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 OF AMICI CURIAE PUBLIC CITIZEN AND AMERICAN CIVIL LIBERTIES UNION FOUNDATION IN SUPPORT OF PETITIONERS

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Statutes

Other Authorities

INTEREST OF AMICI CURIAE[1]

Public Citizen is a nonprofit consumer-advocacy organization with members in all 50 states. Public Citizen appears on behalf of its members before Congress, administrative agencies, and the courts on a wide range of issues involving protection of consumers and workers, public health and safety, and maintaining openness and integrity in government. One of Public Citizen's interests is ensuring that federal and state governments comply with laws that affect their citizens. The ability of citizens to enforce those laws, including through the private right of action provided in 42 U.S.C. § 1983, is vital to guaranteeing such compliance. Public Citizen therefore submits this brief because respondent's position, if adopted, would undermine the Section 1983 right of action and impede plaintiffs' choice of a state court forum for their Section 1983 claims.

The American Civil Liberties Union (ACLU) is a nationwide, nonprofit, nonpartisan organization with nearly two million members and supporters dedicated to the principles of liberty and equality embodied in the Constitution. Since its founding more than 100 years ago, the ACLU has appeared before this Court in numerous cases. The ACLU has long used Section 1983 lawsuits to vindicate civil rights and civil liberties, and its interest is in ensuring that it continues to play that role, in state as well as federal courts.

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[1] This brief was not written in whole or part by counsel for a party. No one other than amici curiae made a monetary contribution to the preparation or submission of the brief.

SUMMARY OF ARGUMENT

A state law requiring exhaustion of state administrative remedies before an individual can bring a Section 1983 claim is contrary to both the statute's text and its purpose of providing a legal remedy for violations of federal rights. A state-imposed exhaustion requirement cannot be squared with this Court's decisions in *Patsy v. Board of Regents of State of Florida*, 457 U.S. 496 (1982), and *Felder v. Casey*, 487 U.S. 131 (1988), regardless of whether the Section 1983 lawsuit is filed in state or federal court.

Allowing states to impose administrative exhaustion requirements on Section 1983 claims would undermine the Section 1983 right of action for reasons that apply equally to state and federal court lawsuits. First, the preclusive effect of a state administrative determination could effectively decide the Section 1983 lawsuit. Second, without tolling of the statute of limitations, an exhaustion requirement could make the Section 1983 claim unavailable.

Plaintiffs may have a variety of sound reasons for choosing to sue in state court. For instance, when a plaintiff alleges both a Section 1983 claim and state-law claims, the state court may be the only or most appropriate forum for adjudication of all the claims in the same case. And where abstention doctrines may be triggered, filing suit in state court can avoid dismissal or unnecessary delay. In addition, procedural and practical considerations may support the choice of a state court forum.

ARGUMENT

I. Requiring exhaustion of state administrative remedies as a precondition to suit is contrary to Section 1983.

A. Section 1983 "provide[s] an express cause of action to any person deprived (by someone acting under color of state law) of 'any rights … secured by the Constitution and laws.'" *Health & Hosp. Corp. of Marion Cnty. v. Talevski*, 599 U.S. 166, 171 (2023) (omission in original; quoting 42 U.S.C. § 1983). The statutory text—imposing liability on "[e]very person" who under color of state law violates the federal rights of "any" person, 42 U.S.C. § 1983—has an "expansive sweep," with "language [that] is absolute and unqualified," *Owen v. City of Indep.*, 445 U.S. 622, 635 (1980); *see Felder*, 487 U.S. at 139 (stating that Section 1983 "is to be accorded 'a sweep as broad as its language'" (quoting *United States v. Price*, 383 U.S. 787, 801 (1966)).

Nothing in the statutory text imposes any prerequisite to suit, let alone one requiring exhaustion of state administrative remedies. As this Court has explained, "the plain terms of § 1983" impose "only two" requirements to state a cause of action: "First, the plaintiff must allege that some person has deprived him of a federal right. Second, he must allege that the person who has deprived him of that right acted under color of state or territorial law." *Gomez v. Toledo*, 446 U.S. 635, 640 (1980). Requiring exhaustion as a precondition to suit imposes a third requirement unsupported by the plain text. It is an impermissible "condition[] on the vindication of a federal right." *Felder*, 487 U.S. at 147.

An "assessment of the applicability of a state law to federal civil rights litigation … in light of the purpose and nature of the federal right," *id.* at 139, confirms the point. In enacting Section 1983, Congress "was concerned that state instrumentalities could not protect [federal] rights; it realized that state officers might, in fact, be antipathetic to the vindication of those rights." *Mitchum v. Foster*, 407 U.S. 225, 242 (1972). Requiring individuals to exhaust state administrative remedies and "seek redress in the first instance from the very targets of the federal legislation[] is inconsistent in both purpose and effect with the remedial objectives of the federal civil rights law." *Felder*, 487 U.S. at 153; *see Preiser v. Rodriguez*, 411 U.S. 475, 518 (1973) (Brennan, J., dissenting) ("Exhaustion of state remedies is not required precisely because such a requirement would jeopardize the purposes of the Act."). As this Court has stated, it is "plain that Congress never intended that those injured by governmental wrongdoers could be required, as a condition of recovery, to submit their claims to the government responsible for their injuries." *Felder*, 487 U.S. at 142.

Since the enactment of Section 1983, Congress has imposed an exhaustion requirement on Section 1983 claims only when they are brought by prisoners with respect to prison conditions. Specifically, the Prison Litigation Reform Act (PLRA) provides:

> No action shall be brought with respect to prison conditions under section 1983 of this title … by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.

42 U.S.C. § 1997e(a). As the Court has explained, in requiring exhaustion for Section 1983 suits brought by prisoners to challenge prison conditions, "Congress[] conclu[ded] that the no-exhaustion rule should be left standing with respect to other § 1983 suits." *Patsy*, 457 U.S. at 509. Indeed, "the exhaustion provisions of [Section 1997e] make sense, and are not superfluous, only if exhaustion could not be required before its enactment and if Congress intended to carve out a narrow exception to this no-exhaustion rule." *Id.* at 512.

Accordingly, as the Court has held, "exhaustion of state administrative remedies should not be required as a prerequisite to bringing an action pursuant to § 1983." *Id.* at 516.

B. Nothing in the text of Section 1983 supports a different rule for cases litigated in state court. Although *Patsy* concerned a Section 1983 lawsuit in federal court, the Court's reasoning there easily applies to state court actions. Thus, in *Felder*, this Court applied *Patsy* to reverse a decision of a state supreme court that a Wisconsin notice-of-claim statute applied to Section 1983 actions brought in *state* court. 487 U.S. at 134. The Court explained that "the notice provision impose[d] an exhaustion requirement on persons who cho[se] to assert their federal right in state courts" and that, under *Patsy*, there is no exhaustion requirement for a Section 1983 claim. *Id.* at 146. The state law thus "burden[ed] the exercise of the federal right by forcing civil rights victims who seek redress in state courts to comply with a requirement that is entirely absent from civil rights litigation in federal courts." *Id.* at 141.

The fact that *Felder* was litigated in state court, rather than federal court, offered no basis for veering from the no-exhaustion rule set forth in *Patsy*:

> Given the evil at which the federal civil rights legislation was aimed, there is simply no reason to suppose that Congress meant "to provide these individuals immediate access to the federal courts notwithstanding any provision of state law to the contrary," yet contemplated that those who sought to vindicate their federal rights in state courts could be required to seek redress in the first instance from the very state officials whose hostility to those rights precipitated their injuries.

Id. at 147 (quoting *Patsy*, 457 U.S. at 504).

Put simply, regardless of whether a Section 1983 lawsuit is filed in federal or state court, "[a] state law … that directs injured persons to seek redress in the first instance from the very targets of the federal legislation[] is inconsistent in both purpose and effect with the remedial objectives of the federal civil rights law." *Id.* at 153. There is no basis in the text or purpose of Section 1983, or in this Court's precedents, to read the statute differently depending on whether the case is brought in state or federal court.

II. Permitting states to impose exhaustion requirements as a condition of bringing Section 1983 claims would undermine the Section 1983 right of action.

Irrespective of whether a Section 1983 claim is litigated in state or federal court, conditioning availability of the claim on the plaintiff's exhaustion of state administrative remedies would undermine the federal right of action. In at least two respects,

exhaustion requirements could effectively determine the outcome of Section 1983 claims before they even get to court.

First, state administrative determinations can have preclusive effect in later lawsuits. *See Univ. of Tenn. v. Elliott*, 478 U.S. 788, 799 (1986). If exhaustion were required, that preclusive effect could effectively "reduce to insignificance" the Section 1983 lawsuit. *Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104, 111–12 (1991). "When exhausting an administrative process is a prerequisite to suit in court, giving preclusive effect to the agency's determination in that very administrative process could render the judicial suit 'strictly *pro forma*.'" *B & B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 152 (2015) (quoting *Astoria*, 501 U.S. at 111). If plaintiffs were required to exhaust administrative remedies prior to suit, only plaintiffs who lost in the administrative proceedings would file suit. "In such a case, however, the [defendant] would likely enjoy an airtight defense of collateral estoppel if a state agency determination on the merits were given preclusive effect" in the state court Section 1983 litigation. *Astoria*, 501 U.S. at 111.

For example, in *Plough ex rel. Plough v. West Des Moines Community School District*, 70 F.3d 512 (8th Cir. 1995), a student brought a Section 1983 lawsuit against a school district and its board for violating his due process rights. Before filing suit, the student unsuccessfully pursued an administrative appeal before the state board of education. *Id.* at 514. The Eighth Circuit held that both issue preclusion and claim preclusion barred the student from litigating his Section 1983 lawsuit in federal court. *Id.* at 516–17.

In numerous other cases as well, federal and state courts have granted summary judgment to a defendant or dismissed a plaintiff's Section 1983 claim based on the preclusive effect of an administrative determination. *See, e.g.*, *Taylor v. City of Lawrenceburg*, 909 F.3d 177, 180–82 (7th Cir. 2018) (concluding that issue preclusion barred litigation of a Section 1983 retaliatory discharge claim after an administrative finding that the plaintiff's discharge was not retaliatory); *Baez-Cruz v. Municip. of Comerio*, 140 F.3d 24, 31 (1st Cir. 1998) (concluding that an administrative finding that the plaintiffs' dismissals were not discriminatory had "collateral estoppel effect" because "[t]his factual issue [was] the basis of Plaintiffs' federal constitutional claim"); *Ex parte Smith*, 683 So. 2d 431, 436 (Ala. 1996) (affirming that collateral estoppel barred a faculty member's Section 1983 claim alleging unlawful termination where an administrative panel had found that the termination was for good cause and the plaintiff did not seek state court review of the administrative decision); *Lindas v. Cady*, 515 N.W.2d 458, 459 (Wis. 1994) (stating that issue preclusion barred litigation of a Section 1983 claim alleging sex discrimination in light of a state agency's finding that the defendant had not discriminated against the plaintiff on the basis of sex).

Second, as this Court has recognized, without tolling the statute of limitations pending exhaustion of administrative remedies, an exhaustion requirement "might result in the effective repeal of § 1983." *Patsy*, 457 U.S. at 514 n.17. Without tolling, exhaustion puts plaintiffs in a "self-evident" "procedural catch 22": "the [plaintiff] who files suit under § 1983 prior to exhausting administrative

remedies risks dismissal … whereas the [plaintiff] who waits to exhaust his administrative remedies risks dismissal based upon untimeliness." *Johnson v. Rivera*, 272 F.3d 519, 521–22 (7th Cir. 2001) (tolling the limitations period while the plaintiff pursued the administrative exhaustion required by the PLRA).

No "federal tolling rule" exists for Section 1983 claims. *Wallace v. Kato*, 549 U.S. 384, 394 (2007); *see Bd. of Regents of Univ. of State of N.Y. v. Tomanio*, 446 U.S. 478, 483–86 (1980). Instead, state law governs "tolling rules, just as … for the length of statutes of limitations." *Wallace*, 549 U.S. at 394. And in some states, the limitations period is not tolled while a plaintiff exhausts administrative remedies. *See Braxton v. Zavaras*, 614 F.3d 1156, 1160 (10th Cir. 2010) (in a case where exhaustion was required under the PLRA, holding that "under Colorado law, the statute of limitations is not automatically tolled whenever an individual pursues administrative remedies").

These concerns fully support the rule that exhaustion of state administrative remedies is not a prerequisite to pursuing a Section 1983 claim, in either federal or state court.

III. State courts provide an important forum for the litigation of Section 1983 claims.

Federal and state courts have concurrent jurisdiction over Section 1983 claims, "enabling the plaintiff to choose the forum in which to seek relief." *Haywood v. Drown*, 556 U.S. 729, 735 (2009) (quoting *Patsy*, 457 U.S. at 506); *see Maine v. Thiboutot*, 448 U.S. 1, 3 n.1 (1980). Although the majority of plaintiffs choose to file in federal court, "increasing numbers of § 1983 suits are being filed in state courts." Sheldon

H. Nahmod, *Civil Rights & Civil Liberties Litigation: The Law of Section 1983*, § 1:58 (2023 ed.); *see* Steven H. Steinglass, *Section 1983 Litigation in State and Federal Courts*, § 1:1 (2023 ed.) ("State courts … emerged in the latter decades of the twentieth century as the forum of choice for an increasing number of plaintiffs suing state and local defendants under § 1983.").

Plaintiffs have good reasons for filing Section 1983 lawsuits in state court. For instance, plaintiffs alleging both Section 1983 and state-law claims may choose to sue in state court to be sure that one court can resolve all their claims in the same case, or to have a state court interpret and enforce their state-law claims. In addition, a variety of procedural and practical considerations may support litigating in state court.

A. For plaintiffs alleging a Section 1983 claim and state-law claims, state court may be the only or most appropriate option for adjudication of all the claims in one suit. The Eleventh Amendment bars federal court jurisdiction over suits seeking to enjoin state officials from violating state law. *See Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 124–25 (1984). Therefore, a plaintiff who has a Section 1983 claim and a related state-law claim for injunctive relief against a state official will not be able to litigate both claims in federal court. *See Cuesnongle v. Ramos*, 835 F.2d 1486, 1497–98 (1st Cir. 1987) (stating that because of *Pennhurst*, the federal court could not grant relief on the state-law claims). Such a plaintiff can either "file the entire action in state court, drop the state-law claims in order to file in federal court, or bifurcate the case" so that the state-law claims are in state court and the federal-law claims are in federal

court. A.B.A., *Sword & Shield: A Practical Approach to Section 1983 Litigation*, ch. 2.III.C (5th ed. 2021); *see Cuesnongle*, 835 F.2d at 1497. The bifurcation option not only "involve[s] duplication of effort, but the potential race to the finish may raise preclusion issues as well." Barry Friedman, *Under the Law of Federal Jurisdiction: Allocating Cases Between Federal and State Courts*, 104 Colum. L. Rev. 1211, 1268 (2004); *cf. Migra v. Warren City Sch. Dist. Bd. of Educ.*, 465 U.S. 75, 85 (1984) (holding that a "state-court judgment … has the same claim preclusive effect in federal court that the judgment would have in the … state courts"). Bringing both the Section 1983 claim and the state-law claim together in a single suit in state court, however, allows the plaintiff to pursue all her claims in a single case.

In addition, equitable abstention doctrines "frequently operate to force a § 1983 plaintiff to resort to a state court." Nahmod, *supra*, § 1:58. Under *Younger* abstention, *see Younger v. Harris*, 401 U.S. 37 (1971), federal courts "must refrain from enjoining" pending state criminal proceedings and "particular state civil proceedings that are akin to criminal prosecutions or that implicate a State's interest in enforcing the orders and judgments of its courts." *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 72–73 (2013) (internal citation omitted). Accordingly, applying *Younger* abstention, federal courts have sometimes dismissed Section 1983 suits. *See, e.g.*, *Citizens for Free Speech, LLC v. Cnty. of Alameda*, 953 F.3d 655, 657 (9th Cir. 2020) (dismissing a Section 1983 lawsuit alleging due process violations because of an ongoing county abatement proceeding); *Majors v. Engelbrecht*, 149 F.3d 709, 711 (7th Cir. 1998) (dismissing a Section 1983 lawsuit alleging equal

protection and due process violations because of an ongoing license-suspension hearing); *see also Carroll v. City of Mt. Clemens*, 139 F.3d 1072, 1076 (6th Cir. 1998) (staying a Section 1983 damages action because of an ongoing state building-code enforcement proceeding). When a plaintiff pursues a Section 1983 claim in state court, however, *Younger* abstention is inapplicable, and dismissal on that basis not a risk.

Likewise, the doctrine of *Pullman* abstention, *see R.R. Comm'n of Tex. v. Pullman Co.*, 312 U.S. 496 (1941), may make the state court a more appropriate forum. Under that doctrine, "federal courts should abstain from decision when difficult and unsettled questions of state law must be resolved before a substantial federal constitutional question can be decided." *Hawaii Hous. Auth. v. Midkiff*, 467 U.S. 229, 236 (1984); *cf.* 17A Wright & Miller, *Federal Practice & Procedure*, § 4242 (3d ed. 2023 update). "Designed to avoid federal-court error in deciding state-law questions antecedent to federal constitutional issues, the *Pullman* mechanism remit[s] parties to the state courts for adjudication of the unsettled state-law issues." *Arizonans for Off. Eng. v. Arizona*, 520 U.S. 43, 76 (1997). Accordingly, *Pullman* abstention "entail[s] a full round of litigation in the state court system before any resumption of proceedings in federal court." *Id.* Applying *Pullman* abstention, federal courts have sometimes stayed or dismissed without prejudice Section 1983 lawsuits. *See, e.g.*, *Gearing v. City of Half Moon Bay*, 54 F.4th 1144, 1146 (9th Cir. 2022) (staying Section 1983 lawsuit alleging takings claim pending resolution of a state court eminent-domain action); *Nationwide Mut. Ins. Co. v. Unauthorized Prac. of L. Comm.*, 283 F.3d 650, 655 (5th Cir. 2002) (dismissing without prejudice Section

1983 lawsuit challenging constitutionality of provision of the Texas State Bar Act where resolution of Texas law issue would make resolution of federal constitutional issue unnecessary).

Rather than risk that their Section 1983 claims will be decided late or not at all, plaintiffs may choose to file in state court. Indeed, in deciding to abstain, federal courts have cited the availability of the state court forum for adjudication of the Section 1983 claim. *See, e.g.*, *Carroll*, 139 F.3d at 1075 (upholding district court's application of *Younger* abstention and stating that the "[plaintiff] may raise all of her claims—state, federal, and constitutional—under the state court's general and concurrent jurisdiction").

Plaintiffs also may choose to sue in state court because, aside from the Section 1983 claim, the case is "otherwise … a state tort action." Susan N. Herman, *Beyond Parity: Section 1983 and the State Courts*, 54 Brook. L. Rev. 1057, 1060 (1989); *see* Richard Frankel, *Regulating Privatized Government Through § 1983*, 76 U. Chi. L. Rev. 1449, 1510 (2009) (stating that "certain § 1983 actions have a state tort analogue"). For example, plaintiffs may "add[] a fourth amendment based police misconduct claim to a battery action when police brutality is alleged, or a due process claim to a wrongful discharge action when a government employee has been fired." Herman, *supra*, at 1060; *see* William E. Ringel, *Searches & Seizures, Arrests & Confessions*, § 22:5 & n.3 (2d ed., 2024 update) ("Virtually any police misconduct forming the basis of a Fourth Amendment claim may also form the basis of a tort action in state court against the offending officials.") (collecting cases). In such cases, suing in state court may be preferable

because the state court has more familiarity with state tort law.

B. Plaintiffs also may choose to litigate in state court for procedural reasons. For example, pleading standards in some states are less exacting than those in federal court. *See* Zachary D. Clopton, *Procedural Retrenchment and the States*, 106 Cal. L. Rev. 411, 425 (2018) (finding that "courts in nineteen states have expressly rejected [the] plausibility pleading" standard set forth in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007)); *see, e.g.*, *id.* at 426 n.135 (collecting cases applying state pleading standards to Section 1983 claims); *Peak Alarm Co. v. Salt Lake City Corp.*, 243 P.3d 1221, 1245 (Utah 2010) (stating that under Utah's notice pleading standard, "all that is required of a plaintiff bringing a § 1983 cause of action is to give the defendants 'fair notice' of the claims against them"). Accordingly, in some states, suits may survive an early motion to dismiss in state court, even if they might not satisfy federal pleading standards. Clopton, *supra*, at 426. Because the "difference in procedural provisions may lead to a difference in the ultimate outcome of the case," a plaintiff may choose state court to take advantage of the different procedural rules. Debra Lyn Bassett, *The Forum Game*, 84 N.C. L. Rev. 333, 350 (2006).

State standing rules may also support a plaintiff's choice to file in state court. Because "the constraints of Article III do not apply to state courts, … the state courts are not bound by the limitations of a case or controversy or other federal rules of justiciability even when they address issues of federal law." *ASARCO Inc. v. Kadish*, 490 U.S. 605, 617 (1989). Although some state standing doctrines "roughly resemble the

federal justiciability doctrines," "[o]ther states allow greater access to their courts than is available under the federal doctrines." F. Andrew Hessick, *Cases, Controversies, and Diversity*, 109 Nw. U. L. Rev. 57, 65 (2014); *see generally* Wyatt Sassman, *A Survey of Constitutional Standing in State Courts*, 8 Ky. J. Equine, Agric., & Nat. Res. L. 349 (2015) (surveying state standing requirements). As the Seventh Circuit has observed:

> While some consider it odd that a state court might have the authority to hear a federal constitutional claim in a setting where a federal court would not, it is clear that Article III's 'case or controversy' limitations apply only to the federal courts. … Wisconsin's doctrines of standing and ripeness are the business of the Wisconsin courts, and it is not for us to venture how the case would there be resolved.

Smith v. Wis. Dep't of Agric., 23 F.3d 1134, 1142 (7th Cir. 1994) (internal citations omitted). Thus, for example, in *Urban League of Essex County v. Township of Mahwah*, 370 A.2d 521 (N.J. Super. Ct. App. Div. 1977), the New Jersey appellate court reversed the trial court's dismissal for lack of standing of a lawsuit alleging a Section 1983 claim, stating that "New Jersey is not … bound by federal rules of standing." *Id.* at 524.

C. Finally, a plaintiff may have practical reasons for preferring to litigate a Section 1983 claim in state court. For instance, the plaintiff's attorney may be more familiar with state court practice. *See* Steinglass, *supra*, § 8:2 (noting that "familiarity with the respective forums, including its personnel and policies, … can influence choice-of-forum decisions");

Scott Dodson, *Beyond Bias in Diversity Jurisdiction*, 69 Duke L.J. 267, 296 (2019) (identifying "convenience considerations," including "court familiarity," as one of "[t]he most important factors" for forum selection). In addition, the state courthouse may be more geographically convenient than the federal courthouse, especially for plaintiffs and lawyers in rural areas. *See* Hon. Karen L. Stevenson & James E. Fitzgerald, *Federal Civil Procedure Before Trial (The Rutter Group Practice Guide)*, ch. 2D (Cal. & 9th Cir. ed., 2024 update) (noting that a "state court case filed in Eureka would be removed to San Francisco," which is approximately 270 miles away).

Plaintiffs also may decide whether to sue in state or federal court based on differences in how quickly the respective courts render decisions. "Docket congestion, and therefore the length of time required to get to trial, may vary markedly between the federal and the state court systems." A.B.A., *supra*, ch. 2.III.B. For example, for the 12-month period ending March 31, 2023, for civil cases filed in the federal district courts, the median time intervals from filing to disposition ranged from approximately 0.03 to 68.9 months,[2] and the median time intervals from filing to trial ranged from approximately 19.0 to 64.3 months.[3] In contrast, Oregon has adopted a standard providing that 75 percent of its "[g]eneral [c]ivil" cases

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[2] *See* U.S. Courts, Table C-5, *U.S. District Courts–Civil Federal Judicial Caseload Statistics*, https://www.uscourts.gov/statistics/table/c-5/federal-judicial-caseload-statistics/2023/03/31.

[3] *See* U.S. Courts, Table T-3, *U.S. District Courts–Trials Federal Judicial Caseload Statistics*, https://www.uscourts.gov/statistics/table/t-3/federal-judicial-caseload-statistics/2023/03/31.

should be decided within 180 days.[4] In 2023, the Oregon trial courts met that standard in approximately 77 percent of those cases.[5]

Plaintiffs also may favor state courts because federal court litigation can be generally more expensive. *See* Stephen N. Subrin & Thomas O. Main, *Braking the Rules: Why State Courts Should Not Replicate Amendments to the Federal Rules of Civil Procedure*, 67 Case W. Res. L. Rev. 501, 527 (2016) ("There is substantial evidence that it is considerably more expensive to try the same type of case in federal court than in state court."); Stephen B. Burbank & Stephen N. Subrin, *Litigation and Democracy: Restoring a Realistic Prospect of Trial*, 46 Harv. C.R.-C.L. L. Rev. 399, 409 (2011) (stating that "many observers of current federal practice have asserted that it is more expensive to litigate the same case in federal court than state court").

In sum, Section 1983 provides a cause of action to remedy violations of federal rights by state actors. A plaintiff's choice of state court to adjudicate their claim should not limit the availability of the Section 1983 remedy.

CONCLUSION

For the foregoing reasons, the decision below should be reversed.

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[4] Or. Judicial Branch, *Time to Disposition Standards for Oregon Circuit Courts* 5 (2018), *available at* https://www.courts.oregon.gov/rules/Pages/other.aspx.

[5] Or. Judicial Branch, *Oregon Goals for Timely Disposition—Age of Terminated Cases 2023*, https://www.courts.oregon.gov/about/Documents/2023_TimeToDispo.pdf.

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