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

SUPPLEMENT TO PETITION FOR A WRIT OF CERTIORARI

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I. INTRODUCTION

This supplemental brief is submitted pursuant to S. Ct. Rule 15.8. It consists of discussion of new Ninth Circuit case law holding that constitutional issues can be raised the first time on appeal if raising them below would be futile. It then provides additional analysis based on information unavailable to Petitioner at the time of the filing of the petition. The unavailability was due to the fact that Justice Gorsuch issued his call for new petitions for certiorari raising the continued viability of *Minneapolis & St. Louis R. Co. v. Bombolis,* 241 U. S. 211 (1916) on October 14, 2025, three days before the due date for the petition. *See Thomas v. Humboldt Cty, Cal.*, U.S. Sup. Ct. Case No. 24-1180, October 14, 2025 Petition Denial (statement of Gorsuch, J) ("*Thomas v. Humboldt Cty Statement*").While Petitioner was able to include this issue in his petition, it was impossible for him to access and read even a portion of the relevant case law in that three-day period addressing the Seventh Amendment, U.S. Const. amend. VII, and its application to the states under the Fourteenth Amendment. U.S. Const. amend. XIV.. In any event, the total number of words of this supplemental petition and the original petition is less that the maximum for a petition for certiorari, so the addition of this supplemental brief does not give Roshan any unfair advantage.

II. NEW NINTH CIRCUIT AUTHORITY APPROVES RAISING CONSTITUTIONAL ISSUES ON APPEAL WHERE DOING SO BELOW WOULD BE FUTILE

Petitioner did not raise the Seventh Amendment issue in the District Court or the Ninth Circuit. New Ninth Circuit authority addressing, *inter alia,* a Seventh Amendment claim, explains that this is no barrier to raising the issue for the first time in an appellate proceeding where it would have been futile to do so below. *NLRB v. N. Mountain Foothills Apartments, LLC* Case No. 24-2223 (9th Cir. Oct. 28, 2025).

> The Supreme Court also emphasized that it had "consistently recognized a futility exception to exhaustion requirements." Carr, 593, U.S. at 93. As that exception itself recognizes, it "makes little sense to require litigants to present claims to adjudicators who are powerless to grant the relief requested...."

Id., slip. op. at 12-13, quoting *Carr v. Saul*, 593 U.S. 83 (2021).

III. THIS CASE IS A SUITABLE VEHICLE TO ADDRESS THE APPLICATION OF THE SEVENTH AMENDMENT

A. Relevant State Law

This is a case involving a California Department of Real Estate administrative proceeding which revoked the real estate broker license of Petitioner

Peyman Roshan, *Roshan v. McCauley*, Ninth Circuit Case No. 24-659. The procedures utilized were those set forth in the California Administrative Procedures Act (the "APA"). Cal. Gov. Code §§11340-11365. The APA grew out of California's aggressive regulation of professions and vocations. *See* J. Clarkson, *The History of the California Administrative Procedure Act,* 15 Hastings L.J. 237, 238 (1964). It was the first state to create an administrative procedures act in 1945 and preceded the federal act by a year. *Id.* at 247.

The APA provides the executive licensing agency, in Roshan's DRE case, the California Real Estate Commissioner, the discretion to conduct the hearing itself and issue a decision, or to have it heard before an administrative law judge whom only may issue a proposed decision which the agency head may adopt as the final decision. Cal. Gov. Code §11517(b). The final decision may then be reviewed before a Superior Court (California's court of general jurisdiction) via a petition for writ of administrative mandamus which makes no fact-finding but instead relies upon the administrative record. Cal. Civ. Proc. Code §1094.5; *Western States Petroleum Assn. v. Superior Court,* 9 Cal.4th 559, 573 (1995) (Courts generally consider only the administrative record in proceedings under Cal. Civ. Proc. Code §1094.5). This is the exclusive means of a judicial review. The respondent in an administrative action is barred from challenging the administrative procedure or the superior court proceedings by California's doctrine of judicial exhaustion. *Jamgotchian v. Ferraro*, 93 F. 4th 1150, 1157 (9th Cir. 2024).

There is no right to a jury in such proceedings. Reviewing other state supreme court decisions concerning their state constitutions, the California Supreme Court directly addressed the question of whether a state agency may award damages and restitution and impose fines on the landlord in landlord-tenant cases absent a jury:

> we adduce from these decisions the following proposition: Once a court has determined that exercise of a challenged administrative power meets the "substantive limitations" requirement imposed by the state constitution's judicial powers doctrine -- i.e., the challenged activities are authorized by statute or legislation, and are reasonably necessary to, and primarily directed at, effectuating the administrative agency's primary, legitimate regulatory purposes -- then the state constitution's jury trial provision does not operate to preclude administrative adjudication. Neither plaintiff, nor the amicus curiae and interveners appearing on her behalf, offer a compelling reason to reach a different conclusion under our own constitutional provision.

McHugh v. Santa Monica Rent Control Bd., 49 Cal. 3d 348, 380 (1989).

B. The *Jarkesy* Test—Right to an English Jury *circa* 1789.

Petitioner's case therefore presents a straightforward example of state exercise of combined prosecutorial and adjudicative powers without a jury trial. The answer to a second question merits revisiting the question of incorporating the Seventh Amendment to the states: Was the action stripping Roshan of his real estate license the kind of action for which a jury trial would have been required in the courts of England sitting in Westminster in 1789? *Securities and Exchange Commission v. Jarkesy,* 144 S.Ct. 2117 (2024).

To answer that question, one must examine how a professional or vocational license would have been treated in England in 1789. *Id.* That question is easily answered, and that answer is still reified by ornate buildings in the City of London belonging to the professional guilds. The exclusive right to practice vocations and professions were granted by the British Kings and Queens under "letters patent", as were many other privileges and monopolies, in some cases further authorized by Act of Parliament. 2 Blackstone, *Commentaries* *346; *see generally* W. Levin, *The English Common Law Concerning Monopolies,* 21 U. Chicago L. R. 355, 357-8 (1954) (discussing letters patent case involving alcohol sales); *Bonham v. College of Physicians,* 8 Co. Rep. 107, 77 Eng. Rep. 638, 639-40 (1610)(English trans.) (*"Dr. Bonham's Case"*)(in an action in the Court of Common Pleas, describing the terms of letters patent granted to the College of Physicians in London and the subsequent Parliamentary Act in a false imprisonment lawsuit asserting that the College of

Physicians could not impose fines it kept or imprison qualified non-members whom it would not admit).[1]

Because letters patent, whether for selling sweet wine, practicing "physic", tailoring, clothmaking, practicing an invention, or any other matter were deemed to be legally equivalent acts of royal prerogative, they were all subject to the same legal treatment, discussed in a dissent by Circuit Judge Newman regarding the Seventh Amendment's application to United States patent cases:

> In *Parsons v. Bedford,* 28 U.S. (3 Pet.) 433, 447, 7 L. Ed. 732 (1830), the Court explained that the language of the Seventh Amendment, "Suits at common law," refers to "suits in which legal rights were to be ascertained and determined, in contradistinction to those, where equitable rights alone were recognized, and equitable remedies were

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[1] In *Dr. Bonham's Case* there was no jury because there were no matters of fact to be determined. Juries were empaneled only if there was a disputed question of fact. "Matter of. Fact is to be averr'd by the Party, and triable by the Jurors: The other, being Matter in Law, is to be discussed by the Judges of the Law, and *quemadmodum (a) ad quœstionem facti non respondent Judices; ita ad quœstionem juris non respondent Juratores.*" *Lawrence v. Altham,* 8 Co. Rep. 148, 155, 77 *English Reports* 698 (1616) *("Edward Altham's Case")*(original English and Latin text).

administered." When an action calls for the adjudication of legal rights, the trial court must honor the jury demand, whether or not equitable issues are also present. *Dairy Queen Inc. v. Wood,* 369 U.S. 469, 472-73, 479, 82 S. Ct. 894, 8 L. Ed. 2d 44 (1962). In *Ross v. Bernhard,* 396 U.S. 531, 538, 90 S. Ct. 733, 24 L. Ed. 2d 729 (1970), the Court again explained that the "Seventh Amendment question depends on the nature of the issue to be tried rather than the character of the overall action," and that the presence of a legal issue preserves the jury right, even if the overall character of the cause can be viewed as equitable.

...

Patent validity was a common law action tried to a jury in Eighteenth Century England. An action to repeal and cancel a patent was pled as the common law writ of *scire facias*. E.g., *Rex v. Arkwright* (Kings Bench 1785) (in an action in the Court of King's Bench: "Gentlemen of the jury, this is a *scire facias* brought to repeal a patent...."); *Rex v. Else* (Kings Bench 1785) ("the patent is void, and the jury must find for the Crown"); *Blackston v. Martin,* Latch 112 (Kings Bench 1625-1628) ("En un scire facias, ... mit hors del Chancery, al County Palatine de Durham, d'estra trye, & en verdict done pur le plaintiff...." [our

translation: "In a *scire facias*, ... removed from the Chancery to the County Palatine of Durham, having been tried, and upon verdict given for the plaintiff...."]) Blackstone explained that a *scire facias* to cancel a patent was tried in an "ordinary legal court":

> The ordinary legal court is much more ancient than the court of equity. Its jurisdiction is to hold plean upon a *scire facias* to repeal and cancel the king's letters patent, when made against law, or upon untrue suggestions; and to hold plea of petitions, monstrans de droit, traverses of offices, and the like; when the king has been advised to do any act, or is put in possession of any lands or goods, in prejudice of a subject's right.

3 William Blackstone, *Commentaries on the Laws of England* 47 (1765-69). The *scire facias* for invalidating a patent invoked the common law powers that were held by the court of chancery, see Theodore F. Plucknett, *A Concise History of the Common Law,* 392 n.2 (5th ed.1956) (the *scire facias* is legal, not equitable); 1 William Holdsworth, A

> History of English Law, 449 (6th ed.1938) (chancery had always had some common law jurisdiction). Lord Coke explained that "The court of chancery is either ordinary, as a court of common law, or extraordinary, as a court of equity. The ordinary court holds pleas upon *scire facias* to repeal patents...." 3 *A Systematic Arrangement of Lord Coke's First Institute of the Laws of England,* 328 n.D (J.H. Thomas ed., London, S. Brooke 1818). See also 2 William C. Robinson, The *Law of Patents* § 726, n.1 (a *scire facias* could issue for unlawful grant of a patent).

In Re Technology Licensing Corp., 423 F.3d 1286, 1292-3 (Fed. Cir. 2005).

While Circuit Judge Newman's analysis was not accepted by the majority in *Technology Licensing Corp.* as providing a convincing basis for trying a patent invalidation action before a jury, as a piece of historical analysis it is completely sound.

Roshan's petition presents an appropriate vehicle for determining whether the Seventh Amendment applies to the states because professional and vocational license issues were litigated as matters of law in the common law courts or in other courts employing their their common law powers. Since the suits were ordinary at law matters, a jury trial was required as of 1789 if there were any facts under dispute. In addition, both the DRE proceedings and the underlying State Bar proceedings provide for the imposition of fines, Cal. Bus. & Prof. Code §§

6086.10, 10080.9, and the California Supreme Court imposed a money judgment of $24,407.27 against Roshan, *Roshan on Discipline*, Cal. Sup. Ct. Case No. S265119, Order Imposing Recommended Discipline (Feb. 17, 2021).

C. *Younger* Abstention is no Barrier to Review

Roshan's petition explains why, under the Seventh Circuit's analysis in *SKS & Associates, Inc. v. Dart*, 619 F.3d 674 (7th Cir. 2010), *Younger* abstention cannot protect state actors from lawsuits under 42 U.S.C. §1983 where the state courts of general jurisdiction have been stripped of jurisdiction to hear lawsuits against such state actors, as prohibited under *Haywood v. Drown,* 556 U. S. 729 (2009) as explained by *Williams v. Reed,* 145 S.Ct 465 (2025).

While this basis for rejecting *Younger* abstention applies to the Seventh Amendment issue, there is a separate exceptional circumstance which makes *Younger* abstention inappropriate on the Seventh Amendment issue. *Younger* abstention is based on the principle that state courts are equally capable of addressing constitutional issues as federal courts, and therefore as a matter of comity should be allowed to address federal issues that fall into one of the so-called *NOPSI* categories. *See New Orleans Public Service, Inc. v. Council of City of New Orleans*, 491 U.S. 350 (1989)("*NOPSI*"); *and Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69 (2013)(holding that *Younger* abstention only applies to the kinds of state court proceedings identified in *NOPSI*.) This principle has no application to lawsuits to the extent

that a federal issue raised is the assertion that on-point United States Supreme Court authority is wrongly decided and should be changed. Neither the state courts nor the federal District Courts and Courts of Appeal have the power to make such a determination. *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989) ("If a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions."); *see also, e.g., State Oil Co. v. Khan,* 522 U.S. 3, 20 (1997) ("[I]t is this Court's prerogative alone to overrule one of its precedents.").

There is no dispute *Bombolis, supra*, binds the state courts and the lower federal courts from holding that the Seventh Amendment right to jury trial applies to state proceedings. *Younger* abtention therefore serves no purpose if the state court cannot address a plaintiff's contention that a particular U.S. Supreme Court decision or line of decisions is wrongly decided and should be changed. The dismissal of this action on grounds of *Younger* abstention therefore is no barrier to this Court's granting review.

D. This Case is also a Suitable Vehicle for Reconsideration of the *Slaughter-House Cases.*

In the *Thomas v. Humboldt Cty* Statement Justice Gorsuch pointed out that

> There are, for example, those who hold that the Fourteenth Amendment incorporates provisions of the Bill of Rights through its Due Process Clause, while others believe that the Privileges or Immunities Clause supplies the truer source of authority for the job. See generally *Timbs v. Indiana,* 586 U. S. 146, 157 (2019) (GORSUCH, J., concurring). Similarly, some have argued that the Fourteenth Amendment selectively incorporates only fundamental or deeply rooted aspects of the Bill of Rights, while others have suggested that, under that test or any other, the Fourteenth Amendment renders all of the first eight Amendments enforceable against the States. Compare *Wolf v. Colorado*, 338 U. S. 25, 27 (1949) (over-ruled by *Mapp v. Ohio*, 367 U. S. 643 (1961)), with *Adamson v. California,* 332 U. S. 46, 74–75 (1947) (Black, J., dissent- ing).

Thomas v. Humboldt Cty Statement, slip. Op. at 1-2.

This case presents a suitable vehicle for resolving whether the *Slaughter-House Cases*, 83 U.S. 36 (1872), should be overturned and incorporation of the first eight Amendments of the Constitution, and perhaps other rights, should be deemed arising from the Privileges or Immunities Clause of the Fourteenth Amendment.

This case, like the *Slaughter-House Cases*, involves a state's grant of monopoly rights to practice a profession (a single corporation in the *Slaughter-House Cases* and professional licensees in the case of Roshan). Roshan agrees that the Privileges or Immunities Clause of the Fourteenth Amendment is a sounder basis for incorporation of the first eight Amendments against the states. This case will be an appropriate domain for consideration of the validity of the dissent in the *Slaughter-House Cases* because it requires this Court to review the common law of professional guilds and monopolies as adopted in the United States circa 1789. The dissent relies heavily upon these common law rights and Blackstone's exegesis of them. *Slaughter-House Cases*, at 115-121. If this issue is raised, Roshan will submit that decisions such as *Dr. Bonham's Case*, when placed in the proper historical perspective of royal and parliamentary grants, modifications and revocations of the right and conditions of practicing a trade or profession, demonstrate both a broad power of regulation coupled with the same limitations on revocation as would apply to the most serious and esteemed rights protected by English statute and common law. California, on the other hand, gives a professional licensee fewer and weaker protections against state action against such professional licenses than he would be entitled to if the state action affected his real property; in the former, the professional has no right to a jury trial, to contest to action via a lawsuit under 42 U.S.C. §1983, or to discovery rights granted to any litigant fighting claims in excess of $25,0000, all of which are available in an inverse condemnation action. *Weiss*

v. People ex rel. Department of Transportation 9 Cal.5th 840, 848 (2020) ("inverse condemnation actions....instead proceed by the rules governing ordinary civil actions"); *Knick v. Township of Scott, Pennsylvania,* 588 U.S. 180 (2019).

IV. CONCLUSION

This action is a suitable vehicle to address the Seventh Amendment jury right issue in state administrative proceedings, as well as addressing whether the application of that Amendment against the states arises from the Privileges or Immunities claue of the Fourteenth Amendment.

Dated this October 30, 2025.

Respectfully submitted,

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