

IN THE
SUPREME COURT OF THE UNITED STATES

KEITH HAYWOOD,

Petitioner,

v.

CURTIS DROWN, *et al.*,

Respondents.

On Petition for Writ of Certiorari to
The New York State Court of Appeals

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

New York Correction Law § 24 provides that New York State courts lack jurisdiction over *all* private damages claims against correction employees in their personal capacity for acts or omissions within the scope of employment and in the discharge of their duties, including such claims under 42 U.S.C. § 1983, and substitutes a state court damages remedy directly against the State in the New York State Court of Claims. The question presented is whether that statute violates the Supremacy Clause of the United States Constitution, art. VI, cl. 2.

TABLE OF CONTENTS

	<i>Page</i>
QUESTION PRESENTED	i
TABLE OF CONTENTS	ii
TABLE OF CITED AUTHORITIES	iii
STATEMENT OF THE CASE	1
REASONS FOR DENYING THE PETITION	2
I. There Is No Split of Authority Among the States' Highest Courts	3
II. Prisoners In New York Retain The Ability To Obtain Complete Redress For Violations Of Federal Or State Law	5
III. The Court of Appeals' Decision Correctly Applies This Court's Supremacy Clause Precedent.	8
CONCLUSION	13

TABLE OF CITED AUTHORITIES

Page

Cases:

Blount v. Stroud,
 877 N.E.2d 49 (Ill. App. Ct. 2007), lv. granted,
 2008 Ill. LEXIS 309 (Ill. Apr. 4, 2008) 4,5

Brewer v. Board of Trustees of Univ. of Illinois,
 791 N.E.2d 657 (Ill. App. Ct.), lv. denied,
 803 N.E.2d 479 (Ill. 2003), cert. denied,
 541 U.S. 987 (2004) 4

Brown v. State of New York,
 674 N.E.2d 1129 (N.Y. 1996) 7

Faulkner-King v. Wicks,
 590 N.E.2d 511 (Ill. App. Ct.), lv. denied,
 602 N.E.2d 450 (Ill. 1992), cert. denied,
 507 U.S. 960 (1993) 4

Felder v. Casey,
 487 U.S. 131 (1988) 11

Herb v. Pitcairn,
 324 U.S. 117 (1945) 9

Howlett v. Rose,
 496 U.S. 356 (1990) 8,9,11

Johnson v. Fankell,
 520 U.S. 911 (1975) 11,12

Jones v. Bock,
 127 S.Ct. 910 (2007) 10

Martinez v. California,
 444 U.S. 277 (1980) 4,9,11

McKnett v. St. Louis & San Francisco Ry. Co.,
 292 U.S. 230 (1934) 9,10

Meehan v. Illinois Power Co.,
 808 N.E.2d 555 (Ill. App. Ct. 2004) 4

Missouri ex rel. Southern Ry. Co. v. Mayfield,
 340 U.S. 1 (1950) 9

cited authorities

	Page
<i>National Private Truck Council, Inc. v. Oklahoma Tax Comm'n</i> , 515 U.S. 582 (1995)	8
<i>Rogers v. Saylor</i> , 760 P.2d 232 (Or. 1988)	3,4
<i>Testa v. Katt</i> , 330 U.S. 386 (1947)	10
<i>Will v. Michigan Dep't of State Police</i> , 491 U.S. 58 (1989)	6
<i>Woodford v. Ngo</i> , 126 S.Ct. 2378 (2006)	6
 UNITED STATES CONSTITUTION	
art. VI, cl. 2	1
 FEDERAL STATUTES	
42 U.S.C. § 1983	passim
 STATE STATUTES	
N.Y. Correction Law	
§ 24	passim
§ 24(1)	1
§ 24(2)	1,7
N.Y. Court of Claims Act	
§ 9	11
N.Y. Public Officers Law	
§ 17(3)(a)	7
 MISCELLANEOUS	
Hart, <i>The Relations Between State and Federal Law</i> , 54 Colum. L. Rev. 489 (1954)	8

STATEMENT OF THE CASE

Petitioner, a prisoner in a New York State correctional facility, commenced two actions in New York State court against several correction employees for damages in connection with three disciplinary proceedings and an alleged altercation. Petitioner asserted claims under state law and 42 U.S.C. § 1983.

The trial court dismissed both complaints as barred by New York Correction Law § 24. (App. 28a-29a.) Section 24 provides that New York courts lack jurisdiction to entertain any private claim for damages against correction employees in their personal capacity for acts or omissions within the scope of employment and in the discharge of their duties. N.Y. Correction Law § 24(1). Such claims for damages may be brought directly against the State of New York in the New York State Court of Claims. N.Y. Correction Law § 24(2).

The New York State Appellate Division, Fourth Department, affirmed the dismissal of the claims. (App. 24a-26a.) On November 27, 2007, the New York State Court of Appeals affirmed (App. 1a-23a.) The Court of Appeals held that by withholding state court jurisdiction over all damages claims against correction employees in their personal capacities -- whether brought under federal or state law -- Correction Law § 24 does not violate the Supremacy Clause of the United States Constitution.

The Court of Appeals explained that states have broad latitude to establish the structure and subject matter jurisdiction of state courts and can decline jurisdiction over federal claims pursuant to a neutral rule that does not discriminate against federal rights. The court found that "New York does not discriminate against section 1983 actions in favor of analogous state law claims because Correction Law § 24 removes subject matter jurisdiction over any cause of action -- state or federal -- for money damages in state Supreme Court for conduct by [correction] employees." (App. 11a.) Thus, § 24 does not offend the Supremacy Clause.

REASONS FOR DENYING THE PETITION

This case does not warrant review by this Court. The statute at issue is unique to New York, and there is no split of authority among the states' highest courts on the legal issue presented. In addition, the decision by the New York Court of Appeals is of limited practical significance even in New York, both because prisoners in New York routinely bring individual capacity claims for damages under 42 U.S.C. § 1983 against correction employees in federal court, and because § 24 provides for an alternate damages remedy in the New York State Court of Claims. Finally, and in any event, the Court of Appeals correctly applied this Court's Supremacy Clause precedent.

I. There Is No Split of Authority Among the States' Highest Courts

The Court of Appeals' decision upholding a state statutory limitation on the subject matter jurisdiction of New York State courts is not of sufficient nationwide importance to warrant this Court's review. Petitioner does not identify even one other state with an identical statute, and research has not uncovered any, although the pertinent provisions of Correction Law § 24 have been in effect for 36 years. Moreover, contrary to petitioner's suggestion, there is no division among the states' highest courts on the validity under the Supremacy Clause of a limitation on the subject matter jurisdiction of state courts that does not discriminate against federal claims.

In *Rogers v. Saylor*, 760 P.2d 232 (Or. 1988), the Oregon Supreme Court did not reach "the opposite conclusion from the court's below." (Pet. 29.) In *Rogers*, the Oregon court entertained jurisdiction over the state and federal claims, and the issue was whether Oregon's statutory cap on compensatory damages and elimination of punitive damages against public bodies or officers could be applied to a federal § 1983 claim. *Id.* at 270-73. The court held that if a state court entertains a federal damages claim, it cannot then limit by state law the amount that the plaintiff may recover. The court did not consider a statute like Correction Law § 24 that withholds state court jurisdiction altogether over analogous state and federal damages claims in a

manner that does not discriminate against federal rights. Indeed, the *Rogers* court noted that this Court "has never held that a state court must hear a claim based on a violation of section 1983," except "'where the same type of claim, if arising under state law, would be enforced in the state courts.'" 760 P.2d at 240 (quoting *Martinez v. California*, 444 U.S. 277, 283 n.7 (1980)). Thus, the *Rogers* holding does not conflict with the Court of Appeals' holding here.

In fact, the sister state judicial authority that exists accords with the decision below. The Illinois intermediate appellate courts have found no Supremacy Clause infirmity in an Illinois statute that precludes original state court jurisdiction over all discrimination claims -- state or federal -- and vests jurisdiction in a state administrative agency to hear those claims. See *Blount v. Stroud*, 877 N.E.2d 49 (Ill. App. Ct. 2007), *lv. granted*, 2008 Ill. LEXIS 309 (Ill. Apr. 4, 2008); *Meehan v. Illinois Power Co.*, 808 N.E.2d 555 (Ill. App. Ct. 2004); *Brewer v. Board of Trustees of Univ. of Illinois*, 791 N.E.2d 657 (Ill. App. Ct.), *lv. denied*, 803 N.E.2d 479 (Ill. 2003), *cert. denied*, 541 U.S. 987 (2004); *Faulkner-King v. Wicks*, 590 N.E.2d 511 (Ill. App. Ct.), *lv. denied*, 602 N.E.2d 450 (Ill. 1992), *cert. denied*, 507 U.S. 960 (1993). These courts agree that where a state fashions the subject matter jurisdiction of its own courts, it does not offend the Supremacy Clause by adopting a rule that "does not

discriminate against federal law but, rather, treats federal and state claims alike." *Blount*, 877 N.E.2d at 61.

There being no division among the states' highest courts on the constitutionality of a rule like New York's, this Court's review is not necessary to ensure "greater uniformity in the application of the Supremacy Clause by state courts." (Pet. 10-11.) Because Correction Law § 24 governs the subject matter jurisdiction of New York courts, the decision below hardly "provides a template for state legislatures to impose special procedural burdens on litigants attempting to vindicate federal rights" (Pet. 27) when federal claims are entertained in a state court. Thus, review is not "necessary to ensure adherence to this Court's rulings" (Pet. 10) under the Supremacy Clause with respect to future state legislation, which can be reviewed and corrected in appropriate cases if necessary.

II. Prisoners In New York Retain the Ability To Obtain Complete Redress For Violations Of Federal Or State Law

Petitioner overstates the significance of the Court of Appeals' decision, which does not prevent New York prisoners from obtaining complete redress for violations of their federal or state civil rights.

Nothing in Correction Law § 24 or the Court of Appeals' decision prevents New York prisoners from enforcing all of the federal rights cognizable under 42 U.S.C. § 1983. Prisoners remain

free to use the federal courts to pursue § 1983 claims against New York correction employees in their individual capacities and to seek the full panoply of remedies under the federal act, including damages. Indeed, because state courts "are precisely the courts Congress sought to allow civil rights claimants to avoid through § 1983," Will v. Michigan Dep't of State Police, 491 U.S. 58, 66 (1989), the overwhelming majority of § 1983 lawsuits are brought in federal court, where prisoner § 1983 damages suits against New York correction employees are legion. See *Woodford v. Ngo*, 126 S. Ct. 2378, 2388 n.4 (2006) (noting that "prisoner civil rights and prison conditions cases still account for an outsized share of filings" in federal court, averaging from 2000 through 2005 "about one new prisoner case every other week for each of the nearly 1,000 active and senior district judges across the country"). Thus, the practical impact of Correction Law § 24's application to § 1983 claims is marginal at best.

In addition, if a correction employee acts outside of the scope of employment, Correction Law § 24 does not bar a § 1983 claim in New York court at all, including a damages claim against the employee personally. And even where the employee acts within the scope of employment, nothing in § 24 prevents the employee from being sued under § 1983 in state court for injunctive or declaratory relief to address an ongoing violation of federal law.

Finally, Correction Law § 24 provides for an alternate state court damages remedy for injuries stemming from unlawful conduct of correction employees within the scope of employment. Pursuant to § 24(2), a plaintiff may recover damages directly from the State in the New York Court of Claims. Because § 24 applies only if the employee was acting within the scope of employment, the employee generally would have been indemnified by the State in any event. See N.Y. Public Officers Law § 17(3)(a) (providing for the State's indemnification of employees where "the act or omission from which [a] judgment or settlement arose occurred while the employee was acting within the scope of his public employment or duties"). The New York Court of Claims has jurisdiction over state constitutional tort claims against the State, and provisions of the New York Constitution generally provide protections at least as broad as their counterparts in the United States Constitution. See *Brown v. State of New York*, 674 N.E.2d 1129 (N.Y. 1996).

For these reasons, this Court's review is not necessary to ensure that prisoners in New York retain the ability to obtain redress for violations of law by correction employees, including the rights protected by § 1983.

III. The Court of Appeals' Decision Correctly Applies This Court's Supremacy Clause Precedent

As petitioner acknowledges, this Court has already articulated "the governing legal principles in closely related cases." (Pet. 11.) This Court's Supremacy Clause jurisprudence does not require state courts to entertain federal claims where the same type of state law claim would not be enforced in the state court. Review is also not warranted because the New York Court of Appeals' decision correctly applied this settled principle.

This Court has "never held that state courts must entertain § 1983 suits." *National Private Truck Council, Inc. v. Oklahoma Tax Comm'n*, 515 U.S. 582, 587 n.4 (1995). To the contrary, "[t]he requirement that a state court of competent jurisdiction treat federal law as the law of the land does not necessarily include within it a requirement that the State create a court competent to hear the case in which the federal claim is presented." *Howlett v. Rose*, 496 U.S. 356, 372 (1990). This Court has stressed the states' "great latitude to establish the structure and jurisdiction of their own courts" and that, as a general rule, "federal law takes the state courts as it finds them." *Id.* (quoting Hart, *The Relations Between State and Federal Law*, 54 Colum. L. Rev. 489, 508 (1954)).

The Supremacy Clause permits states to decline jurisdiction over federal claims if they have a "valid excuse," including a "neutral state rule regarding the administration of the courts."

Howlett, 496 U.S. at 369, 372. A rule will be deemed valid and neutral if it does not discriminate against federal claims in favor of analogous state law claims. See *McKnett v. St. Louis & San Francisco Ry. Co.*, 292 U.S. 230, 233-34 (1934). Thus, "where the same type of claim, if arising under state law, would be enforced in the state courts, the state courts are generally not free to refuse enforcement of the federal claim." *Martinez v. California*, 444 U.S. 277, 283 n.7 (1980). What the Supremacy Clause does not tolerate is a state court's refusal to entertain a federal claim "solely because the suit is brought under a federal law." *Howlett*, 496 U.S. at 373 (quoting *McKnett*, 292 U.S. at 233-34).

Applying these principles, this Court has consistently upheld state rules that did not discriminate against federal claims and has struck down those that did. Compare *Missouri ex rel. Southern Ry. Co. v. Mayfield*, 340 U.S. 1, 4 (1950) (affirming "the power of a State to deny access to its courts to persons seeking recovery under [a federal statute] if in similar cases the State for reasons of local policy denies resort to its courts and enforces its policy impartially . . . , so as not to involve a discrimination against [federal] suits"), and *Herb v. Pitcairn*, 324 U.S. 117, 123 (1945) (while freedom of state court to decline jurisdiction was "of course, subject to the qualification that the cause of action must not be discriminated against because it is a federal one," no violation where analogous cases brought under state statutes or

common law would have been dismissed under the same circumstances), with *McKnett*, 292 U.S. at 232-34 (where denial of jurisdiction was "based solely upon the [federal] source of law sought to be enforced," state court could not refuse to exercise jurisdiction) and *Testa v. Katt*, 330 U.S. 386, 394 (1947) (where it was conceded that "this same type of claim arising under [state] law" would be enforced by the state court, it was not free to refuse enforcement of the federal claim).

Applying this precedent, the Court of Appeals correctly held that Correction Law § 24 does not offend the Supremacy Clause. As the court explained, "[t]he statute, by emphasizing that '[n]o civil action shall be brought in any court of the state,' creates a neutral jurisdictional barrier to all claims -- state and federal -- for monetary damages in a state court against any correction officer in his or her personal capacity for actions within the scope of employment." (App. 8a.) The statute furthers New York's legitimate interest in minimizing the disruptive effect of prisoner damages claims against correction employees, many of which are frivolous and vexatious. See *Jones v. Bock*, 127 S. Ct. 910, 914 (2007) ("Most of these cases have no merit; many are frivolous."). The rule also promotes the efficient administration of New York's finite judicial resources by substituting the State as defendant and channeling this litigation into New York's Court of Claims, which has exclusive jurisdiction to hear, and expertise in

adjudicating, damages claims against the State. See N.Y. Court of Claims Act § 9; see also *Johnson v. Fankell*, 520 U.S. 911, 922 n.13 (1975) ("We have made it quite clear that it is a matter for each State to decide how to structure its judicial system."). Because these interests are furthered by a neutral jurisdictional rule that does not discriminate against § 1983 or other federal claims, the statute does not violate the Supremacy Clause.

The Court of Appeals' decision is not, as petitioner claims (Pet. 11-25), inconsistent with the holdings in *Howlett*, *Martinez*, and *Felder v. Casey*, 487 U.S. 131 (1988). In *Howlett*, the state provided a sovereign immunity defense to a school board with respect to a § 1983 claim in state court that did not apply to related state law claims, violating the nondiscrimination principle. 469 U.S. at 359, 364. In *Martinez*, this Court observed that a "state immunity defense" could not control a § 1983 claim where the state court "accepted jurisdiction of this federal claim." 444 U.S. at 283-84, nn.7-8. And in *Felder*, this Court held that a state could not apply its notice of claim statute to a § 1983 claim entertained in state court, thereby requiring the plaintiff to comply with a condition precedent to suit that would not apply in federal court and that redefined the essential elements of the federal cause of action. 487 U.S. at 144.

Correction Law § 24 is not analogous to the foregoing rules and does not suffer from the same infirmities. As the Court of


Appeals held, the plain language of § 24 does not confer an immunity defense, but rather bars New York courts from entertaining jurisdiction over any such claims at all. See *Johnson*, 520 U.S. at 916 ("Neither this Court nor any other federal tribunal has any authority to place a construction on a state statute different from the one rendered by the highest court of the state."). Nor does the statute apply a condition precedent to a federal claim in state court in an attempt to redefine its elements. Rather, it neutrally applies a rule of subject matter jurisdiction and denies a state judicial forum to all similar claims for damages against correction employees in their personal capacities, whether arising under state or federal law. For these reasons, the Court of Appeals correctly held that the provision falls with the New York's broad authority to establish the structure and subject matter jurisdiction of its own courts.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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