No. 12-532

In the Supreme Court of the United States

SGT. BILL BROWN, ET AL.,
PETITIONERS

v.

CRYSTAL HENLEY

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF OF *AMICI CURIAE* STATE OF MICHIGAN AND [#] OTHER STATES FOR PETITIONERS

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QUESTION PRESENTED

Whether a plaintiff may maintain a cause of action for employment discrimination against a state or local government under 42 U.S.C. § 1983, when he would be barred from maintaining an action based on the same facts and same alleged discrimination under Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972.

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INTEREST OF AMICI CURIAE

The *amici* states and their municipalities employ millions of Americans. Each of the *amici* has adopted statutes, rules, and regulations prohibiting discrimination on the basis of race, color, religion, sex, or national origin by its constituent branches, departments, agencies, and political subdivisions. Many *amici* have fair-employment-practices agencies responsible for the enforcement of state and federal anti-discrimination laws against state and local government employers. In sum, eradicating unlawful employment discrimination by state and local governmental units is of crucial importance to *amici*.

In Title VII, Congress prioritized the voluntary resolution of employment disputes over litigation. Specifically, Title VII requires an employee to make a charge of discrimination to the Equal Employment Opportunity Commission or a state-fair-employment-practices agency before filing a lawsuit. Title VII further requires that the EEOC "endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion." 42 U.S.C. § 2000e-5(b). Title VII also imposes a duty of notice and ensures the timely initiation of employment-discrimination claims. This Court long ago concluded that Title VII provides the exclusive remedy for discrimination claims against the federal government; but the Eighth Circuit, among others, allows a plaintiff employee to bypass the comprehensive remedial scheme of Title VII and pursue relief under 42 U.S.C. § 1983. The *amici* states respectfully submit that the states are entitled to the same benefits of Title VII exclusivity as the federal government.

INTRODUCTION AND SUMMARY OF ARGUMENT

Title VII creates a far-reaching and detailed statutory scheme for resolving employment discrimination. It protects Americans against discrimination based on race, color, religion, sex, or national origin. It provides an administrative framework that favors notice, informal resolution of disputes, and timely initiation and resolution of claims. In 1972, Congress extended Title VII to apply to federal, state, and municipal employees.

By contrast, § 1983 creates no substantive rights or protections for the public. Section 1983 is merely a vehicle for the protection of rights granted by other federal laws.

The decision below improperly allows § 1983 suits to circumvent the comprehensive remedial scheme of Title VII. Thus, state and municipalities are alone deprived of Title VII's benefits—including its encouragement of conciliation and early-notice requirements—and subjected to suit under the less-tailored, generic § 1983. Under this Court's jurisprudence, Congress's creation of a comprehensive statutory scheme to guard against employment discrimination precludes the use of the generic § 1983 to vindicate those same rights. Indeed, in *Brown* v. *General Services Administration*, 425 U.S. 820 (1976), construing the same 1972 amendments to Title VII, this Court held that Congress intended Title VII to preempt federal employees' rights to sue under the Constitution and 42 U.S.C. § 1981, which provides a right to be free from racial discrimination.

This Court's intervention is needed to restore Title VII's comprehensive nature and its protections to the states and municipal governments. Accordingly, the *amici* states respectfully request that this Court grant Missouri's petition for a writ of certiorari for all the reasons stated in the petition, and also because the Eighth's Circuit's holding conflicts with five of this Court's decisions: *Fitzgerald* v. *Barnstable School Committee*, 555 U.S. 246 (2009); *Rancho Palos Verdes* v. *Abrams*, 544 U.S. 113 (2005); *Smith* v. *Robinson*, 468 U.S. 992 (1984); *Middlesex County Sewerage Authority* v. *National Sea Clammers Association*, 453 U.S. 1 (1981); and *Brown* v. *General Services Administration*, 425 U.S. 820 (1976)).

ARGUMENT

I. The Petition should be granted because Title VII provides the exclusive remedy for gender discrimination.

This Court has not determined whether Title VII precludes a plaintiff from asserting a claim for discrimination under § 1983 against a state or local government employer. *Henley* v. *Brown*, 686 F.3d 634, 640 (8th Cir. 2012). Section 1983 "is not itself a source of substantive rights, but a method for vindicating federal rights elsewhere conferred by those parts of the United States Constitution and federal statutes that it describes." *Baker* v. *McCollan*, 443 U.S. 137, 144 n.3 (1979). Section 1983 imposes liability on anyone who, under color of state law, deprives a person "of any rights, privileges, or immunities secured by the Constitution and laws." 42 U.S.C. § 1983. Redress under § 1983 is only available if the plaintiff can

demonstrate that the Constitution or a federal statute creates an individually enforceable right in the class of beneficiaries to which the plaintiff belongs. *Rancho Palos Verdes*, 544 U.S. at 120. Even then, "there is only a rebuttable presumption that that the right is enforceable under § 1983" because Congress may expressly or impliedly have forbidden recourse to § 1983. *Blessing* v. *Freestone*, 520 U.S. 329, 341 (1997).

The Court has set forth the appropriate analysis to determine whether statutory enactments preclude claims under § 1983, most recently in *Fitzgerald* v. *Barnstable School Committee*, 555 U.S. 246, 252 (2009). The critical inquiry is congressional intent. *Smith*, 468 U.S. at 1012 (1984) (citing *Brown*, 425 U.S. at 825–29); *Fitzgerald*, 555 U.S. at 252. Evidence of congressional intent can be found in the statutory text, *Rancho Palos Verdes*, 544 U.S. at 120; inferred because individual enforcement under § 1983 "would be inconsistent with Congress' carefully tailored scheme," *Smith*, 468 U.S. at 1012; and "confirmed by a statute's context," *Fitzgerald*, 555 U.S. at 253. The Court has further explained that where the § 1983 claim asserts a constitutional violation, "lack of congressional intent [to preclude a § 1983 action] may be inferred from a comparison of the rights and protections of the statute and those existing under the Constitution." *Id*. at 252–53. Applying that analysis here demonstrates that Congress intended Title VII to preclude § 1983 employment-discrimination claims against state and local governments.

A. Title VII's carefully tailored scheme is incompatible with gender-discrimination claims under § 1983.

In three cases, the Court has held that statutory enactments preclude claims under § 1983. In all of these cases, the statutes at issue required plaintiffs to comply with particular procedures and exhaust their administrative remedies before filing suit. See *Fitzgerald* v. *Barnstable Sch. Comm.*, 555 U.S. 246, 254 (2009) (discussing the three cases).

First, in *Middlesex County Sewerage Authority* v. *National Sea Clammers Association*, 453 U.S. 1 (1981), the Court concluded that the comprehensive nature of the specific statutory remedies provided in the Federal Water Pollution Control Act and the Marine Protection, Research, and Sanctuaries Act of 1972 demonstrated that Congress "intended to supplant any remedy that otherwise would be available under § 1983." *Id.* at 20–21. The Court explained that "[w]hen the remedial devices provided in a particular Act are sufficiently comprehensive, they may suffice to demonstrate congressional intent to preclude the remedy of suits under § 1983." *Id.* at 20.

Second, in *Smith* v. *Robinson*, 468 U.S. 992 (1984), the Court held that the Education of the Handicapped Act (EHA) precluded § 1983 claims alleging violations of the equal-protection right to a free, appropriate, public education. *Id.* at 1009. The Court again emphasized the comprehensive scheme established by Congress in the EHA, including the requirement that parents and local education agencies work together to formulate an individualized plan for the education of

each child with a disability. *Id.* at 1010–12. The Court determined that Congress's intent was clear: "Allowing a plaintiff to circumvent the EHA administrative remedies would be inconsistent with Congress' carefully tailored scheme." *Id.* at 1012. Accordingly, the Court concluded that the EHA's comprehensive administrative provisions demonstrated congressional intent to preclude the enforcement of a plaintiff's constitutional rights under § 1983.

Third, in *Rancho Palos Verdes* v. *Abrams*, 544 U.S. 113 (2005), the Court determined that an individual may not enforce the Telecommunications Act's limitations on local zoning decisions through a § 1983 action. The Court reiterated that Congress's provision of "'one method of enforcing a substantive rule suggests that Congress intended to preclude others.'" *Id.* at 121 (quoting *Alexander* v. *Sandoval*, 532 U.S. 275, 290 (2001)). The Court concluded that enforcement of the Telecommunication Act's zoning restrictions through § 1983 "would distort the scheme of expedited judicial review and limited remedies created by [the Act]" and held that resort to § 1983 was precluded. *Id.* at 127.

In contrast, in those cases where the Court has held that § 1983 *is* available for violation of another federal statute, the Court has emphasized the absence of a comprehensive remedial scheme. *Rancho Palos Verdes*, 544 U.S. at 121–22 (collecting cases); see *Fitzgerald*, 555 U.S. at 247 (The remedies provided by Title IX "stand in stark contrast to the 'unusually elaborate,' 'carefully tailored,' and 'restrictive' enforcement schemes of the statutes in *Sea Clammers*, *Smith*, and *Rancho Palos Verdes*.").

In Title VII, Congress adopted comprehensive administrative remedies that must be exhausted before a plaintiff can sue. Specifically, Title VII imposes the following administrative prerequisites to suit:

- Exhaustion of any administrative remedies under state law before the filing of a charge with the EEOC, 42 U.S.C. § 2000e-5(c);

- Filing of a charge with the EEOC within 180 days after the alleged discriminatory act, 42 U.S.C. § 2000e-5(e)(1); and

- Requiring the EEOC to "endeavor to eliminate any . . . alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion" before initiating suit, 42 U.S.C. § 2000e-5(b), (f)(1).

Accord, e.g., *Great Am. Fed. Savs. & Loan Ass'n* v. *Novotny*, 442 U.S. 366, 372–74 (1979) ("Under Title VII, cases of alleged employment discrimination are subject to a detailed administrative and judicial process designed to provide an opportunity for nonjudicial and nonadversary resolution of claims.")

Further, Congress provided the EEOC with significant Title VII enforcement responsibility. 42 U.S.C. § 2000e. And with regard to allegations of discrimination against "a government, government agency, or political subdivision," when the EEOC has cause to believe that a violation of Title VII has occurred, the EEOC is required to refer the case to the Attorney General "who may bring a civil action against such respondent in the appropriate United States district court." 42 U.S.C. § 2000e-5(f)(1).

In sum, Congress created a detailed and comprehensive remedial scheme in Title VII that is at least as "unusually elaborate," "carefully tailored," and "restrictive" as the statutes in *Sea Clammers*, *Smith*, and *Rancho Palos Verdes*. Further, the administrative scheme demonstrates that "[v]oluntary compliance with Title VII is an important public policy," and that "Congress intended cooperation and conciliation to be the preferred means of enforcing Title VII." *W.R. Grace & Co.* v. *Local Union 759*, 461 U.S. 757, 771 (1983). Like the promotion of cooperation between parents and education agencies in *Smith*, Title VII imposes a requirement of cooperation that cannot be replicated in litigation. See *Smith*, 468 U.S. at 1011–12 (allowing a child with a disability to go directly to court "would run counter to Congress' view that the needs of handicapped children are best accommodated by having the parents and the local education agency work together . . .").

For similar reasons, this Court has already concluded that the comprehensive remedial scheme in Title VII is the exclusive remedy available to federal employees asserting discrimination claims. In *Brown* v. *General Services Administration*, 425 U.S. 820 (1976), the Court was confronted with the question of whether Title VII provides the exclusive judicial remedy for claims of employment discrimination against the federal government. The plaintiff initiated an action asserting race discrimination in violation of Title VII and § 1981, and seeking declaratory judgment under the Declaratory Judgment Act. *Id.* at 823–24. The plaintiff failed to comply with the requirement to file suit within 30 days of the final agency decision and thus could not assert claims under Title VII. *Id.* at 824.

The Court considered Title VII's remedial scheme for claims by federal employees and reasoned that "[t]he balance, completeness, and structural integrity of § 717 are inconsistent with the petitioner's contention that the judicial remedy afforded by § 717(c) was designed to merely supplement other putative judicial relief." *Id.* at 832. The Court concluded "[i]t would require the suspension of disbelief to ascribe to Congress the design to allow its careful and thorough remedial scheme to be circumvented by artful pleading." *Id.* at 833. Accordingly, federal employees' only remedy for unlawful discrimination is Title VII.

Since *Brown*, the federal courts have regularly dismissed constitutional employment-discrimination claims under the Fifth Amendment. *Mlynczak* v. *Bodman*, 442 F.3d 1050, 1056–57 (7th Cir. 2006) ("Although Mlynczak asserts that he is also entitled to assert a claim directly under constitutional equal protection principles based on the due process clause of the Fifth Amendment, the district court held that this avenue was foreclosed by the Supreme Court's decision in *Brown* v. *General Services Administration*. The district court was correct . . . .") (citations omitted); *Ford* v. *West*, 222 F.3d 767, 773 (10th Cir. 2000) ("Plaintiff's § 1985(3) Fifth Amendment equal protection claim fails, however, because the Supreme Court has clearly held that Title VII provides the exclusive judicial remedy for discrimination claims in federal employment.") (citing *Brown*, 425 U.S. at 835); *Porter* v. *Adams*, 639 F.2d 273, 278 (5th Cir. 1981) ("Even if, as appellant contends, the fifth amendment would have afforded her a Bivens action for those reprisals prior to the enactment of § 717, such an action is no longer available because § 717 is now the

exclusive remedy for charges of discrimination brought against federal employers." (citing *Brown*, 425 U.S. at 835)). Such Fifth Amendment claims are analogous to § 1983 claims seeking to vindicate the 14th Amendment's Equal Protection Clause. See *Ford*, 222 F.3d at 773 (plaintiff seeks to vindicate "constitutional equal protection principles based on the due process clause of the Fifth Amendment"). The natural import of *Brown* is that general constitutional employment-discrimination claims, including those under § 1983, are precluded by Title VII's comprehensive scheme.

In short, *Brown*, *Sea Clammers*, *Smith*, and *Rancho Palos Verdes* demonstrate that allowing a plaintiff to assert § 1983 claims for employment discrimination is inconsistent with Congress' carefully tailored Title VII scheme. Just as in those cases, Congress' intent to preclude § 1983 actions against state and local governments for employment discrimination can be inferred from Title VII's text and extensive remedial and administrative scheme.

B. The right against unlawful discrimination protected by Title VII does not significantly diverge from the same right protected by the Constitution.

In *Fitzgerald*, the Court reasoned that when a plaintiff states a § 1983 claim for a constitutional violation, the absence of congressional intent to preclude § 1983 actions can be inferred where the rights and protections provided by the statute significantly diverge from those protected by the Constitution. 555 U.S. at 252–53.

Here, the plaintiff has asserted claims of gender and sex discrimination in violation of the Fourteenth Amendment's Equal Protection Clause. *Henley*, 686 F.3d at 638. Title VII provides nearly identical rights and protections against unlawful discrimination based on gender.

The Equal Protection Clause provides, "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV § 1. Equal protection of the laws includes freedom from employment discrimination based on sex. E.g., *Back* v. *Hastings On Hudson Union Free Sch. Dist.*, 365 F.3d 107, 117 (2d Cir. 2004) ("Individuals have a clear right, protected by the Fourteenth Amendment, to be free from discrimination on the basis of sex in public employment.") Title VII offers the exact same protection, making it unlawful for an employer:

> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
>
> (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin. [42 U.S.C. § 2000e-2.]

So the analysis of discrimination claims under § 1983 and Title VII is fundamentally the same. *Ruiz* v. *Cnty. of Rockland*, 609 F.3d 486, 491 (2d Cir. 2010) ("Both Mr. Ruiz's Title VII claims and his claims for race and national origin discrimination under Sections 1981 and 1983 are analyzed under the burden-shifting framework set forth in *McDonnell Douglas Corp.* v. *Green*, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973)."); *English* v. *Colo. Dep't of Corrs.*, 248 F.3d 1002, 1007 (10th Cir. 2001) ("While *McDonnell Douglas* involved a Title VII claim for failure to hire, the analytical framework it pioneered applies equally to claims brought pursuant to section 1981, as well as to § 1983 claims based on allegations of racial discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment." (citations and quotations omitted)).

Indeed, Title VII is legislation enacted by Congress to *enforce* the rights that the Equal Protection Clause of the 14th Amendment guarantees. *Fitzpatrick* v. *Bitzer*, 427 U.S. 445, 447–48 (1976) ("In the 1972 Amendments to Title VII of the Civil Rights Act of 1964, Congress, acting under § 5 of the Fourteenth Amendment, authorized federal courts to award money damages in favor of a private individual against a state government found to have subjected that person to employment discrimination on the basis of "race, color, religion, sex, or national origin.").

Admittedly, in *Fitzgerald*, the Court considered, as some evidence of congressional intent *not* to preclude equal-protection actions under § 1983, the fact that Title IX did not allow claims against individuals but § 1983 did allow such claims. 555 U.S. at 257. Like

Title IX, Title VII does not provide a cause of action against individuals who are not employers. *Grant* v. *Lone Star Co.*, 21 F.3d 649, 653 (5th Cir. 1994) ("[W]e conclude that title VII does not permit the imposition of liability upon individuals unless they meet title VII's definition of 'employer.'") But in *Fitzgerald*, the Court also noted that Title IX provides exemptions for activities that may be challenged on constitutional grounds, and imposes different liability standards than would apply to a similar claim pled as a violation of the Equal Protection Clause via § 1983. *Id.* at 257–58. Neither is true of Title VII.

Thus, Title VII's rights and protections do not diverge significantly from those the Equal Protection Clause provides. And, in light of Congress's provision of a comprehensive remedial scheme in Title VII that is comparable to those at issue in *Sea Clammers*, *Smith*, and *Rancho Palos Verdes*, the Court should grant the petition and reverse the Eighth Circuit's decision that a plaintiff suing a state government can circumvent Title VII's administrative requirements by artfully re-pleading a complaint as a § 1983 suit.

C. Title VII's context and history confirm Congress' intent to preclude § 1983 suits for employment discrimination.

When Congress amended Title VII to include state, local, and federal government employees, it believed that these employees did not have adequate remedies to protect against employment discrimination. See, e.g., H.R. Rep. No. 92-238 (1971), reprinted in 1972 U.S.C.C.A.N. 2137, 2151 ("Few of these [state and local] employees, however, are afforded the protection

of an effective forum to assure equal employment."); *Brown*, 425 U.S. at 827 (discussing federal employees). Thus, Congress acted to create a comprehensive remedial scheme to protect these employees' rights. See Equal Employment Opportunity Act of 1972, Pub. L. 92-261, 86 Stat. 103 (1972). As discussed above, that action indicates that Congress intended for that scheme to be exclusive. *Brown*, 425 U.S. at 828–35 (the "balance, completeness, and structural integrity" of Title VII indicates that Congress intended to provide an exclusive remedy).

As is often the case, legislative history is murkier than the statutory text. But, contrary to the views of the circuit courts, the legislative history does not demonstrate that Congress intended to allow suits under both Title VII and § 1983 to arise from the same factual allegations and the same substantive rights. Contra *Keller* v. *Prince George's Cnty*., 827 F.2d 952, 958 (1987) ("[The legislative] history clearly indicates that § 2 of the [Equal Employment Opportunity] Act was not intended to preempt the preexisting remedies under § 1983 . . . .").

The House Committee on Education and Labor's report—after noting that state and local employees lacked effective measures for ensuring equal employment—stated, "In establishing the applicability of Title VII to State and local employees, the Committee wishes to emphasize that the individual's right to file a civil action in his own behalf, pursuant to the Civil Rights Act of 1870 and 1871, 42 U.S.C. Secs. 1981 and 1983, is in no way affected." H.R. Rep. No. 92-238 (1971), *reprinted in* 1972 U.S.C.C.A.N. 2137, 2154. But following this report, the House proceeded to

amend the bill to make Title VII "the exclusive remedy" for employment practices. H.R. 9247, Legislative History, 144, 311–14. In other words, the House rejected the Committee's approach, which might have allowed the use of § 1983 to circumvent Title VII. The Senate then adopted a version of the bill that did not include the exclusivity provision, rejecting efforts to include exclusivity in its version of the bill. S. 2515, Legislative History, 1407, 1521, 1790. At conference, the exclusivity provision was left out of the final version of the act. See Equal Employment Opportunity Act of 1972, Pub. L. 92-261, 86 Stat. 103 (1972).

From this legislative history, it is not certain why each member of Congress rejected the exclusivity provision. Some may have done so because they wanted to preserve overlapping remedies, including § 1983. See H.R. Rep. No. 92-238. But others may have discarded the provision because they were concerned about preserving actions outside of Title VII's scope, see S. 2515, Legislative History, 1404; or, most likely, because they believed that this Court's specific-over-general doctrine would create the exclusive effect they desired without the need for an additional provision. See, e.g., *D. Ginsberg & Sons* v. *Popkin*, 285 U.S. 204, 208 (1932) ("Specific terms prevail over the general in the same or another statute which otherwise might be controlling.").

Because the legislative history is far from clear, it does not provide a reliable guide to congressional reasoning, and so it should not drive this Court's interpretation of the interplay between Title VII and § 1983. See, e.g., *Lamie* v. *U.S. Tr.*, 540 U.S. 526, 541–42 (2004) ("These competing interpretations of the

legislative history make it difficult to say with assurance whether petitioner or the Government lays better historical claim to the congressional intent. . . . Nothing in the legislative history confirms that this particular point bore on the congressional deliberations or was given specific consideration. These uncertainties illustrate the difficulty of relying on legislative history here and the advantage of our determination to rest our holding on the statutory text."); *Conroy* v. *Aniskoff*, 507 U.S. 51, 519 (Scalia, J. concurring) ("But not the least of the defects of legislative history is its indeterminacy. If one were to search for an interpretative technique that, *on the whole*, was more likely to confuse than to clarify, one could hardly find a more promising candidate than legislative history.").

Indeed, this Court in *Brown* found unpersuasive the argument that the legislative history related to the exclusivity provision compelled the conclusion that Title VII admits all other remedies. Compare *Brown*, 425 U.S. at 832–33, with *id*. at 838 (Stevens, J. dissenting) (noting that Congress rejected an amendment that would have made Title VII the exclusive remedy for federal employees). The Court also rejected the idea that the original Civil Rights Act of 1964's legislative history—which indicated that Title VII was not intended to displace other remedies—applied to the 1972 amendments that added federal, state, and local government employees. *Brown*, 425 U.S. at 833–34 ("There is no such legislative history behind the 1972 amendments. Indeed, as indicated above, the congressional understanding was precisely to the contrary.").

Congress's later amendments to Title VII confirm its comprehensive nature. The Civil Rights Act of 1991 greatly expanded Title VII's scope and the remedies available. See Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071 (1991). It extended Title VII to reach Americans working for American companies in foreign countries, and certain groups of previously exempt state and federal employees. *Id*. §§ 109, 301–25. The Act altered the burden of proof in disparate-impact cases to favor plaintiffs. *Id*. § 105. Title VII now protected against "race norming" and mixed-factor discrimination. *Id*. §§ 106, 107. The Act provided for punitive and compensatory damages, the recovery of expert witness fees, and jury trials in certain cases. *Id*. §§ 102, 113. This broad expansion of Title VII reaffirms its exclusive nature—particularly, in relation to § 1983. Following the Civil Rights Act of 1991, "Title VII now offers a plaintiff all of the remedial advantages they once gained under section 1983: access to compensatory and punitive damages, and a jury trial." *Marrero-Rivera* v. *Dep't of Justice of the Commonwealth of Puerto Rico*, 800 F. Supp. 1024, 1031 (D.P.R. 1992).

In sum, state-employee plaintiffs do not lose rights because Title VII preempts relief under § 1983. They can still vindicate their right to be free from employment discrimination. The employees must simply follow Title VII's rules and procedures, as Congress intended. See, e.g., *Novotny*, 442 U.S. at 372 ("Under Title VII, cases of alleged employment discrimination are subject to a detailed administrative and judicial process designed to provide an opportunity for nonjudicial and nonadversary resolution of claims.")

CONCLUSION

The petition should be granted, and the judgment below should be reversed.

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