NO. _____

ORIGINAL

25-6213

IN THE

SUPREME COURT OF THE UNITED STATES

SAMUEL GALBRAITH—PETITIONER

V.

TIM HOOPER, WARDEN—RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES FIFTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Galbraith seeks certiorari for the following issue:

I. When a person has no cause of action and no right of action to appeal the affirmative decision of a parole board, does the simple ability to mail and file a state habeas corpus petition (or any legal filing) that will be summarily denied for no cause of action and no right of action mean a state remedy is "available," "adequate," and "effective" under the statutory requirements of 2254(b)(1)(B)(i) and this Court's 1973 precedent under *Presier v. Rodriguez* ?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

RELATED CASES

Galbraith v. Hooper, 19-181 (M.D. La. 3/9/22), 2022 WL 943144.

Galbraith v. Hooper, 19-181 (M.D. La. 3/28/22), 2022 WL 907142.

Galbraith v. Hooper, 19-181 (M.D. La. 4/20/22), 2022 WL 1178508.

Galbraith v. Hooper, 22-30159 (5th Cir. 10/23/23), 85 F. 4th 273 ("*Galbraith I*").

Galbraith v. Hooper, 22-30159 (5th Cir. 3/19/24), 2024 WL 1170026.

Galbraith v. Hooper, 22-30159 (5th Cir. 8/20/25); 151 F. 4th 795 *("Galbraith II")*.

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES

CASES **PAGE NUMBER**

STATUTES AND RULES

U.S. CONSTITUTION

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari be issued to review the judgment below.

OPINIONS BELOW

The opinion, on rehearing, of the United States Court of Appeals appears at Appendix A to the petition, and can be found at *Galbraith v. Hooper*, 22-30159 (5th Cir. 8/20/25); 151 F. 4th 795 ("*Galbraith II*")

The memorandum by the Fifth Circuit Clerk of Court withdrawing *Galbraith I* appears at Appendix B to the petition, and can be found at *Galbraith v. Hooper*, 22-30159 (5th Cir. 3/19/24), 2024 WL 1170026.

The first opinion of the United States Court of Appeals appears at Appendix C to the petition, and can be found at *Galbraith v. Hooper* , 22-30159 (5th Cir. 10/23/23), 85 F. 4th 273 ("*Galbraith I*").

The judgment of the United States District Court for the Middle District of Louisiana appears at Appendix D to the petition and is published at *Galbraith v. Hooper*, 19-181 (M.D. La. 3/28/22), 2022 WL 907142..

The report and recommendations, adopted by the district judge, of the United States District Court for the Middle District of Louisiana appears at

Appendix E to the petition and is published at *Galbraith v. Hooper*, No. 19-181 (M.D. La. 3/9/22), 2022 WL 943144.

JURISDICTION

The date on which the United States Court of Appeals for the Fifth Circuit decided this case, on rehearing, was August 20, 2025. No petition for rehearing *en banc* was filed as to the August 20, 2025 opinion. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution Amendment XIV, Section 1
All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

28 U.S.C. § 2254 State custody; remedies in Federal Courts
(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

(b)(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that--

(A) the applicant has exhausted the remedies available in the courts of the State; or

(B)(i) there is an absence of available State corrective process; or

(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

(2) An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.

(3) A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement.

(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under

the law of the State to raise, by any available procedure, the question presented.

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim--

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of facts in light of the evidence presented in the State court proceeding.

(e)(1) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall the the burden of rebutting the presumption of correction by clear and convincing evidence.

(2) If the applicant has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that--

(A) the claim relies on--

(i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and

(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

(f) if the applicant challenges the sufficiency of the evidence adduced in such State court proceeding to support the State court's determination of a factual issue made

therein, the applicant, if able, shall produce that part of the record pertinent to a determination of the sufficiency of the evidence to support such determination. If the applicant, because of indigency or other reason is unable to produce such part of the record, then the State shall produce such part of the record and the Federal court shall direct the State to do so by order directed to an appropriate State official. If the State cannot provide such pertinent part of the record, the the court shall determine under the existing facts and circumstances what weight shall be given to the State court's factual determination.

(g) A copy of the official records of the State court, duly certified by the clerk of such court to be a true and correct copy of a finding, judicial opinion, or other reliable written indicia showing such a factual determination by the State court shall be admissible in the Federal court proceeding.

(h) Except as provided in section 408 of the Controlled Substances Act, in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel for an applicant who is or becomes financially unable to afford counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

(i) The ineffectiveness or incompetence of counsel during Federal or State collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under section 2254.

La. R.S. 15:574.9(B) Revocation of parole for violation of condition; committee panels; return to custody hearing; duration of reimprisonment and reparole after revocation; credit for time served; revocation for a technical violation

B. The committee may order revocation of parole upon a determination that:

(1) The parolee has failed, without a satisfactory excuse, to comply with a condition of his parole; and

(2) The violation of condition involves the commission of another felony, or misconduct including a substantial risk that the parolee will commit another felony, or misconduct indicating that the parolee is unwilling to comply with proper conditions of parole.

La. R.S. 15:574.11(A). Finality of board determinations; venue; jurisdiction and procedure; peremptive period; service of process

A. Parole is an administrative device for the rehabilitation of prisoners under supervised freedom from actual restraint, and the granting, conditions, or revocation of parole rest in the discretion of the Board of Parole. No prisoner or parolee shall have a right of appeal from a decision of the board regarding release or deferment of release on parole, the imposition or modification of authorized conditions of parole, the termination or restoration of parole supervision or discharge from parole before the end of the parole period, or the revocation or reconsideration of revocation of parole, except for the denial of a revocation hearing under R.S. 15:574.9.

STATEMENT OF THE CASE

Samuel Galbraith would have been released on parole from prison but for the Louisiana Board of Pardons and Parole (hereinafter "Board") fabricating a false basis in attempts to ensure passage of important criminal justice reform legislation. Galbraith's impending release garnered negative media coverage jeopardizing the upcoming legislation. The falsehood—there may have been a technical irregularity to victim notice—allowed one member of the Board to rescind his certificate of parole just two days before Galbraith was to be released. This is not a case where Galbraith is requesting parole; he was granted a certificate of parole after fulfilling all of his conditions of parole. This case calls into question whether the Board rightfully and constitutionally has the right to rescind parole by making up a false accusation without affording notice and an opportunity to be heard.

Galbraith was granted parole by the Board in part because he had "good support," a "good plan," "good conduct," "good programs," "has employment plans," "taken all programs," and "will be a tax-payer and not a tax burden." R. Doc. 15-2, p. 178. Although Galbraith was convicted of a horrible crime 28 years ago, he received the unanimous support from the Board to be released on parole.

The Board set Galbraith's release date for April 23, 2017. However, Galbraith found himself at the center of a political storm. Shortly before his release

date, the Governor was pushing for a criminal reform package of bills in the legislature when news of Galbraith's release became the subject of media attention. The Governor then summoned the Board to the Governor's mansion to discuss the negative medial coverage of the impending release and the impact it had on the proposed legislation. ROA 1341-1344.

Two days before his scheduled release date, Galbraith was notified that his certificate of parole had been rescinded. He was told that he could not be released because "there *may* have been a technical irregularity to victim notice." ROA 812 (emphasis added).

Galbraith filed a civil rights action under 42 U.S.C. § 1983. *Galbraith v. Ranatza*, 3:17-cv-486, M.D.LA. During the pendency of that case, Galbraith was afforded discovery which not only proved the reason was not fact-based, but demonstrated that the Board was well-aware it was false and unsubstantiated.

Following the receipt of Galbraith's parole file and depositions taken during the discovery period of the civil rights suit, Galbraith found clear and unequivocal evidence that supported a claim for relief in habeas corpus. The evidence clearly demonstrated that the Board's own rules for rescinding a grant of parole had been violated and that the alleged "technical irregularity" was factually false. Based upon this revelation, Galbraith then filed his Petition for Habeas Corpus, pursuant

to 18 U.S.C. § 2241.

The Board erroneously states that the alleged "technical irregularity" of victim notification had to do with the time it was sent, i.e., "the Parole Board send out a new required notices to the victim's family on September 28, 2016, less than the ninety days required notice." At. 3. The State wrongly argues it was 30 at the time. The regulation regarding victim notification in force at the time of the hearing, November 3, 2016, required victim notification to occur 90 days prior to the scheduled parole hearing. See, La. Admin. Code, tit. 22 Pt XI, section 510 (B) "The victim, spouse, or next of kin of a deceased victim shall be advised in writing no less than 30 days prior to the hearing date when the offender is scheduled for a parole hearing." ROA 1356, n. 98.

Galbraith filed a Petition for the Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 on March 27, 2019 seeking release from an unconstitutional confinement after the Louisiana Board of Pardons and Parole rescinded his Certificate of Parole based upon allegations the Board knew to be false and a reason not enumerated in the law that allows for rescission of parole.

The district court granted relief finding that the Board violated Galbraith's "due process rights when it arbitrarily and without notice rescinded his parole in violation of Louisiana's statutory and administrative rules." ROA 1339. This ruling

was based on facts presented. ROA 1340-1344. Louisiana law provided two instances in which a grant of parole can be rescinded; neither is present here. La. Admin. Code., Title 22, Part XI section 504 (K) (the Board may rescind a grant of parole if "an offender has violated the terms of work release granted under § 311 or has engaged in misconduct prior to the inmate's release.")

The district court found the exhaustion requirement for habeas corpus relief was excused due to the fact that Louisiana does not provide an avenue to challenge decisions made by the Board. Galbraith relies upon the statutory law providing that a challenge cannot be made to any Board decision except for a challenge to the denial of a revocation hearing, La. R.S. 15:574.11, and the fact that Galbraith was informed in no uncertain terms that he could not challenge the Board's action. *See*, Appendix J.

The district court found that Galbraith's petition was timely. ROA 1351. Galbraith demonstrates that the district court was correct in its determination. The petition was timely as the petition was filed directly following Galbraith's discovery of the factual predicate supporting his claim for relief. The documents and depositions of Board Chair Ranatza could not have been discovered earlier through the exercise of due diligence.

Finally, the district court ruled that Galbraith's claim was supported and

dictated by caselaw requiring relief. While this fact pattern is unique, it is clear that the Board disregarded the two bases for rescission of parole, and alleged full authority to rescind for any reason.

The Fifth Circuit composed of Circuit Judges Stewart, Dennis and Southwick, affirmed the district court's ruling, holding that Galbraith's challenge to the rescission of his parole was properly brought as a § 2241 habeas petition; that Galbraith did not have a state remedy and therefore was entitled to federal habeas relief; and, that the Board violated prisoner's procedural due process rights when it rescinded his parole because of an alleged problem with notice to victim. *Galbraith v. Hooper*, 22-30159 (5th Cir. 10/23/23), 85 F. 4th 273, hereinafter referred to as "*Galbraith I.*"

Using Louisiana's statutory framework under La. R.S. 15:574.9 and La. R.S. 15:574.11, *Galbraith I* made clear that Louisiana's very own statutory framework prohibits any recourse to challenge a decision by the parole board thus triggering Section 2254's exhaustion requirements and this Court's *Preiser* precedent. The *Galbraith I* Court stated: "Based on the statutory scheme alone, Galbraith did not have an adequate and available state remedy or corrective process that would have allowed him to bring this claim into state court." *Id.* at 282.

After the State petitioned the 5th Circuit for rehearing, five months later, the

Fifth Circuit Clerk of Court issued a memorandum to counsel and parties stating that the court has taken the following action: "The published opinion filed on October 23, 2023, is hereby WITHDRAWN. A new opinion will be substituted at a later date." *Galbraith v. Hooper*, 22-30159 (5th Cir. 3/19/24), 2024 WL 1170026.

On rehearing, the Fifth Circuit was composed of the same three Circuit Judges Stewart, Dennis and Southwick. *Galbraith v. Hooper* , 22-30159 (5th Cir. 8/20/25); 151 F. 4th 795 *("Galbraith II"). Galbraith II,* again, went through a methodical order, using the same facts, and using primarily the same issues, yet strangely comes to a completely different result than the first time. Referencing Louisiana Revised Statutes 15:574.9 and 574.11, *Galbraith II* properly premised, "Based on this statutory language, a prisoner has no right to appeal a decision by the Parole Board unless his parole was revoked under Revised Statute 15:574.9 without a revocation hearing." *Galbraith II,* at 806, cf. *Leach v. La. Parole Board*, 991 So. 2d 1120, 1124 (La. App. 1 Cir. 2009). *Galbraith II* also acknowledged that Galbraith filed a formal State Administrative Grievance challenging the Parole Board's rescission, which formal State Administrative Grievance was denied because "decisions of these boards are discretionary and may not be challenged," which again was based on the same two parole statutes mentioned above. *Galbraith II,* at 806. After several red herrings, *Galbraith II* apparently forgot

about the state statutory bar under La. R.S. 15:574.9, holding "Galbraith was required to give state courts a chance before applying for federal habeas relief. Galbraith did not exhaust his available state court remedies and therefore is not entitled to federal habeas relief." *Galbraith II*, at 807.

Galbraith II's reversing the district court and then itself is depriving Galbraith of Federal Due Process under the 14th Amendment, and disregarding Section 2254 and this Court's long precedent of an adequate, available and effective remedy.

REASONS FOR GRANTING THE PETITION

I. CERTIORARI SHOULD BE GRANTED BECAUSE THE UNITED STATES FIFTH CIRCUIT, ON REHEARING, DEPRIVES GALBRAITH OF A STATE CREATED DUE PROCESS LIBERTY INTEREST BY BREAKING FEDERAL STATUTORY AND SUPREME COURT PRECEDENT CONCERNING STATE EXHAUSTION.

The Fifth Circuit held that Galbraith failed to show there is no state procedural remedy available, and thereby reversed the district court, and itself on rehearing. They did so basing its decision on a procedural vehicle, state habeas corpus, that it believed to be a procedural mechanism that Galbraith should have used prior to coming to federal court. While it is a procedural mechanism in Louisiana for prisoners to use, it is a procedural mechanism that does not give Galbraith a right of action or cause of action against the Louisiana Parole Board.

Galbraith's habeas claim centered on his denial of due process under the Fourteenth Amendment protecting "persons against deprivations of life, liberty, or property." U.S. Const. XIV Amend. The district court held that "Although Galbraith did not have a liberty interest in the granting of parole, there was a state-created liberty interest at issue here because the Parole Board regulations in effect at the time permitted rescission of a parole grant only in two circumstances, neither of which was applicable to Galbraith's situation." Appendix E. The district court further held "Galbraith was therefore entitled to notice and a meaningful opportunity to be heard prior to rescission of his parole grant, but he received

neither." *Id. Galbraith I* agreed that Louisiana statutory provisions created a liberty interest protecting Galbraith from rescission. *See, Galbraith I*, at 287. *Galbraith II* omitted discussion regarding the due process violation, sticking instead to timeliness and exhaustion. *See generally, Galbraith II.*

The Middle District and *Galbraith I* also determined that Galbraith's Section 1983 complaint filed on July 26, 2017 was a *de facto habeas* application that interrupted the the one year limitations period under Section 2244. While *Galbraith II* decided Galbraith's habeas application was untimely, it stated "We need not decide this issue [interruption by *de facto habeas*] because of our holding in the following section [exhaustion]." *Galbraith II*, at 805. Because *Galbraith II* does not disturb or address the due process liberty interest nor the *de facto* interruption of the one year period, Galbraith contends that they are not ripe issues for this Court to determine at this time. Should the Court desire Galbraith to brief these issues, he stands ready to do so at the Court's instruction. Therefore, the one and only issue that is ripe and justiciable before the Court at present, is the issue of whether a state habeas corpus is an available, adequate, and effective mechanism for Galbraith to pursue when Louisiana's statutory law clearly deprives a prisoner a right and cause of action against a Parole Board committees decision.

A. The Federal Statutory Framework.

The exhaustion of state remedies requirement is codified in the United States Code. The exhaustion requirement has been in existence both before and after the 1996 AEDPA. The requirement that a prisoner first exhaust his state remedies comes from 28 U.S.C. 2254, which reads:

> (b)(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that--
>
> (A) the applicant has exhausted the remedies available in the courts of the State; or
>
> (B)(i) there is an absence of available State corrective process; or
>
> (ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

28 U.S.C. 2254(b)(1)(B)(i).

The jurisprudence surrounding this provision is fairly straightforward since the statute is fairly straightforward. For instance, the 1973 case of *Presier v. Rodriguez*, 411 U.S. 475, 93 S. Ct. 1827 (1973), has long stood for the legal principle that the exhaustion required under Section 2254 means that the prisoner's state remedy must be "adequate" and "available." This "adequate" and "available" language closely tracks the statutory language of the section's "adequate," and "effective." Subsection (b)(1) provides the disjunctive "or" when addressing

whether an applicant exhausted his state remedies, ultimately providing three equally available triggering events. The first of the three options to determine whether the federal courts can hear the case is easy: The applicant has brought his/her issue through the state courts prior to presenting it to the federal courts. Presentation to the state courts is not required, however, if either of the two of the following subsections are present.

The second of the three options is whether there is a complete absence of available State corrective process. The provision does not stop there as there is one more available prong. The third prong of the exhaustion requirement that could determine whether an applicant needs to exhaust the State remedies is whether circumstances exist that render such process ineffective. This second and third provision loosely use federal "futility" jurisprudence. Notwithstanding, any prong, if reached, gives the federal court the ability to grant federal habeas relief to a state prisoner.

The issue that has been pestering this case since Galbraith petitioned the federal court in 2019 centers around the second and third prong. And since that beginning phase, Galbraith has been on the winning side of the judgments and opinions issued from the Middle District of Louisiana and the United States Fifth Circuit Court of Appeals. Oddly, almost two years after the Fifth Circuit agreed

that there was no available and adequate state remedy for Galbraith to pursue, and almost three years after a mandate for Galbraith to be released pursuant to the grant of parole was issued, the same three-judge Fifth Circuit panel granted the State a rehearing and changed its decision.

Each court along the way issued principled, reasoned judgments and decisions. Each of the courts gave supporting statutes, caselaw, and in-depth analysis in rendering their decisions holding that there is a lack of available and adequate state remedy for Galbraith. After the Fifth Circuit's October 2023 decision, nothing groundbreaking in the law occurred.[1] The United States Supreme Court did not make any changes to the adequacy, availability, or futility requirements under the law. The same panel[2] in the Fifth Circuit simply decided to change its mind despite giving contradictory legal arguments for their prior opinion.

Galbraith has fought this battle since 2016—a battle in which he won starting with the Louisiana Parole Board providing Galbraith with a parole hearing wherein they unanimously voted to release him to Texas at the beginning of 2017. The illegal and unprecedented rescission and zealous fight by the state of Louisiana to illegally maneuver out of its promise to release Galbraith since that

1 The Louisiana Legislature did, however, change its victim notification requirements to now embrace the notification untruth used to rescind its grant of parole.

2 Judge James L. Dennis dissented.

original granting of parole has been absolutely disheartening. The amount of tears and anger cannot adequately illustrate the injustice and inhumanity felt by the State's illegal action. Notwithstanding the emotions involved, the Fifth Circuit has erred, and in its error, disregards United States Statutory Law and Supreme Court exhaustion precedent.

B. Rights and Causes of Action in Louisiana.

A prudent starting place is Louisiana's law on rights and causes of action.

Louisiana requires a plaintiff bringing a civil action to have a "real and actual interest" to which he asserts. La. C. Civ. P. art. 681. Generally, persons asserting a "right" must have both the capacity to assert that right because they are a member of the group of people who have an interest and a cause they are able to assert because the law affords a remedy for the right. *Louisiana Hotel Motel Ass'n, Inv. v. East Baton Rouge Parish*, 385 So. 2d 1193 (La. 1980). Explaining the exception of no right of action, Louisiana courts have held that the question raised as to whether a plaintiff has a right of action is whether a remedy afforded by the law can be invoked by a particular plaintiff. Undertaking a right of action analysis assumes that a valid cause of action exists. *See, Bamber Contractors, Inc.* 345 So. 2d 1214-1215; *Teachers' Retirement System of Louisiana v. Louisiana State Employees' Retirement System*, 456 So. 2d 594, 596 (La. 1984); *Babineaux v.*

Pernie-Bailey Drilling Co., 261 La. 1080, 262 So. 2d 328 (1972). Rights of action and causes of action run hand in hand; if there is no cause of action, then no right of action but not necessarily the other way around. Louisiana's statutory law gives Galbraith neither a right of action nor a cause of action against the Parole Committee's decision in this case.

Applying the applicable Louisiana law, Galbraith does not have a valid right of action because Louisiana's primary law – statutory law – does not allow Galbraith a cause of action against the Louisiana Parole Board. The only cause of action held by Galbraith wherein he could possibly utilize a state habeas corpus would be appealing the failure of the Parole Board to provide him with a revocation hearing. As recognized by the Middle District Court, then the Fifth Circuit prior to changing course, Galbraith's challenge is based on the Parole Board's *ultra vires* act of unilaterally rescinding his grant of parole without any legal or factual basis. Whether or not the Parole Board provided Galbraith with a hearing is not an issue because the Parole Board had neither legal nor factual bases to hold any hearings. The law simply does not afford Galbraith a cause of action to pursue what the Fifth Circuit ultimately decided. The Fifth Circuit's decision, on rehearing, runs afoul of Section 2254's requirement that the remedy be adequate, available and effective.

C. Louisiana Prisoner's Right of Action Against the Parole Board.

When, how, and why a Louisiana prisoner may file a state action against the Louisiana Parole Board? That answer is found in two statutory provisions of Louisiana law. The second sentence of Louisiana Revised Statute 15:574.11(A), while poorly written, makes clear that Galbraith has no right of action against the Louisiana Parole Board for it's illegal rescission:

> Parole is an administrative device for the rehabilitation of prisoner's under supervised freedom from actual restraint, and the granting, conditions, or revocation of parole rest in the discretion of the committee on parole. *No prisoner or parolee shall have a right of appeal from a decision of the committee regarding release on parole, the imposition or modification of authorized conditions of parole, the termination or restoration of parole supervision or discharge from parole before the end of the parole period, or the revocation or reconsideration of revocation of parole except for the denial of a revocation hearing under R.S. 15:574.9.*

La. R.S. 15:574.11(A). [emphasis provided by Galbraith]. Despite the statute's ugly form, it declares that Galbraith (prisoner) has no right to appeal from a decision of the committee on parole except for the denial of a revocation hearing.

The statute – written in the positive as opposed to this mangled negative form—would read thusly: Prisoners and parolees have a right of action to appeal the parole committee's decisions to release, impose, modify, restore, discharge, revoke or reconsider parole in one circumstance. That circumstance is the denial of a revocation hearing under La. R.S. 15:579.9. That provision provides for two

circumstances to revoke, neither of which apply to Galbraith:

> The committee may order revocation of parole upon a determination that:
> (1) The parolee has failed, without a satisfactory excuse, to comply with a condition of his parole; and
> (2) The violation of condition involves the commission of another felony, or misconduct including a substantial risk that the parolee will commit another felony, or misconduct indicating that the parolee is unwilling to comply with proper conditions of parole.

La. R.S. 15:574.9(B). A lot to do about nothing has been made as these two statutory provisions may ultimately be the reason the State was able to buffalo the same Fifth Circuit judges to change its prior decision. The analysis ends with the statutory language that Louisiana provided through the wisdom of its legislature. That is, a prisoner has no right to appeal a decision of the parole board unless a revocation hearing was not provided after committing a new felony or violating parole terms. Again, that situation is not applicable to Galbraith.

What happens in circumstances like this case? If Galbraith could research and cite the district courts, this Court would see arguably thousands of prisoner litigants meeting their fates of dismissals based on no cause of action and no right of actions. In fact, this Court could be certain that the Attorney General, the Department of Corrections, and the various District Attorneys could provide this Court with their stock dismissal motions that are routinely granted summarily. For the State to sit back with a straight face in response to whether Galbraith has the

ability to pursue an appeal from the Parole Board's illegal action in this case pushes the very furthest limits of ethical candor with a tribunal. And the Fifth Circuit's about face to sanction such actions is a slap to the face of the statute and precedent of this Court.

D. Adequacy and Availability Jurisprudence.

Does this Court need case law on the treatment of an adequate, or available, or effective remedy in light of the very obvious circumstances in this matter? Certainly not. But for the sake of thoroughness, the cases surrounding the same are provided in their annotated form.

> An applicant for habeas corpus in federal court shall not be deemed to have exhausted remedies available in courts of the state within meaning of this section, if he has right under state law to raise, by any available procedure, the question presented. To obtain federal habeas corpus relief, a state prisoner must exhaust available state remedies unless there is no available state corrective process or **circumstances make the process ineffective to protect his rights**. *Young v. Ragen*, 69 S. Ct. 1073, 337 U.S. 235 (1949).
>
> Where the state does not provide corrective judicial process, federal courts will entertain habeas corpus to redress violation of federal constitutional right in criminal proceeding in state court. *Hawk v. Olson*, 326 U.S. 271, 66 S. Ct. 116 (1945).
>
> If claim has not been fairly presented to state courts, federal court may nonetheless consider habeas petition if there is either absence of available state corrective process or existence of circumstances rendering such process ineffective to protect the rights of prisoner; state remedies must be available to petitioner at time he files federal

petition, and remedies **must be meaningful** in that **outcome is not preordained** or **otherwise futile**. *Cruz v. Warden of Dwight Correctional Center*, 907 F. 2d 665 (7th Cir. 1990).

Where Alabama Appellate Court had consistently denied pretrial detention credit, habeas corpus was available in Alabama only when petitioner was entitled to immediate relief, and request for presentence credit was not in Alabama proper subject of collateral attack by writ of error coram nobis, there was absence of available state corrective process and thus petitioner, who did not present his claim for pretrial credit to courts of Alabama before seeking federal habeas corpus relief on ground that he was entitled to credit on his sentence for period of presentence detention during which due to indigency he was unable to make bond, satisfied exhaustion of state remedies requirement under this section. *Jackson v. State of Ala.* (5th Cir. 1976) 530 F. 2d 1231.

While state prisoner had not exhausted his state habeas corpus remedies, where there was evidence to indicate that the state habeas corpus procedure was not currently available to him, prisoner was not required to seek state habeas corpus relief prior to filing petition for federal habeas corpus. *Garrett v. Puckett*, 348 F. Supp 1317 (WD Va. 1972)

In *Wilwording v. Swenson*, 404 U.S. 249, 250 (1971), the Supreme Court was met with a case different factually than this one, but perfectly applicable to the absurdity illustrated by simply throwing out "available" state procedures that a prisoner can use to exhaust state remedies. *Swenson, supra,* is a case involving the challenge of prison conditions while confined in maximum security. In that case, petitioner's state habeas corpus petitions were dismissed. After dismissal, petitioners sought federal habeas relief in the federal district court. The District Court dismissed the federal habeas corpus for failure to exhaust state remedies.

The Eighth Circuit affirmed the dismissal. The lower courts held and reasoned that petitioners did not meet the exhaustion requirements of Section 2254 because the petitioners could have filed (1) suit for injunction; (2) writ of prohibition; (3) writ of mandamus; (4) petition for declaratory judgments. In other words, the State imagined a whole string of other actions that "could" be filed, but in actuality, had no basis in the law as meeting the "available" and "effective" measures. The Supreme Court in per curiam opinion, reversing and rejecting this reasoning stated:

> Section 2254 does not erect insuperable or successive barriers to the invocation of federal habeas corpus. The exhaustion requirement is merely an accommodation of our federal system designed to give the State an initial opportunity to pass upon and correct alleged violations of its prisoner's federal rights. *Fay v. Noia*, 372 U.S. 391, 438 (1963).
>
> * * *
>
> Whether the State would have heard petitioner's claims in any of the suggested alternative proceedings is a matter of conjecture; certainly no available procedure was indicated by the State Supreme Court in earlier cases. *See, Michaels v. Hancock,* 428 F. 2d 122, 1223 (1st Cir. 1970). In these circumstances s 2254 did not require petitioners to pursue the suggested alternatives as a prerequisite to taking their claims to federal court. As Mr. Justice Rutledge stated in his concurrence in *Marino v. Ragen*, 332 U.S. 561, 568 (1947):
>
> > The exhaustion of state remedies rule should not be stretched to the absurdity of requiring the exhaustion of . . . separate remedies when at the outset a petitioner cannot intelligently select the proper way, and in conclusion he may find only that none of the (alternatives) is appropriate or effective.

Wilwording v. Swenson, 404 U.S. 249, 250 (1971), superseded by statute [PLRA].

The point here is fully illustrated by the simple listing of the code of civil procedure, which the *Swenson* court picked up on right away. The State (this Court, lawyers, and most jurists) could rattle off a number of procedural mechanisms that can be filed to challenge a certain legal problem or issue. That does not mean those meaningless mechanisms are actually adequate, available, or effective under the circumstances. In fact, it is disingenuous to suggest, and certainly to hold, it as such in light of historical treatment.

So, could Galbraith, too, file a State Writ of Prohibition? Sure. Could Galbraith, too, file a State Writ of Mandamaus? Sure. Could Galbraith, too, file a State Suit for Preliminary and Permanent Injunction? Sure. Could Galbraith, too, file a State Petition for Declaratory Injunction? Sure. Could Galbraith, too, file a State Habeas Corpus? Sure. And in any of those matters, the State would use it's boilerplate motion to dismiss, and the State Court would grant it based on La. R.S. 15:574.11.

Galbraith has researched this issue with and without an attorney. Galbraith's circumstances and case is totally unique and no other case has its relevant facts. Louisiana has effectively barred any due process appeal from a discretionary decision made by the Parole Board. There is no available and adequate remedy for Galbraith to pursue his unique claim in a state court. Galbraith's claim would be

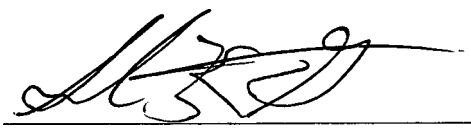
futile. Without an adequate justification, the same Fifth Circuit court judges are attempting to change the spirit and application of State and Federal statutory law and precedent. It must be reversed.

CONCLUSION

The petition for a writ of certiorari should be granted.

Dated: November 11, 2025.

Respectfully submitted:



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