25-683

IN THE Supreme Court of the United States

PEYMAN ROSHAN, *Petitioner*,

v.

DOUGLAS R. MCCAULEY.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

All proceedings conducted pursuant to the California Administrative Procedures Act are subject to a doctrine of "judicial exhaustion"; a party may not file in state court a lawsuit attacking the unconstitutionality of state administrative proceedings until after the completion of the administrative proceedings and exhaustion of the exclusive judicial remedy, an administrative petition for writ of mandamus proceeding. Prior to 2024 the Ninth Circuit Court of Appeals applied this same doctrine to 42 U.S.C. §1983 lawsuits in federal court, but in *Jamgotchian v. Ferraro*, 93 F.4th 1150 (9th Cir. 2024) it acknowledged this was mistaken and overruled the prior authority. However, in this case, involving an attack on then on-going administrative proceedings before the California Department of Real Estate ("DRE") that were dismissed on *Younger* abstention grounds, oral argument occurred prior to publication by this Court of *Williams v. Reed*, 145 S.Ct. 465 (2025). Petitioner notified the panel of this decision by Fed. R. Civ. P. 28(j) letter and thereafter requested supplemental briefing on its effects which was denied, and the panel refused to engage with relevant Seventh Circuit authority. Petitioner therefore presents the following:

1. Does California's doctrine of judicial exhaustion violate the Supremacy Clause under *Williams v. Reed*, 145 S.Ct. 465 (2025)?

2. If so, does this Supremacy Clause violation invalidate the California DRE reciprocal disciplinary

proceeding based on the Supremacy Clause violating California State Bar proceedings?

3. Does a Supremacy Clause violating proceeding fail to meet the requirements for the application of *Younger* abstention, as the Seventh Circuit held in *SKS & Associates, Inc. v. Dart*, 619 F.3d 674 (7th Cir. 2010)?

4. Should this Court resolve the circuit conflict between the Ninth Circuit's opinion in this action and *SKS*, *supra*?

5. Were the DRE proceedings invalid because there was no right to a jury even though such proceedings would be deemed legal in the courts of England in 1791 and financial penalties and restitution can be ordered thereunder?

PARTIES TO THE PROCEEDING

Petitioner (plaintiff-appellant below) is Peyman Roshan.

Respondents (defendants-appellees below) is Douglas R. McCauley sued in his personal capacity and in his official capacity as the Commissioner of the California DRE.

RELATED PROCEEDINGS

United States District Court (N.D. Cal.):

1. *Roshan v. Lawrence, et al.*, No. 21-cv-01235 (Feb. 19, 2021).
2. *Roshan v. Sunquist, et al.*, No. 24-cv-02789 (May 9, 2024).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Peyman Roshan respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS AND ORDERS BELOW

The opinion of the court of appeals (App., *infra*, A1-A10) is published at 130 F. 4th 780; and the dismissal order of the district court is in the appendix (Appendix ("App."), *infra*, C1-C16).

JURISDICTION

The court of appeals opinion and rehearing denial were entered on March 11, 2025 (corrected on March 12, 2025) and May 20, 2025, respectively. This Court's jurisdiction is provided by 28 U.S.C. 1254(1).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

All pertinent statutory, regulatory, and constitutional provisions are reproduced in the appendix to this petition. App., *infra*, E1-E9.

STATEMENT OF THE CASE

This petition concerns a California Department of Real Estate ("*DRE*") disciplinary action against Petitioner's real estate broker license as reciprocal discipline for a California State Bar suspension order, which actions he challenged under, inter alia, 42 U.S.C. §1983 in federal court. The District Court dismissed his challenge without prejudice under *Younger* abstention. *Roshan v. McCauley*, Case No. 23-cv-05819, U.S. Dist. Ct. (N.D. Cal.), Dkt. No. 36, App., *infra*, C1-C16.

Petitioner appealed. On February 11, 2025, the case was argued and submitted. On the same day, Petitioner moved to file supplemental briefing to address questions raised by the panel at oral argument. *Roshan v. McCauley*, 130 F. 4th 780 (9th Cir. 2025), 9th Cir. Case No. 24-659, Dkt. No. 55 (hereinafter "9th Cir. Dkt. No.").

Just ten days later, on February 21, 2025, this Court published *Williams v. Reed,* 145 S.Ct 465 (2025)("*Williams*") holding jurisdiction-stripping to immunize particular defendants from certain kinds of liability under 42 U.S.C. §1983 lawsuits violates the Supremacy Clause, U.S. Const. art. VI, cl.2. *Id.*

On February 25, 2025, Petitioner filed a F.R.A.P. Rule 28(j) letter detailing the effect of *Williams* on this case. 9th Cir. Dkt. No. 59.

While Petitioner had filed several motions to supplement his original motion for supplemental briefing, on March 7, 2025, he moved to supplement his motion for supplemental briefing to include *Williams*' effect on the case. *Id.* at Dkt. No. 60.

On March 11, 2025, the panel denied petitioner's motion for supplemental briefing, 9th Cir. Dkt. No. 62, App., *infra*, B1, and published its opinion; which opinion the panel corrected on March 12, 2025 (correcting counsel listing), *Id.* at Dkt. No. 68, App., *infra*, A1-A10.

On April 24, 2025 Petitioner timely filed a petition for panel rehearing and petition for rehearing en banc, *id.* at Dkt. No. 84, in part based on the effect of *Williams* in the case; which petition, on May 20, 2025, were denied, *id.* at Dkt. No. 88, App., *infra*, D1.

ARGUMENT

A. *Williams v. Reed.*

In *Williams*, this Court held that statutes and rules which immunize particular defendants from all or certain kinds of liability under 42 U.S.C. §1983 lawsuits violate the Supremacy Clause, U.S. Const.

art. VI, cl.2. The question presented in the *Williams* petition for certiorari was whether states could require administrative exhaustion for 42 U.S.C. §1983 claims. However, this Court's opinion covered both exhaustion requirements and jurisdiction stripping rules and statutes which, in effect, immunize the *Ex Parte Young* defendants who would otherwise be subject to suit under 42 U.S.C. §1983 in a state court.

Williams directly affects this case. The sole grounds for dismissal of the action was *Younger* abstention.[1] *Younger* abstention is premised on comity, and *Middlesex Ethics Comm. v. Garden State*

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[1] The panel, at App. A4-A5, characterized its test as follows:

> "[A]bstention from the exercise of federal jurisdiction is the 'exception, not the rule.'" *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 82 (2013) (citation omitted). "[R]ooted in overlapping principles of equity, comity, and federalism," *Arevalo v. Hennessy*, 882 F.3d 763, 765 (9th Cir. 2018), *Younger* abstention is a "national policy forbidding federal courts to stay or enjoin [certain] pending state court proceedings," *Younger*, 401 U.S. at 41. "*Younger* abstention is appropriate only when the state proceedings: (1) are ongoing, (2) are quasi-criminal enforcement actions or involve a state's interest in enforcing the orders and judgments of its courts, (3) implicate an important state interest, and (4) allow litigants to raise federal challenges." *Seattle Pac. Univ. v. Ferguso*n, 104 F.4th 50, 63–64 (9th Cir. 2024) (citation omitted).

Petitioner contended that the second and fourth requirements were not met, and that the Supremacy Clause violation in particular meant that the fourth requirement was not met and/or also constituted "extraordinary circumstances" as articulated under *Younger* itself. *Younger v. Harris*, 401 U.S. 37, 53 (1971).

Bar Assn, 457 U.S. 423, 432 (1982)("*Middlesex*") held one factor for the application of *Younger* abstention is whether the plaintiff can adequately assert federal constitutional claims. *Middlesex*, *supra*, at 431. California has erected multiple levels of barriers to federal constitutional attacks on administrative proceedings in general and State Bar administrative proceedings in particular in state court. Both are implicated in this case, as it involves DRE summary reciprocal discipline based exclusively on a determination from unconstitutional California State Bar attorney discipline proceedings that suffer from an even stronger *Williams* defect than the DRE proceedings.

B. Judicial Exhaustion.

In *Williams* this Court rejected the argument that the availability of a state judicial remedy barred the lawsuit; holding while it might be relevant to the merits, state courts could not apply the judicial exhaustion doctrine to reject 42 U.S.C. §1983 claims. Indeed, judicial exhaustion is a more elaborate version of administrative exhaustion. *See, generally*, *Williams*. Accordingly, any state which immunizes a class of defendants from 42 U.S.C. §1983 claims based on judicial exhaustion violates the Supremacy Clause, even if the procedural barriers were not intended to frustrate federal §1983 claims. The Ninth Circuit found that judicial exhaustion cannot be applied to §1983 claims attacking regular California professional discipline cases in federal court, in large part because of the Catch-22 of the preclusion trap. *Jamgotchian v. Ferraro*, 93 F.4th 1150 (9th Cir.

2024). Roshan explicitly addressed *Jamgotchian* in his appellate opening brief.

C. Jurisdiction-Stripping.

The DRE proceedings at issue were reciprocal discipline proceedings arising from a suspension ordered by the California State Supreme Court after it refused to grant a petition for review of a State Bar Court recommendation. The jurisdiction stripping by the California Legislature and Supreme Court of regular professional license proceedings and claims regarding attorney discipline constitute "extraordinary circumstances that would make [*Younger*] abstention inappropriate". *Middlesex, supra* at 435.

The particular extraordinary circumstances, over and above the unconstitutional judicial exhaustion requirement, are the complete unconstitutionality of the relevant underlying proceedings under the State Bar Act that were reciprocally applied by the DRE. *See Aiona v. Judiciary of Haw.*, 17 F.3d 1244, 1248-49 (9th Cir.1994) ("For example, if a statute `flagrantly and patently' violates `express constitutional prohibitions in every clause, sentence and paragraph,' then federal intervention in state court proceedings is appropriate." (*quoting Younger v. Harris*, 401 U.S. 37, 53 (1971)).

The California Legislature stripped Superior Courts and Courts of Appeal of the jurisdiction to hear 42 U.S.C. §1983 claims in administrative hearings that are subject to administrative mandamus by making that the only effective remedy in state court. "A party must exhaust judicial remedies by filing a § 1094.5 petition, the exclusive

and "established process for judicial review" of an agency decision." *Doe v. Regents of the University of California*, 891 F.3d 1147, 1155, (9th Cir. 2018), *abrogated by Jamgotchian, supra, quoting Johnson v. City of Loma Linda*, 24 Cal.4th 61, 70 (2000).

As for attorney discipline, it is clear that after *Williams* the California State Bar Act "'flagrantly and patently' violates 'express constitutional prohibitions...'", namely the Supremacy Clause, "in every clause, sentence and paragraph," because no such "clause, sentence and paragraph" can be challenged under 42 U.S.C. §1983 in California state court. The California Legislature explicitly stripped Superior Courts and Courts of Appeal of jurisdiction in any matters involving attorney discipline, reserving such jurisdiction to the California Supreme Court. *Barry v. State Bar*, 2 Cal.5th 218, 322-3 (2017), *citing Jacobs v. State Bar*, 20 Cal.3d 191, 196 (1977) ("In 1951, the Legislature excluded other courts from exercising such jurisdiction by striking language from section 6100 which conferred jurisdiction upon the Courts of Appeal and the superior courts"); *see also Sheller v. Sup. Ct.*, 158 Cal.App.4th 1697, 1710 (2008). The California Supreme Court has repeatedly acknowledged that under the State Bar Act "this court has exclusive original jurisdiction to discipline attorneys, **and the sole means of obtaining review of State Bar Court disciplinary recommendations is by a petition for review filed in this court**." *In re Rose*, 22 Cal. 4th 430 (2000)(bold emphasis added). This is as brazen a violation of the Supremacy Clause as one can imagine under *Williams*; the highest state court

has repeatedly held that 42 U.S.C. §1983 claims may not be raised in the courts of the state.

Since the California Supreme Court, by statute and California State Constitutional proviso, cannot and will not try a 42 U.S.C. §1983 claim, this jurisdiction stripping immunizes the State Bar, the California Supreme Court, and its *Ex Parte Young* defendants from all §1983 lawsuits regarding attorney discipline and admissions in California state courts. Cal. Code Civ. Proc. §395. In addition, *Williams* makes clear in a footnote that 42 U.S.C. §1983 claims against the *Ex Parte Young* defendants in an attorney discipline case must be in the same court of general jurisdiction as all other 42 U.S.C. §1983 claims. *See Williams* at 470, n. 3 (obligation to remove state law barriers arises because of "state creating courts of general jurisdiction that routinely sit to hear analogous §1983 actions").

There has been only one appellate decision to consider the inter-relationship of abstention and the line of cases starting with *Felder v. Casey,* 487 U.S. 131 (1988) ("*Felder*") and ending with *Williams* in any detail: *SKS & Associates, Inc. v. Dart,* 619 F.3d 674 (7th Cir. 2010). *SKS* explicates how the *Felder/Williams* line of cases enters into the *Younger* abstention calculus, thus disproving any assertion that *Williams* does not fully constitute a potential exception to the application of *Younger.* In *SKS,* a landlord sued the Chief Judge of Cook County's District Court to vacate his order delaying all eviction cases. The *SKS* panel acknowledged that abstention as to 42 U.S.C. §1983 claims should not occur if there are procedural barriers to filing §1983 claims in state court against the same defendants:

We recognize that there is no general duty to exhaust state judicial or administrative remedies before pursuing a section 1983 action. *See Felder v. Casey,* 487 U.S. 131, 146-47, 108 S.Ct. 2302, 101 L.Ed.2d 123 (1988); *Patsy v. Board of Regents of the State of Florida,* 457 U.S. 496, 500-501, 102 S.Ct. 2557, 73 L.Ed.2d 172 (1982) (collecting cases). However, when the section 1983 action seeks to impose federal supervision on state court proceedings, the federal courts must defer to the state's sovereignty over the management of its courts, **at least so long as the state does not substantively limit or procedurally obstruct something that Congress intended to provide by enacting section 1983.** *See Felder v. Casey,* 487 U.S. at 147, 108 S.Ct. 2302 ("States retain the authority to prescribe the rules and procedures governing suits in their courts.... [H]owever, that authority does not extend so far as to permit States to place conditions on the vindication of a federal right.")....
Unlike the State of Wisconsin in *Felder,* Cook County has done nothing to limit the remedies available to claimants like SKS, nor has the county attempted to force SKS into a specialized, burdensome adjudication system. *See Felder,* 487 U.S. at 141-

> 150, 108 S.Ct. 2302 (striking state statute that limited remedies, provided specialized courts, and imposed a notice restriction).

SKS, supra, at 682 (bold emphasis added, citation to and quotation of the holding of *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985) deleted as it was explicitly overturned and abrogated by *Knick v. Township of Scott, Pa.*, 580 U.S. 180 (2019)).

SKS thus explains why *Felder/Williams* immunity analysis is relevant to the calculus of *Younger* abstention: if the state denies a litigant the right to file a 42 U.S.C. §1983 claim against a defendant in state court, he must be allowed to do so in federal court. The panel in this case could not rebut, let alone acknowledge, this analysis, even though *SKS* was argued in the petition for rehearing.

D. Judicial Exhaustion Vitiates *Younger* Abstention.

Under *Williams*, the State Bar Act is totally and completely unconstitutional as a violation of the Supremacy Clause. As to the DRE proceedings, judicial exhaustion is, as the Seventh Circuit, citing and quoting *Felder*, recognized, utterly inconsistent with *Younger* abstention. *SKS, supra*, at 682.

The Seventh Circuit's *SKS* analysis conflicts with the Ninth Circuits drive-by jurisdictional ruling (placed in a footnote in *McCauley*), that the *Felder/Williams* prohibition on immunizing exhaustion requirements does not affect the *Younger* abstention analysis. *Roshan v. McCauley*, App., *infra*, A5 at n. 1.

E. Review Should Be Granted to Resolve the Conflict Between the Opinion in this Case and *SKS*.

SKS clearly articulates why *Younger* abstention should not apply to protect administrative proceedings as to which the state refuses to allow constitutional challenges in state court under 42 U.S.C. §1983. *Younger* abstention is based on comity, but comity is not a one-way street; the Supremacy Clause requires states that accept lawsuits under 42 U.S.C. §1983 in their courts of jurisdiction accept such lawsuits against all kinds of proceedings, including administrative proceedings. *See, generally, Williams*. Where the state does not permit 42 U.S.C. §1983 lawsuits against favored defendants, the proceedings that are shielded from attack in state court in violation of the Supremacy Clause should not also be shielded in federal court. This can be characterized in terms of *Younger* as either a failure to meet the "adequate opportunity to raise constitutional issues" or as an "extraordinary circumstances" that makes *Younger* abstention inappropriate. *See Middlesex*, at 432; *Younger*, at 52. Either way, states that exclude 42 U.S.C. §1983 from attacking the constitutionality of a state proceeding should not also be immune from such attack in federal court.

The panel in this case refused to allow supplemental briefing and also refused to engage with the presentation of *SKS* in the petition for rehearing. 9th Cir. Dkt. Nos. 60, 84, 88; App. *infra*, A, B, D. There is a manifest conflict between the Ninth Circuit and Seventh Circuit on this question, which should be resolved by this Court.

E. This Case Also Presents the Seventh Amendment Issue Recently Raised by Justice Gorsuch.

While the Supremacy Clause defect was clearly argued before the Ninth Circuit and thus properly preserved for review, there is another issue recently raised by Justice Gorsuch that also merits review and is presented by this case: the absence of a right to jury trial under the Seventh Amendment. U.S. Const. amend VII; App., *infra*, E1.

In a concurrence from a denial of certiorari earlier this month, Justice Gorsuch stated this Court should find an appropriate vehicle to overturn *Minneapolis & St. Louis R. Co. v. Bombolis,* 241 U. S. 211 (1916) and hold that the Seventh Amendment is incorporated against the states in civil trials. *See Thomas v. Humboldt Cty., Cal.*, U.S. Sup. Ct. Case No. 24-1180, October 14, 2025 Petition Denial (statement of Gorsuch, J). California DRE proceedings permit the imposition of penalties and restitution. Cal. Bus. & Prof. Code §10080.9; Cal. Code of Regs. §2907.1. It thus falls straight within the example discussed by Justice Gorsuch at page 3 of the statement. Moreover, under the Court's most recent Seventh Amendment jurisprudence, attorney discipline proceedings that decide issues of fact would require a jury. *Sec. & Exch. Comm'n v. Jarkesy*, 144 S. Ct. 2117 (2024). Under *Jarkesy*, unless a case involves a matter of public right, the question of whether a proceeding covered by the Seventh Amendment requires a jury

> is not limited to the "common-law forms of action recognized" when the Seventh Amendment was ratified. *Curtis v. Loether,* 415 U.S. 189, 193,

> 94 S.Ct. 1005, 39 L.Ed.2d 260. Rather, it "embrace[s] all suits which are not of equity or admiralty jurisdiction, whatever may be the peculiar form which they may assume." Parsons, 3 Pet. at 447. That includes statutory claims that are "legal in nature." *Granfinanciera*, 492 U.S. at 53, 109 S.Ct. 2782. To determine whether a suit is legal in nature, courts must consider whether the cause of action resembles common law causes of action, and whether the remedy is the sort that was traditionally obtained in a court of law. Of these factors, the remedy is the more important. And in this case, the remedy is all but dispositive.

Sec. & Exch. Comm'n v. Jarkesy, *supra*, at 2122.

Matters involving the right to practice as an attorney or to occupy some privileged profession were addressed by the common law courts, particularly the ordinary legal court. 3 Blackstone *Commentaries* •48. However, the common-law Court of King's Bench also had jurisdiction over matters that would involve breach of professional duty. 3 Blackstone, *Commentaries* •41-2. While the various causes of action arising from professional and attorney discipline were very diverse, it is clear that in 1791 the Court of Equity's jurisdiction did not cover them. Accordingly, under this Court's current application of the Seventh Amendment, the original proceedings for professional discipline where facts are under dispute

must be heard by a jury. Some states already recognize this rule; Texas attorneys, for example, have a right to a jury trial in discipline cases. Tex. R. Disciplinary P. 3.06.

While Roshan did not argue this issue below, it would have made no difference if he had because *Minneapolis & St. Louis R. Co. v. Bombolis* unambiguously controls and would without any discussion require rejection of that attack as one which could defeat *Younger* abstention. Thus raising the Seventh Amendment question would have been utterly futile, and failure to do so is no barrier to review. *Bowen v. City of New York*, 476 U.S. 467, 485 (1986). Since this case presents a fully perfected Supremacy Clause issue that defeats *Younger* abstention under *SKS*, nothing would prevent this Court from also considering the Seventh Amendment question.

CONCLUSION

The Court should grant certiorari to address the questions presented.

Dated this October 17, 2025.

Respectfully submitted,

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