No. A14-0893

State of Minnesota

In Supreme Court

MARK R. ZWEBER,

Appellant,

v.

CREDIT RIVER TOWNSHIP and COUNTY OF SCOTT,
a political subdivision of the State of Minnesota,

Respondents.

BRIEF OF AMICUS CURIAE INSTITUTE FOR JUSTICE

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INTRODUCTION[1]

This case presents the question of whether the existence of a state administrative procedure may bar a plaintiff from seeking to vindicate his federal constitutional rights in a state court Section 1983 action. The court of appeals and Respondents say "yes." The Supremacy Clause of the U.S. Constitution says "no."

In this case, the court of appeals concluded that Minnesota's certiorari appeal procedure was the "exclusive means" by which Petitioner Mark Zweber could bring a constitutional challenge to Respondents' actions. It concluded that the district court did not have subject matter jurisdiction to hear Zweber's constitutional claims brought pursuant to Section 1 of the Civil Rights Act of 1871, codified at 42 U.S.C. § 1983 ("Section 1983"). The court of appeals' decision thus allows Minnesota to shut the doors of its state courthouses to citizens dealing with an agency to which the certiorari procedure applies, even though the specific remedy Zweber seeks—compensatory damages—is not available in the state administrative proceeding. The court of appeals' decision is profoundly mistaken. Under uniform decisions of the U.S. Supreme Court, the federal courts of appeals, and state appellate courts, a state cannot block a plaintiff's access to a

[1] The Institute for Justice certifies that this brief was not authored in whole or in part by counsel for either party to this appeal and that no other person or entity contributed monetarily towards its preparation or submission.

federal remedy in state courts except in very limited circumstances, none of which apply here.

The Institute for Justice (IJ) therefore urges this Court to reverse the decision of the court of appeals and bring this state into conformity with precedent from the federal and state courts. As a nonprofit, public-interest legal center dedicated to defending the essential foundations of a free society, IJ has seen too often how local governments violate the constitutional rights of citizens and how important it is for these citizens to have access to the remedies codified in Section 1983. This brief seeks to apprise this Court of the necessity of reversing the court of appeals' decision and returning to every Minnesotan the right to have their federal claims heard by the state's courts.

STATEMENT OF THE CASE AND FACTS

IJ concurs with the Petitioner's statement of the case and facts but wishes to call this Court's attention to the precise information that is necessary for this Court to decide this case. The key facts are these:

1. In 2006, Zweber submitted a preliminary plat application to appellant Scott County (the "County"). *Zweber v. Credit River*, No. A14-0893 slip op. at 2 (Minn. App., Mar. 16, 2015).

2. The County approved the preliminary plat application with certain conditions, and informed Zweber in October 2006. *Id.* at 2-3.

3. Zweber did not seek review of the 2006 approval using Minnesota's certiorari procedure within 60 days. *Id.* at 3.

4. In September 2012, Zweber sued the County in state court and made the following claims: mandamus relief, a takings claim under the Minnesota Constitution, and a federal takings claim under Section 1983. *Id.* at 4.

5. Zweber filed his lawsuit five years and eleven months after the County's approval of his preliminary plat application, within the applicable statute of limitations. *Id.* at 3-4.

6. The 60-day statute of limitations for certiorari appeals had expired by the time Zweber filed his lawsuit under Section 1983.

7. In August 2013, Zweber amended his complaint to include an equal-protection claim under Section 1983. *Id.* at 4-5.

STANDARD OF REVIEW

IJ concurs with Petitioner's statement of the applicable standard of review.

ARGUMENT

The court of appeals here held that a writ of certiorari is "the exclusive method" to challenge a municipality's land use decision. *Id.* at 6-8 (quoting *County of Wash. v. City of Oak Park Heights*, 818 N.W.2d 533, 538 (Minn. 2012)). In particular, it held that because Zweber had failed to file a petition for certiorari, he "is not entitled to review on the merits of the challenge by way of some other

remedy" and that "he was required to assert those claims by way of certiorari appeal, rather than before the district court. The fact that Zweber now asserts those claims through a federal civil-rights statute does not change our resolution of the issue." *Id* at 6-9. Respondents similarly argued that if a Minnesota county violates the federal constitutional rights of a citizen within the context of a land use decision, that citizen is completely barred from filing a claim for a violation of the federal Takings and Equal Protection Clauses in Minnesota state court. *See* Resp't's Ct. of App. Br. 22 ("Zweber's exclusive remedy for a challenge to the plat conditions was through a certiorari appeal to this Court") and 24 ("[T]he exclusive remedy to challenge conditions imposed as part of a quasi-judicial decision is through a timely writ of certiorari, not a separate action in district court."). According to both the court of appeals and Respondents, since Zweber did not seek a writ of certiorari, he cannot bring his federal constitutional claims in state court because the district court has no subject matter jurisdiction to hear such claims.

The issue before this Court is thus whether—or under what conditions—the state of Minnesota may prevent its citizens from seeking a federal remedy in state court.[2] The federal cause of action here is Section 1983. Congress intended

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[2] IJ assumes, for the purposes of addressing the preemptive effect of Section 1983, that Respondents' actions here were quasi-judicial in nature and that an appeal

this law to open the courthouse doors—both state and federal—to citizens when the government has violated their federal rights. The court of appeals' decision, if allowed to stand, will close those doors to plaintiffs that have had their federal rights violated by an agency to which the certiorari process applies.

Part one of this brief discusses the basic principles of federal preemption and the purposes of Section 1983 that the Supremacy Clause enforces across the entire nation. Part two examines how the federal and state courts have consistently struck down state procedural statutes and rules that have interfered with the ability of state citizens to vindicate their federal constitutional rights in state court. In addition, this part examines the very limited exceptions to the rule that a state law or procedure cannot deprive citizens of their ability to vindicate their federal rights in state court and explains why those exceptions do not apply here. Part three addresses anticipated arguments from Respondents and their supporting amicus. IJ first addresses an anticipated argument that the purported need for finality and predictability in municipal planning should outweigh Section 1983's effect and discusses why this argument fails. IJ then addresses why Zweber's claims under Section 1983 are ripe.

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using the certiorari procedure was proper under Minnesota law. Substantively, however, IJ agrees with Petitioner on these points.

1. SECTION 1983 PREEMPTS STATE LAWS THAT INTERFERE WITH CONGRESS' GOAL OF ENSURING THAT CITIZENS WHOSE FEDERAL RIGHTS HAVE BEEN VIOLATED CAN ACCESS FEDERAL AND STATE COURTS.

a. The Standard for Federal Preemption of State Laws.

Section 1983 was intended to preempt state law. Indeed, its purpose was to provide a remedy for rights violations committed by state municipal officials. Article VI of the U.S. Constitution provides that the laws of the United States "shall be the supreme Law of the Land; . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. art. VI, cl. 2. Any state law that conflicts with federal law is thus "without effect." *Maryland v. Louisiana*, 451 U.S. 725, 746 (1981).

There are numerous ways Congress may preempt state laws; we are concerned here with "conflict preemption." Under conflict preemption, a state law is preempted "if it 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" *Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n*, 461 U.S. 190, 220-21 (1983) (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)).

"[W]hen the question is whether a Federal act overrides a state law, the entire scheme of the statute must of course be considered and that which needs must be implied is of no less force than that which is expressed. If the purpose of the act cannot otherwise be accomplished – if its operation within its chosen field

else must be frustrated and its provisions be refused their natural effect – the state law must yield to the regulation of Congress . . . ." *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 373 (2000) (citation and quotation marks omitted). In other words, the purpose of Congress "is the ultimate touchstone" of any preemption analysis. *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992) (quotation marks omitted).

Thus, if the exclusivity of Minnesota's certiorari procedure for reviewing decisions of County governments on plat applications stands as an obstacle to achieving Congress' purpose in passing Section 1983, it must yield to the operation of the federal statute.

b. Congress Sought to Ensure that Citizens Whose Federal Rights Have Been Violated Could Vindicate Those Rights in Both State and Federal Courts.

Congress' purpose in passing 42 U.S.C. § 1983 is well established: "compensation of persons injured by deprivation of federal rights and prevention of abuses of power by those acting under color of state law." *Robertson v. Wegmann*, 436 U.S. 584, 590-91 (1978). "[T]he central objective of the Reconstruction-Era civil rights statutes is to ensure that individuals whose federal constitutional or statutory rights are abridged may recover damages or secure injunctive relief. Thus, § 1983 provides a uniquely federal remedy against incursions upon rights secured by the Constitution and laws of the Nation and is

to be accorded a sweep as broad as its language." *Felder v. Casey*, 487 U.S. 131, 139 (1988) (quotation marks, ellipses, and citations omitted).

"The very purpose of § 1983 was to . . . protect the people from unconstitutional action under color of state law, whether that action be executive, legislative, or judicial." *Patsy v. Bd. of Regents*, 457 U.S. 496, 503 (1982) (quotation marks omitted). Put another way, "[t]he 1871 Congress intended . . . to throw open the doors of the United States courts to individuals who were threatened with, or who had suffered, the deprivation of constitutional rights." *Id.* at 504 (quotation marks omitted).

This was not the sole purpose, however. Another important purpose was "to serve as a deterrent against future constitutional deprivations." *Owen v. City of Independence*, 445 U.S. 622, 651 (1980). In other words, it was Congress' judgment "that all persons who violate federal rights while acting under color of state law shall be held liable for damages." *Haywood v. Drown*, 556 U.S. 729, 737 (2009) (striking down a New York state law that restricted the ability of prisoners to seek restitution from correctional officers as preempted by Section 1983). The act thus stands as a warning to state and local authorities who decide to violate federal rights that the consequences will be severe.

Finally, Congress did not restrict the ability of citizens to go to only federal court to vindicate their rights. Three years after Congress first passed the law, it

amended what would become Section 1983 to ensure that state courts would have jurisdiction over federal civil rights claims. *Terry v. Kolski*, 254 N.W.2d 704, 708-09 (Wisc. 1977). State courts thus have concurrent jurisdiction with federal courts in actions brought under Section 1983. *Martinez v. California*, 444 U.S. 277, 283 n.7 (1980). But a state court's ability to hear a federal claim under Section 1983 is not discretionary: It is obligatory. "[S]tate courts have the coordinate authority *and consequent responsibility* to enforce the Supreme Law of the Land." *Howlett v. Rose*, 496 U.S. 356, 370 n.16 (1990) (emphasis added). *See also Terry*, 254 N.W.2d at 711 (reciting the history of Section 1983 to demonstrate that such claims are not only cognizable in state court, but that state courts cannot decline jurisdiction over them).

2. THE SUPREME COURT HAS CONSISTENTLY STRUCK DOWN LOCAL LAWS AND RULES THAT BURDEN THE ABILITY OF PLAINTIFFS TO VINDICATE THEIR FEDERAL RIGHTS IN STATE COURT.

a. The State Cannot Create Procedural Barriers to the Vindication of Federal Rights in State Court.

Given the purpose and breadth of the cause of action Congress created when it passed Section 1983, it is not surprising that the courts have routinely struck down state and local laws that interfere with the ability of plaintiffs to bring civil rights suits in state court. The leading case is *Felder*, where the Supreme Court held that Wisconsin's notice of claim statute was preempted by

Section 1983 because it conflicted with the remedial objectives of Section 1983 and because its application would produce different outcomes based on whether the suit was brought in federal or state court. *Felder*, 487 U.S. at 138. In particular, the Court noted that the statute could not be reconciled with the purposes of Section 1983 because "it 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. While Wisconsin could choose to protect its subdivisions from liability in state causes of action, "[t]he decision to subject state subdivisions to liability for violations of federal rights ... was a choice Congress, not the Wisconsin Legislature, made, and it is a decision that the State has no authority to override." *Id.* at 143.

Similarly, in *Howlett*, the Supreme Court unanimously held that a state law that immunized government officials from liability was preempted by Section 1983. *Howlett*, 496 U.S. at 380. In particular, the Court held that a state may not escape its responsibility to hear federal constitutional claims by claiming that such claims fell outside of the state court's jurisdiction: "The force of the Supremacy Clause is not so weak that it can be evaded by mere mention of the word 'jurisdiction.'" *Id.* at 382-83.

In *Haywood*, the Court held that a New York statute that absolved state corrections officers from liability was preempted by Section 1983. The Court concluded that "although States retain substantial leeway to establish the contours of their judicial systems, they lack the authority to nullify a federal right or cause of action they believe is inconsistent with their local policies." *Haywood*, 556 U.S. at 736.

State supreme courts are in accord. In *Conley v. Shearer*, 595 N.E.2d 862, 869 (Ohio 1992), the Ohio Supreme Court held, *sua sponte*, that it was "plain error" for the trial court to have dismissed the plaintiff's Section 1983 claim. The trial court had concluded that it lacked subject matter jurisdiction because state law required that any claim against a state officer be filed in the Court of Claims (a court of limited jurisdiction) and not the Court of Common Pleas (a court of general jurisdiction). The court reversed that decision on Supremacy Clause grounds, holding that it was "not necessary [for the plaintiff] to comply with the [state filing requirements] in bringing his Section 1983 claim, a federal law claim." *Id.* at 870.

The reasoning of these cases applies here. The state of Minnesota cannot immunize counties from federal civil rights actions by simply invoking "jurisdiction." Moreover, had Zweber brought his claim in federal court, there is no doubt that the existence of the certiorari proceeding would not—and could

not—preclude his Section 1983 cause of action. Congress has decided that Minnesota's counties can be held liable in state court under Section 1983 when they violate the federal civil rights of Minnesota citizens. Once Congress made that decision, the state could not change it. "Strict local rules of pleading cannot be used to impose unnecessary burdens upon rights of recovery authorized by federal laws. Whatever springes the State may set for those who are endeavoring to assert rights that the State confers, the assertion of federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice." *Brown v. W. Ry. of Alabama*, 338 U.S. 294, 298-99 (1949) (citation and quotation marks omitted).

b. The Exceptions to Section 1983's Preemptive Effect Do Not Apply Here.

There are two exceptions to the rule set out in *Felder* and the cases relying upon it. First, the existence of an adequate state remedy precludes declaratory or injunctive relief by state courts under Section 1983 against state taxes. *Nat'l Private Truck Council, Inc. v. Oklahoma Tax Comm'n*, 515 U.S. 582, 588 (1995). This case is not a tax case, of course, so this exception does not apply.

The second exception concerns neutral state rules regarding the administration of the courts. "States may apply their own neutral procedural rules to federal claims, unless those rules are pre-empted by federal law." *Howlett*, 496 U.S. at 372. The Court has identified the kind of "neutral procedural

rules" to which it referred, things like residency requirements, venue, and *forum non conveniens*. *Id.* at 374-75. If a state makes its courts of general jurisdiction open to hear claims that are analogous to Section 1983 claims, however, it cannot discriminate against the federal cause of action. *Haywood*, 556 U.S. at 739. In Minnesota, the state has opened the district courts to claims against government officers in many different circumstances. *See, e.g.,* Minn. Stat. § 466.01, *et seq.* (authorizing tort suits in district court against government officials, including county officials). Indeed, even some appeals of quasi-judicial acts such as grants or denials of variances (for cities *and* counties), conditional use permits (for cities), and subdivision plats (for cities) are to be made in district court via an action for a declaratory judgment. *See* Minn. Stat. § 394.27, subd. 9; Minn. Stat. § 462.361, subd. 1. Only a few claims against county officials must go through the certiorari procedure, however. *See, e.g., Interstate Power Co., Inc. v. Nobles Cnty. Bd. of Comm'rs*, 617 N.W.2d 566, 574 (Minn. 2000) (conditional use permit decision).

In other words, Minnesota has opened its district courts to all sorts of causes of actions similar to a Section 1983 claim against county officials. Having done so, it cannot discriminate against federal claimants who seek redress in district court simply because the people who allegedly violated their rights are county officials. "The dominant characteristic of civil rights actions [is] they

belong in court." *Felder*, 487 U.S. at 148 (quotation marks and citation omitted). Zweber's civil rights action is no exception.

3. ANTICIPATED ARGUMENTS BY RESPONDENTS AND THEIR SUPPORTING *AMICUS*.

a. There Are No Government Interests that Outweigh Congress' Compelling Interest in Having the Federal Civil Rights of Americans Vindicated in State Courts.

Respondents and its supporting *amicus* will likely argue that permitting property owners to challenge the land use decisions of counties in federal civil rights actions with a significantly longer statute of limitations will disrupt orderly planning and otherwise make it difficult for local governments to structure and restrict the use of property within their jurisdictions. In particular, IJ expects *amicus* to argue that the 60-day statute of limitations in certiorari proceedings permits municipalities to make and implement land-use decisions without concern that these decisions will be challenged up to six years later in a civil rights action. *See* Req. of Minn. Ass'n Twnshps for Leave to File Amicus Curiae Br. 1.

This argument has been made before and it has been rejected before. In *Board of County Commissioners v. Sundheim*, 926 P.2d 545, 549 (Colo. 1996), the Colorado Supreme Court disposed of precisely this argument. There, the defendant municipality argued that a 30-day deadline for Section 1983 claims promoted government efficiency and sound municipal planning. The court

disagreed, holding that a "thirty-day filing deadline on ... § 1983 action[s] represents a procedural barrier that hinders the exercise of ... federal rights....[T]hose interests must give way to the compelling government interest of giving § 1983 actions a broad berth." *Id. See also Mullaneaux v. State*, 950 P.2d 1156, 1161 (Ariz. App. 1997) (one-year statute of limitations preempted as inconsistent with federal law); *Montoya v. Colo. Springs*, 770 P.2d 1358 (Colo. App. 1989) (concluding no need to appeal administrative board's decision before filing 1983 action); *Esslinger v. Balt. City*, 622 A.2d 774, 782-83 (Md. App. 1993) (ruling homeowner can make 1983 damages claim in land use action even though state appellate rules only allowed for administrative appeal, and finding significant no opportunity for damages, discovery, or a jury trial).

Put another way, Section 1983 is one of the most consequential laws passed by Congress. Its goal was a significant restructuring of the relationship between the citizens of the states and the local and state officials in those states, with the courts of the United States—federal and state—acting as guarantors of federal rights. *See Mitchum v. Foster*, 407 U.S. 225, 238-39 (1972). Whatever interests municipalities have in government efficiency and effective planning, they pale in comparison to the purpose and intent of Section 1983. The Supremacy Clause, moreover, does not involve a balancing test—either a state

law is consistent with federal purposes or it is not. The exclusivity of certiorari proceedings is inconsistent with Section 1983's purposes. It must therefore yield.

b. Zweber's Section 1983 Claim Is Ripe.

Finally, Respondents or their supporting *amicus* may also argue that, regardless of the question of the exclusivity of the certiorari process, Zweber's constitutional claims are not yet ripe under *Williamson County Regional Planning Authority v. Hamilton Bank*, 473 U.S. 172, 194-95 (1985), and so the district court would not have subject matter jurisdiction in any event. This argument is incorrect. Zweber is seeking damages and may only seek damages through an inverse condemnation proceeding. There is no administrative process for him to pursue for these damages. His claim is therefore ripe.

In *Williamson County*, the U.S. Supreme Court held that a property owner does not have a ripe takings or inverse condemnation claim until the landowner has actually been denied compensation. *Williamson County* does not apply here because damages are not available in a certiorari proceeding. "Review by certiorari is limited to an inspection of the record of the inferior tribunal in which the court is necessarily confined to questions affecting . . . whether the order or determination in a particular case was arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without any evidence to support it." *Dietz v. Dodge Cnty.*, 487 N.W.2d 237, 239 (Minn. 1992). This means

that Zweber could only recover damages for the regulatory taking he alleges through an inverse condemnation proceeding in state court—which is precisely what he has filed and which the court of appeals dismissed. *See Suitum v. Tahoe Reg'l Planning Agency*, 520 U.S. 725, 734 n.8 (1997) ("Ordinarily, a plaintiff must seek compensation through state inverse condemnation proceedings before initiating a taking suit in federal court, unless the State does not provide adequate remedies for obtaining compensation"); *City of Minneapolis v. Meldahl*, 607 N.W.2d 168, 172 (Minn. App. 2000) ("When the government has taken property without formally using its eminent domain powers, the property owner has a cause of action for inverse condemnation").

There is no compensation mechanism in the certiorari procedure and it is impossible for Zweber to ripen his claim any further. *Williamson County* therefore does not control and Zweber's takings and equal protection claims may proceed.

Furthermore, even if *Williamson County* applied to Zweber's takings claim, it should not apply to his equal protection claim. There is a significant split of authority on whether *Williamson County* applies to equal protection claims. *Compare Kittay v. Giuliani*, 252 F.3d 645, 646–47 (2d Cir. 2001) (per curiam) (*Williamson County* applies to equal protection claims) *with Front Royal & Warren Cnty. Indus. Park Corp. v. Town of Front Royal*, 135 F.3d 275, 283 n.3 (4th Cir. 1998) (stating *Williamson County*'s concerns about exhaustion are "[a]bsent" with

respect to "Fourteenth Amendment due process and equal protection claims"). If it must address the issue, this Court should conclude *Williamson County* does not bar Zweber's equal protection claim. The principle behind *Williamson County* simply is not present in an equal protection claim. *Williamson County* is premised on the notion that because the government may commit a taking for a public use as long as it provides just compensation, just compensation must be denied before a federal violation arises. In contrast, the government may not violate the Equal Protection Clause whether or not it provides compensation. *See Rumber v. Dist. of Columbia*, 487 F.3d 941, 944-45 (D.C. Cir. 2007) (distinguishing between just compensation claims and other constitutional challenges, including equal protection claims). There is thus no need to exhaust state procedures to determine what is due.

CONCLUSION

For these reasons, and the reasons set out in Zweber's briefing, IJ respectfully requests that this Court reverse the court of appeals and hold that the district court had subject matter jurisdiction over Zweber's federal civil rights claims in this case.

DATED: July 2, 2015

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CERTIFICATION OF BRIEF LENGTH

No. A14-0893

1. I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds.1 and 3(a), for a brief produced with a proportional font.

2. The length of this brief is 4,165 words, excluding the cover, table of contents, table of authorities, signature block and this certificate.

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