON,

ALABAMA SECRETARY OF LABOR,

Respondent.

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF ALABAMA

BRIEF *AMICI CURIAE* OF THE ISLAM AND RELIGIOUS FREEDOM ACTION TEAM AND THE AMERICAN HINDU COALITION IN SUPPORT OF PETITIONERS

NICHOLAS R. REAVES
YALE FREE EXERCISE CLINIC
1919 Pennsylvania Ave.
N.W., Suite 400
Washington, D.C. 20006
nicholas.reaves@yale.edu

LIA M. HIGGINS
SIDLEY AUSTIN LLP
787 Seventh Ave.
New York, NY 10019

BRIAN P. MORRISSEY
Counsel of Record
DANIEL J. HAY
HUNDLEY H. POULSON
SIDLEY AUSTIN LLP
1501 K Street., N.W.
Washington, D.C. 20005
(202) 736 8407
bmorriss@sidley.com

ROBERT C. UHL
SIDLEY AUSTIN LLP
2021 McKinney Ave #2000,
Dallas, TX 75201

Counsel for Amici Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES – continued

TABLE OF AUTHORITIES – continued

TABLE OF AUTHORITIES – continued

STATUTES AND ORDINANCES

TABLE OF AUTHORITIES – continued

TABLE OF AUTHORITIES – continued

INTEREST OF THE *AMICI*[1]

The **Islam and Religious Freedom Action Team (IRF)** of the Religious Freedom Institute amplifies Muslim voices on religious freedom, seeks a deeper understanding of support for religious freedom inside Islamic teachings, and aims to protect Muslims' religious freedom. The IRF engages in research, education, and advocacy on core issues including equal citizenship for diverse faiths and freedom from coercion. The IRF fosters inclusion of Muslims in religious freedom work, including by translation of resources into and out of English.

The **American Hindu Coalition (AHC)** is an apolitical national advocacy organization representing Hindus, Buddhists, Jains, Sikhs, and related members of minority religions that frequently face discrimination and misunderstanding in government administrative proceedings, as their religious practices and beliefs are unfamiliar to mainstream America.

Amici have an interest in ensuring that religious minority communities are able to protect their constitutional rights without facing insurmountable administrative hurdles or outright religious discrimination in state and local administrative proceedings. In particular, minority faiths who lack political power within a community are particularly likely to be the target of pretextual administrative proceedings.

---

[1] No counsel for a party authored this brief in whole or in part and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. This brief is prepared by a clinic operated by Yale Law School but does not purport to present the School's institutional views, if any.

INTRODUCTION

Federal law guarantees that persons of all religions are free to worship according to the tenets of their faith, not the edicts of bureaucrats. Centuries of practice further teaches that state courts are an appropriate forum to seek vindication of those rights. Yet state and local administrative procedures can prove a substantial and often insurmountable burden to religious claimants seeking a state judicial forum. This Court should reverse the decision of the Alabama Supreme Court, and place state-court civil rights plaintiffs on equal footing with those who seek relief in federal court.

If states are allowed to impose their own administrative exhaustion requirements on federal causes of action, state bureaucrats and local administrative bodies could subject religious minorities to overwhelming administrative burdens and effectively block religious claimants from seeking redress for violations of core constitutional rights. This process-as-punishment regime would chill many claimants from seeking redress in state court for clear violations of religious rights and *ex ante* discourage minority religions from freely exercising their religion where local officials are viewed as hostile.

The risk of state administrative process nullifying federally guaranteed religious liberty rights is, sadly, far from hypothetical. Case law and *Amici*'s experience demonstrate how state and local officials strategically employ administrative procedures to discriminate against religious minorities and unpopular forms of religious exercise. These officials wield broad discretion, which can be used to mask decisions based on religious animus. Land use and local zoning decisions provide a ready example of how local governments can

abuse the administrative process to covertly—and in some cases, overtly—discriminate against religious minorities. With nowhere else to turn, subjects of discrimination must rely on the courts for relief. Federal laws like 42 U.S.C. § 1983 and the Religious Land Use and Institutionalized Persons Act (RLUIPA) provide religious minorities necessary protective avenues to litigate their rights and must remain open to these claims.

Congress has decided that claims under section 1983 and RLUIPA may be brought in either federal or state court. An exhaustion requirement that places obstacles at the entrance to the state courthouse—but not its federal counterpart—makes no sense. While Alabama has blithely stated this case has "little practical significance" because "anyone in Alabama seeking to sue under § 1983 may sue in federal court," BIO 20, that is simply not the case. State courts are a critical forum for civil rights claims generally, and free exercise claims specifically.

Even assuming, as Alabama does, that federal court is in theory open to all section 1983 and RLUIPA plaintiffs, but see *infra* Section II.B.a, the exhaustion requirement is at best a trap for the unwary. For example, an uncounseled party may choose to file suit at his or her local state courthouse, unaware that doing so triggers procedural requirements that would not apply in federal court. Even with counseled litigants, a religious community may decide at first to begin the state administrative process, in false hope that local officials will be duly solicitous of their First Amendment rights, and turn to litigation only when the process reveals itself to be unfair. Under Alabama's rule and federal abstention doctrine, the plaintiffs in that

situation could find themselves trapped in a Kafkaesque process that could take years to exhaust and that could result in preclusive factual or legal determinations. In other words, Alabama's exhaustion rule will harm primarily those who need the protection of the courts the most.

Alabama's rule is not merely bad policy; it is unmoored from sound principles of statutory interpretation. Alabama's parsimonious construction of section 1983 stands in stark contrast to this Court's command that "§ 1983 is to be construed generously to further its primary purpose." *Gomez* v. *Toledo*, 446 U.S. 635, 639 (1980). Congress knows how to establish exhaustion requirements—or choose not to. In the present case, Congress neither established an exhaustion requirement nor delegated its authority to the State of Alabama, and it was improper for the Alabama Supreme Court to substitute its judgment for Congress's.

ARGUMENT

I. STATE AND LOCAL ADMINISTRATIVE PROCESS CAN BE WEAPONIZED AGAINST RELIGIOUS MINORITIES.

State and local government officials wield an incredible amount of power, and with that power comes the potential for abuse by unscrupulous officials. In particular, state and local administrative officials, out of their own animus or in furtherance of community sentiment, with great frequency and even greater effect, use process as a pretext to target and discriminate against certain religious groups and exercise practices, inflicting serious harm on believers.

While the potential for religious discrimination in administrative proceedings can arise in many contexts,[2] religious land use and zoning decisions typify the type of highly discretionary, often lengthy and idiosyncratic administrative proceedings most easily subject to abuse by bad actors. See generally Ashira Ostrow, *Judicial Review of Local Land Use Decisions: Lessons from RLUIPA*, 31 Harv. J.L. & Pub. Pol'y 717, 736 (2008) (describing local zoning boards: "because of their small size and homogeneous constituency, local decision making bodies are particularly vulnerable to political capture by a single interest or faction").

Religious communities frequently have to seek special permission to buy, build, or renovate real property. Douglas Laycock & Luke W. Goodrich, *RLUIPA: Necessary, Modest, and Under-Enforced*, 39 Fordham Urb. L.J. 1021, 1030 (2012) ("Zoning ordinances often require churches to obtain a special-use permit, and

---

[2] *See*, *e.g.*, *Church of Lukumi Babalu Aye, Inc.* v. *City of Hialeah*, 508 U.S. 520, 541 (1993) (plurality) (finding "significant hostility exhibited by residents, members of the city council, and other city officials toward the Santeria religion"); *Masterpiece Cakeshop, Ltd.* v. *Colo. Civil Rights Comm'n*, 584 U.S. 617, 634 (2018) ("The neutral and respectful consideration to which Phillips was entitled was compromised here."); *Fellowship of Christian Athletes* v. *San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664, 692 (9th Cir. 2023) (en banc) ("[T]he facts of this case arguably demonstrate animus by government decision-makers exceeding that present in *Masterpiece Cakeshop* or *Lukumi*."); *Tenafly Eruv Ass'n, Inc.* v. *Borough of Tenafly*, 309 F.3d 144, 168 (3d Cir. 2002) ("[T]he Borough's invocation of the often-dormant Ordinance 691 against conduct motivated by Orthodox Jewish beliefs is sufficiently suggestive of discriminatory intent that we must apply strict scrutiny.") (cleaned up).

special-use permits are often subject to vague conditions or to the broad discretion of local officials.").[3] Special permission opens religious communities—especially religious minority communities whose religious practices may be less familiar to or unpopular with the local community—to government discrimination. See *id.* at 1021 ("Churches are often unpopular in the zoning context."); *Islamic Ctr. of Miss., Inc.* v. *City of Starkville*, 840 F.2d 293, 294 (5th Cir. 1988) (highlighting religious discrimination against Islamic Center); *Sts. Constantine & Helen Greek Orthodox Church, Inc.* v. *City of New Berlin*, 396 F.3d 895, 900 (7th Cir. 2005) ("[I]n the case of the grant or denial of zoning variances, a state delegates essentially standardless discretion to nonprofessionals operating without procedural safeguards.").

In the hearings leading up to the passage of RLUIPA, Congress heard testimony confirming both this country's "pervasive land use regulation and the nearly unlimited discretionary power of land use authorities." H.R. Rep. No. 106-219, at 18 (1999). But Congress also heard how zoning boards and other local

---

[3] *See*, *e.g.*, *Tran* v. *Gwinn*, 554 S.E.2d 63, 65 (Va. 2001) (describing Fairfax County zoning administrator's efforts to enjoin a Buddhist monk from using his property for worship services without special use permit); Prince William Cnty., Va., Code § 32-302.04 (religious institutions and places of worship subject to requirement of special use permit in semi-rural residential districts); D.C. Mun. Regs. tit. 11, § 504.1(e) (subjecting "religious program uses" to requirement of special exception and various other conditions in mixed-use zone); Miami-Dade Cnty., Fla., Code § 33-238(29.1) (religious facilities "outside the Urban Development Boundary" in neighborhood business districts "will be permitted only upon approval after public hearing"); Vill. of Atl. Beach (N.Y.) Code § 250-108.1 (prohibiting "religious and educational use[]" without "a special exception permit").

land-use authorities regularly use their "authority in discriminatory ways." 146 Cong. Rec. 16698 (2000). These discriminatory burdens were "often covert" and difficult to detect, *id.* at 16699, because discrimination frequently "lurks behind such vague and universally applicable reasons as traffic, aesthetics," or the especially common claim that a religious community's house of worship is "not consistent with the city's land use plan," *id.* at 16698. Such land-use proceedings, testimony confirmed, were "often vague, discretionary, and subjective." H.R. Rep. No. 106-219, at 24; Laycock & Goodrich, *supra*, at 1022 ("[C]ore First Amendment rights are placed at the mercy of a standardless licensing system that makes it easy for local officials to disguise regulation of churches that is arbitrary, discriminatory, or both.").

Despite Congress's cautionary findings and the passage of RLUIPA, discrimination against religious groups in the land use context has continued. *See* Laycock & Goodrich, *supra*, at 1026-27 (documenting post-RLUIPA hostility toward Muslims seeking to build an Islamic community center and Orthodox Jews requesting to build a yeshiva); see also *Guru Nanak Sikh Soc'y of Yuba City* v. *Cnty. of Sutter*, 456 F.3d 978, 991 (9th Cir. 2006) (explaining how NIMBYism[4] was used to exclude a Sikh temple from the community).

All too often, *Amici* have seen how local governments can hold minority faith communities hostage in administrative proceedings "just by running applicants in infinite circles" rather than granting or denying applications outright. *Israelite Church of God in Jesus*

---

[4] NIMBY is an acronym for "not-in-my-backyard." *See*, *e.g.*, *Ave. 6E Invs., LLC* v. *City of Yuma*, 818 F.3d 493, 498 (9th Cir. 2016).

Christ, Inc. v. *City of Hackensack*, No. 11-5960, 2012 WL 3284054, at *5 (D.N.J. Aug. 10, 2012).

One need not look far for additional recent examples. In *Mast* v. *Fillmore County*, Fillmore County enacted an ordinance requiring homes to have a modern septic system for gray water disposal. 141 S. Ct. 2430 (2021). The Amish, who objected to these systems on religious grounds, petitioned the Minnesota Pollution Control Agency for an exemption. Petition for Review of Decision of Court of Appeals, *Swartzentruber* v. *Cnty. of Fillmore*, No. A19-1375 (Minn. July 7, 2020). But the state ignored their request and instead initiated an administrative enforcement action against 23 Amish families, exposing them to the prospect of criminal penalties and civil fines. Even after the Amish were forced to sue under RLUIPA, the state continued to harass them. The government sought to dispossess these families of their homes if they didn't comply with the septic system requirements and even attempted to use discovery to "attack the sincerity of [the Amish's] religious beliefs." App. to Br. in Opposition for Respondent MPCA at 81 n.5, *Mast* v. *Fillmore Cnty.*, 141 S. Ct. 2430 (2021) (No. A19-1375). The litigation alone has already spanned nine years—and that was *without* a state administrative exhaustion regime.

Or consider the case of Jesus Christ Is the Answer Ministries, an evangelical, multicultural Christian church in Baltimore that ministers to a community of primarily African immigrants. See *Jesus Christ Is the Answer Ministries, Inc.* v. *Baltimore Cnty.*, 915 F.3d 256, 258–59 (4th Cir. 2019). There, the church's request to convert a single-family residence into a church was initially set for approval but was then quickly rejected after a public hearing at which several community members "display[ed] open hostility to …

the Church," including complaints that congregants were "dancing and hollering like they back at their home back in Africa." *Id.* at 259; see *Ware* v. *People's Counsel*, 117 A.3d 628, 632 (Md. Ct. Spec. App. 2015) (affirming zoning board's denial of church's request). The Church later sought a more modest zoning modification, only to suffer through four more years of costly administrative proceedings before the government concluded that the new request was barred by *res judicata* and collateral estoppel. See *Jesus Christ is the Answer Ministries, Inc.* v. *Baltimore Cnty.*, 303 F. Supp. 3d 378, 386 (D. Md. 2018), *vacated on other grounds*, 915 F.3d 256 (4th Cir. 2019).

Alabama's administrative exhaustion requirement creates a system ripe for abuse. If blessed by this Court, Alabama's rule would force minority religious litigants into a game of Calvinball designed by those hostile to their faith; only those who can afford to withstand the punitive administrative process, and who can do so without having their claims effectively erased by preclusive or highly discretionary decisions, would have even the faint hope, years later, of their day in state court.

II. STATE COURTS ARE A CRITICAL BULWARK AGAINST UNFAIR ADMINISTRATIVE PROCEEDINGS.

Faced with hostility from state or local governments, religious minority communities have long found refuge in section 1983. While federal courts are oftentimes available to these litigants, Congress "did not leave the protection of such rights exclusively in the hands of the federal judiciary, and instead conferred concurrent jurisdiction on state courts as well." *Felder* v. *Casey*, 487 U.S. 131, 147 (1988).

Indeed—contrary to Alabama's claim that access to state courts is of "little practical significance," BIO 20-21—state courts can be crucial forums for religious minorities seeking to enforce their federal rights in a variety of contexts.

A. State courts have historically been an important forum for religious exercise cases.

A quick look at the history of religious liberty litigation confirms that many of this Court's most significant religious exercise cases have come from state courts. See*, e.g.*, *Espinoza* v. *Mont. Dep't of Revenue*, 140 S. Ct. 2246 (2020); *Masterpiece Cakeshop*, 584 U.S. 617 (2018); *Emp. Div.* v. *Smith*, 494 U.S. 872 (1990); *Wisconsin* v. *Yoder*, 406 U.S. 205 (1972). And even when a particular case does not reach this Court, state courts often adjudicate pressing issues that this Court does eventually decide. As just a few examples:

Religious Exemptions: State courts adjudicating Free Exercise Clause compliance frequently evaluate whether laws are generally applicable and facially neutral under *Smith*, 494 U.S. 872. See*, e.g.*, *Stinemetz* v. *Kan. Health Pol'y Auth.*, 252 P.3d 141, 155-56 (Kan. Ct. App. 2011); *N. Coast Women's Care Med. Grp., Inc.* v. *Super. Ct.*, 189 P.3d 959, 966, 967 (Cal. 2008).

Ministerial Exception: Three years before *Hosanna-Tabor Evangelical Lutheran Church & Sch.* v. *EEOC*, 565 U.S. 171, 196 (2012), the Wisconsin Supreme Court held that the ministerial exception barred an age discrimination claim from a first grade non-ordained teacher at a Catholic elementary school. *Coulee Cath. Schs.* v. *Lab. & Indus. Rev. Comm'n*, 768 N.W.2d 868, 892 (Wis. 2009). And post-*Hosana-Tabor*, state courts have played an important role in fleshing out

how the ministerial exception applies beyond federal employment discrimination causes of action. See, *e.g.*, *In re Diocese of Lubbock*, 624 S.W.3d 506, 513 (Tex. 2021) (holding ministerial exception barred state tort law claims); *Crisitello* v. *St. Theresa Sch.*, 299 A.3d 781, 795 (N.J. 2023) (same result under state employment discrimination law).

Public Religious Monuments: Decades before *American Legion* v. *American Humanist Ass'n*, 139 S. Ct. 2067, 2090 (2019), the Oregon Supreme Court decided that a large Latin cross veteran memorial sponsored by the American Legion did not offend the Establishment Clause. *Eugene Sand & Gravel, Inc.* v. *City of Eugene*, 558 P.2d 338, 349 (Or. 1976).

COVID-19 Litigation: The decisions by many state and local authorities to limit or prohibit in-person religious services prompted an array of Free Exercise claims in both federal and state court. See, *e.g.*, *James* v. *Heinrich*, 960 N.W.2d 350 (Wis. 2021) (holding closure of religious schools did not satisfy strict scrutiny); cf. *Roman Cath. Diocese of Brooklyn* v. *Cuomo*, 592 U.S. 14 (2020) (per curiam) (granting injunction pending appeal against applying occupancy restrictions to houses of worship).

Protection for religious exercise is not the sole province of the federal judiciary.

B. Federal abstention doctrines push many religious minority litigants to state courts.

Religious minority litigants might choose state courts for more favorable precedent, more familiarity with state court procedures, geographic proximity, personnel, or any other of many legitimate strategic reasons, but two federal abstention doctrines can

sometimes bar access to federal courts altogether, making state courts an even more critical forum for litigants.

a. ***Pullman* abstention.** After this Court's decisions in *Smith* and *City of Boerne* v. *Flores*, 521 U.S. 507 (1997), religious minorities have increasingly relied on state laws—like state Religious Freedom Restoration Acts (RFRAs)—to protect their ability to practice their faith. Today, a majority of states have state RFRAs, and free exercise litigants frequently join federal and state religious liberty claims. See Becket, *Federal & State RFRA Map*, https://bit.ly/3xuXc7y (last visited Apr. 16, 2024); see also Christopher C. Lund, *RFRA, State RFRAs, and Religious Minorities*, 53 San Diego L. Rev. 163, 166-67 (2016) (symposium) (explaining importance of state RFRAs).

But when religious minority litigants bring both state and federal law claims in federal court, they run the risk of falling victim to *Pullman* abstention, under which federal courts typically refrain from weighing in on novel state law questions that could be dispositive. See *Quackenbush* v. *Allstate Ins. Co.*, 517 U.S. 706, 716–17 (1996); see also 17A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure Juris. § 4242 (3d ed.). Whether justified or not,[5] *Pullman*

---

[5] Some courts have hesitated to apply *Pullman* abstention in the First Amendment context, explaining that "*Pullman* abstention is almost never satisfied in First Amendment cases because the guarantee of free expression is always an area of particular federal concern." *Courthouse News Serv.* v. *Planet*, 750 F.3d 776, 784 (9th Cir. 2014) (cleaned up). Nevertheless, "there is no absolute rule against abstention in first amendment cases." *Almodovar* v. *Reiner*, 832 F.2d 1138, 1140 (9th Cir. 1987). And in-

abstention can force some litigants into state court, putting on hold any access to federal court until the state law claims are finally adjudicated. Federal Practice and Procedure Juris. § 4242.

Thus, whenever plaintiffs seek protection from newly enacted or under-litigated state laws alongside their federal claims, state forums may be the only rational choice for timely decisions. See, *e.g., W. Va. Parents for Religious Freedom* v. *Christiansen*, Civ. A. No. 5:23-CV-158, 2023 WL 5506030, at *5-6 (N.D.W. Va. Aug. 2, 2023) (invoking *Pullman* abstention to stay federal proceedings in a Free Exercise Clause section 1983 challenge because a state statute had "the potential to resolve th[e] issue"), *appeal filed*, No. 23-1887 (4th Cir. Aug. 25, 2023); *Spirit of Aloha Temple* v. *Cnty. of Maui*, No. 14-00535, 2016 WL 347298, at *1, *11–14 (D. Haw. Jan. 26, 2016) (applying *Pullman* to abstain from deciding federal issue and to stay state law claims "based on allegations that" the local government's land-use decision "violated religious and other rights"); *Congregation Etz Chaim* v. *City of Los Angeles*, No. CV 10-1587, 2010 WL 11595886, at *1, *6 (C.D. Cal. Apr. 26, 2010) (applying *Pullman* and staying an action involving the "question of whether members of" of a congregation "may conduct religious services at a house"); *Entman* v. *City of Memphis*, 341 F. Supp. 2d 997, 999 (W.D. Tenn. 2004) (remanding to state court under *Pullman* abstention doctrine to allow state court to interpret Tennessee's establishment clause); *Presbytery of N.J. of the Orthodox Presbyterian Church* v. *Whitman*, 99 F.3d 101, 106 (3d Cir.

---

deed, federal courts do frequently stay or dismiss First Amendment claims under *Pullman*. *See*, *e.g.*, *Doe* v. *McCulloch*, 835 F.3d 785, 788 (8th Cir. 2016); *Word of Faith World Outreach Ctr. Church, Inc.* v. *Morales*, 986 F.2d 962, 968–70 (5th Cir. 1993).

1996) (affirming application of *Pullman* to as-applied free speech claim by religious plaintiffs); *Word of Faith World Outreach Ctr. Church, Inc.* v. *Morales*, 986 F.2d 962, 969 (5th Cir. 1993) (applying *Pullman* abstention to Church's free association claim); *Voluntary Ass'n of Religious Leaders, Churches, & Orgs.* v. *Waihee*, 800 F. Supp. 882, 891 (D. Haw. 1992) (explaining in dicta that *Pullman* abstention would require the court to abstain from deciding free exercise claim); *Maier* v. *Good*, 325 F. Supp. 1268, 1270 (N.D.N.Y. 1971) (abstaining from deciding constitutionality of religious exemption because "there are possibly controlling issues of state law that should be decided in the first instance by the state courts").

Even where *Pullman* does not prove an insuperable obstacle to federal jurisdiction, the existence of pendent state law claims may counsel some litigants to prefer filing in state court. For example, the constitutional avoidance doctrine may make state statutory claims a more appropriate vehicle than a federal constitutional claim, and concomitantly state court a more natural forum. Likewise, where a litigant determines that its state law claim is comparatively stronger than its federal claim, the litigant may prefer to sue initially in state court, rather than risk having to start over again if the federal court dismisses its federal claim on the merits and declines to retain jurisdiction over the pendent state law claim. See *Arbaugh* v. *Y&H Corp.*, 546 U.S. 500, 514 (2006); *Grubbs* v. *Sheakley Grp.*, 807 F.3d 785, 805 (6th Cir. 2015).

b. ***Younger* abstention.** Even more concerning, *Younger* abstention can force religious entities into state or local administrative proceedings and block access to federal courts entirely. Generally speaking, *Younger* abstention requires federal courts to abstain

from intervening in certain ongoing state proceedings. See *Middlesex Cnty. Ethics Comm.* v. *Garden State Bar Ass'n*, 457 U.S. 423, 431 (1982). And *Younger* can be invoked in state administrative proceedings, even in the face of First Amendment claims. For *Younger* abstention to apply, the primary requirement is that a state proceeding be "ongoing," *id.* at 437, which can be interpreted quite expansively. Some governments have asserted that the mere initiation of an administrative investigation can trigger mandatory abstention, barring access to federal court.

For example, in *Seattle Pacific University* v. *Ferguson*, the university brought a section 1983 action under, among other things, the Free Exercise Clause and the church autonomy doctrine, to challenge its subjection to the Washington Law Against Discrimination and to enjoin an investigation by the Washington State Attorney General, Robert Ferguson. First Am. Compl. at 16-26, *Seattle Pac. Univ.* v. *Ferguson,* No. 3:22-cv-05540-RJB (W.D. Wash. Sept. 2, 2022), ECF No. 16, *appeal argued*, No. 22-35986 (9th Cir. Nov. 16, 2023). The district court dismissed the lawsuit, applying *Younger* abstention based on a single letter sent by Attorney General Ferguson and a single press release issued two days after Seattle Pacific commenced its lawsuit in federal court. Tr. of Mot. to Dismiss Hr'g at 37, *Seattle Pac. Univ.*, ECF No. 33. The agency had filed no complaints or charges, nor had any adjudicative hearings or state court proceedings even been scheduled. Even so, the district court held that the plaintiffs were barred from federal court.

Seattle Pacific is not an outlier. In *Elane Photography, Inc.* v. *Cordova,* the religious plaintiff sued the New Mexico Human Rights Bureau in federal court, claiming its investigation and prosecution of her for

refusing to engage in certain business activities violated her free exercise and free speech rights. She filed suit shortly after the Bureau initiated its investigation but before any adjudicative proceedings had begun. No. Civ. 07-0173, 2008 WL 11409878, at *1 (D.N.M. Jan. 3, 2008). Still, the district court held that the "initiation of the investigation" constituted the "beginning of the state administrative proceeding" and triggered *Younger* abstention, requiring dismissal of the religious minority litigant's complaint. *Id.* at *3. See also *Ocean Grove Camp Meeting Ass'n of United Methodist Church* v. *Vespa-Papaleo,* 339 F. App'x 232, 237, 240 (3d Cir. 2009) (abstaining from a Free Exercise Clause challenge to the New Jersey Law Against Discrimination and reasoning that proceedings begin when a complaint is filed with the New Jersey Division on Civil Rights); *Amanatullah* v. *Colo. Bd. of Med. Exam'rs*, 187 F.3d 1160, 1163 (10th Cir. 1999) (holding that state proceedings began when the medical board issued the "first '30-day' letter to Amanatullah advising him of its investigation").

Federal abstention doctrines confirm that state courts can be the best—or only—forum available for religious minorities to vindicate their constitutional rights, so impeding their access to state court through administrative exhaustion is unjust.

c. **Trap for the unwary.** Even assuming Alabama is correct that the federal courts have an open door to civil rights plaintiffs, the effect of its rule would be for the exhaustion requirement to make a difference only where the injured party is unsophisticated or too trusting of hostile state and local bureaucrats.

The anticipated effect of a state-court exhaustion rule would be for seasoned counsel to steer every case

to federal court. But in low- or no-dollar religious freedom cases, parties may not have seasoned counsel—or any counsel at all. Thus, it will likely only be those who did not know about the availability of a federal forum or the procedural differences in a state forum that will encounter Alabama's exhaustion requirement. Likewise, in free exercise litigation, there is often an impulse on the part of faith communities to try to avoid litigation, both to minimize cost and to avoid unnecessary confrontation. In those cases, faith communities could be drawn into abstention- and even preclusion-triggering administrative processes, only to find out too late that the process is stacked against them.

* * *

Both section 1983 and RLUIPA recognize that certain religious claims belong in court, not before bureaucrats. Placing bureaucrats in line before the courts upsets that design. Cf. *Knick* v. *Twp. of Scott*, 139 S. Ct. 2162 (2019). There is no constitutional, statutory, or policy justification for Alabama's exhaustion requirement.

C. Unending administrative process makes religious liberty rights illusory.

Many minority religious houses of worship and nonprofits operate on tight budgets. In addition, given their smaller profile in the community and the technical nature of state administrative proceedings, particularly in the land-use context, it can be very hard for lesser-known religious groups to secure *pro bono* counsel. As a result, in many cases, the choice to exhaust administrative remedies comes at the cost of funding other core religious exercise, such as helping the needy in the community or educating youth in the ways of the faith. By contrast, state and local govern-

ments can easily shoulder years of administrative proceedings, especially when motivated to make the process as long and costly for the claimant as possible. Given this asymmetry, costly and time-consuming proceedings can grind religious minority litigants into submission before they are able to have their claims heard in court.

Take Betty and Richard Odgaard, a Mennonite couple whose small business was destroyed while they languished in administrative limbo. The Odgaards operated an art gallery and bistro in a restored nineteenth-century church, which they rented out for weddings and other events. While the Odgaards hired LGBTQ employees and served LGBTQ customers, their religious convictions precluded them from renting their business out to same-sex weddings. Brief of Amicus Curiae Christian Business Owners Supporting Religious Freedom in Support of Petitioners at 3, *Masterpiece Cakeshop, Ltd.* v. *Colo. Civil Rights Comm'n*, 584 U.S. 617 (2018) (No. 16-111).[6] After a complaint was filed against the couple with the Iowa Civil Rights Commission, they brought a section 1983 action (among other federal and state law causes of action) asserting that their practice was protected by the Free Exercise Clause. Verified Pet. at 23, *Odgaard* v. *Iowa Civil Rights Comm'n*, No. CVCV046451 (Polk Cnty. Iowa Dist. Ct. Oct. 7, 2013). Applying a rule similar to the one Alabama has now adopted, the state court dismissed their lawsuit on exhaustion grounds, holding that the Odgaards needed to wait for the administrative investigation and adjudication to come to

---

[6] The original documents are available at Becket, *Odgaard v. Iowa Civil Rights Comm'n*, https://tinyurl.com/4kbkbmbm (last visited Apr. 16, 2024).

a close. Ruling on Defs.' Mot. To Dismiss at 14, *Odgaard*.

But it never did. While the administrative process was pending, and before any court reached the merits of the Odgaards' constitutional claims, the couple's business faltered and closed. See Grant Rodgers, *Struggling Gortz Hause to Close Without Wedding Business*, Des Moines Register (June 22, 2015). As the adage goes, "justice delayed is justice denied."

Religious minority litigants who are subject to exhaustion requirements not only suffer monetary and reputational harm; they are also forced to spend years under a cloud of legal uncertainty. See *Morr-Fitz, Inc.* v. *Blagojevich*, 901 N.E.2d 373, 380 (Ill. 2008). Without resolution of the merits of their claim, they cannot exercise their First Amendment freedoms without risking further liability. As this Court has recognized, "threatened Commission proceedings" in the First Amendment context "may give rise to harm" because of the "burdens that Commission proceedings can impose" on those First Amendment rights. *Susan B. Anthony List* v. *Driehaus*, 573 U.S. 149, 165 (2014). Hence, "courts routinely find not just harm, but *irreparable* harm, where a plaintiff asserts a chill on free exercise rights." *Morr-Fitz, Inc.*, 901 N.E.2d at 387.

Administrative exhaustion requirements can turn the vindication of one's rights into a war of attrition. Religious minority litigants frequently cannot bear the cost, time, and reputational injuries caused by protracted administrative proceedings. State and local governments can often outspend or simply wait out even the most resolute claimants, which is why this Court has recognized that "the dominant characteristic of civil rights actions" is that they "*belong in court*" and "are judicially enforceable *in the first instance*."

Felder, 487 U.S. at 148 (quoting *Burnett* v. *Grattan,* 468 U.S. 42, 50 (1984)).

III. A STATE-COURT EXHAUSTION RULE UNDERMINES CONGRESSIONAL INTENT AND INCENTIVIZES BAD ACTORS.

Allowing states to impose their own exhaustion requirements on section 1983 claims would undermine congressional design. Congress makes its intent clear in what it chooses to include in legislation—and what it chooses not to include.

As this Court has recognized, "where Congress had not provided" an administrative exhaustion requirement, the baseline rule for section 1983 claims is that administrative exhaustion is not required. *Id.* at 148–49. Thus, outside of specific contexts where exhaustion is expressly required, Congress did not intend for section 1983 claims to require exhaustion, and there is no statutory indication that this intent was limited to federal lawsuits.

The Prison Litigation Reform Act (PLRA), 42 U.S.C. § 1997e, provides a helpful comparison to the judge-made rule in this case. The PLRA applies to all lawsuits under federal laws (including section 1983 and RLUIPA) pertaining to "prison conditions," and requires pre-suit exhaustion of administrative remedies. *Id.* § 1997e(a). But when Congress later enacted RLUIPA, it did not extend that exhaustion requirement to land use cases or to section 1983 cases more broadly. When Congress expressly establishes exhaustion requirements for some claims and not for others—especially in legislation on the same general subject matter—courts should not read in an implicit exhaustion requirement where none exists. See *Sullivan* v.

Finkelstein, 496 U.S. 617, 632 (1990) (Scalia, J., concurring in part) ("statutes *in pari materia* should be interpreted harmoniously"). Instead, courts must respect Congress's choice. In this case, Congress has not established an exhaustion requirement. Alabama should not override that decision. See, *e.g.*, *Patsy* v. *Bd. of Regents of Fla.*, 457 U.S. 496, 508 (1982) ("[A] judicially imposed exhaustion requirement would be inconsistent with Congress's decision to adopt § 1997e and would usurp policy judgments that Congress has reserved for itself.").

The omission of an exhaustion requirement cannot be dismissed as an oversight. Given that, under both section 1983 and RLUIPA, the gravamen of the claim is an abuse of state authority, it makes perfect sense why Congress would not have wanted to condition such claims on prior review by those very state actors.

Recent experience bears out Congress's reasoned choice. Most religious freedom cases at the Supreme Court in the past decade have come from administrative actions, not legislation. See William J. Haun, *Keeping Our Balance: Why the Free Exercise Clause Needs Text, History, and Tradition*, 46 Harv. J.L. & Pub. Pol'y 419, 451 (2023); see also, *e.g.*, *Masterpiece Cakeshop, Ltd.*, 584 U.S. at 628–30. In contrast to democratically accountable legislatures, "regulatory bodies—premised on their 'expertise' in technical knowledge—are generally disinclined to accommodate religious orthodoxy or account for social knowledge." Huan, *supra*, at 451 (citing Antonin Scalia, *Rulemaking as Politics*, 34 Admin L. Rev. xxv, xxvi, xxxi (1982)). There is, in other words, good reason to doubt that technocratic regulators will be accommodating to unfamiliar religious practice.

RLUIPA in particular was passed amid a growing concern for "[t]he need for affirmative federal protection of religious freedom" from unsympathetic state and local bureaucrats, and reflected an awareness that "states and local governments would often not be sufficiently protective of fundamental rights." *Protecting Religious Freedom After Boerne* v. *Flores: Hearing Before the Subcomm. on the Const. of the H. Comm. on the Judiciary*, 105th Cong. 18 (1997) (prepared statement of Marc D. Stern, Director, Legal Department, American Jewish Congress). President Clinton reaffirmed this intent when he signed the Act into law, saying it seeks to prevent "State and local governments from imposing a substantial burden on the exercise of religion." Statement on Signing the Religious Land Use and Institutionalized Persons Act of 2000, 2 Pub. Papers 1905 (Sept. 22, 2000).

By enacting RLUIPA, Congress chose to protect religious rights by granting remedies against state and local governments that burden those rights. And Congress made an explicit policy decision not to require administrative exhaustion. Permitting states to impose their own exhaustion requirements impermissibly undermines Congress's choice and threatens critical civil rights protections.

CONCLUSION

For the foregoing reasons, the Court should reverse the decision below.

Respectfully submitted,

NICHOLAS R. REAVES
YALE FREE EXERCISE CLINIC
1919 Pennsylvania Ave.
N.W., Suite 400
Washington, D.C. 20006
nicholas.reaves@yale.edu

LIA M. HIGGINS
SIDLEY AUSTIN LLP
787 Seventh Ave.
New York, NY 10019

BRIAN P. MORRISSEY
Counsel of Record
DANIEL J. HAY
HUNDLEY H. POULSON
SIDLEY AUSTIN LLP
1501 K Street., N.W.
Washington, D.C. 20005
(202) 736 8407
bmorriss@sidley.com

ROBERT C. UHL
SIDLEY AUSTIN LLP
2021 McKinney Ave #2000,
Dallas, TX 75201

Counsel for Amici Curiae

APRIL 2024