No. 24-993

In the Supreme Court of the United States

GABRIEL OLIVIER,
Petitioner,

v.

CITY OF BRANDON, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

AMICUS BRIEF OF THE AMERICAN CENTER FOR LAW & JUSTICE IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS[1]

The American Center for Law and Justice (ACLJ) is an organization dedicated to the defense of constitutional liberties secured by law, including the defense of religious liberty and parental rights. The ACLJ has appeared before this Court in many § 1983 cases, *e.g., Lamb's Chapel v. Center Moriches Union Free School District*, 508 U.S. 384 (1993); *Locke v. Davey*, 540 U.S. 712 (2004).

SUMMARY OF ARGUMENT

In this case, petitioner challenges, under the First Amendment, a law under which he was previously prosecuted. If that scenario sounds familiar, it should. In *Wooley v. Maynard*, the plaintiff challenged, under the First Amendment, a law under which he had thrice been charged and convicted. New Hampshire explicitly argued in *Wooley* that allowing such a suit post-conviction would "effectively nullif[y] the prior State criminal proceedings," yet this Court explicitly rejected that argument, ruling the prior conviction posed no bar to the suit. In the present case, however, the lower court embraced the argument *Wooley* rejected. Why? The court below misread *Heck v. Humphrey*, a case about collateral prisoner challenges to the basis for their convictions, as having created a

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[1] Counsel of record for the parties received timely notice of the intent to file this brief, S. Ct. R. 37.2(a). No counsel for any party authored this brief in whole or in part. No such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person or entity aside from the ACLJ, its members, or its counsel made a monetary contribution to the preparation or submission of this brief.

global rule that a person, once convicted under a law, may never more challenge the constitutionality of that law. This Court has made clear, explicitly in *Wooley* and tacitly through countless other cases where the fact pattern presents itself, that prior convictions do not bar a § 1983 lawsuit. Such an understanding of *Heck* is not only wrong, but illogical, as it would bar countless civil rights lawsuits, hamstringing the Ku Klux Klan Act's guarantee of relief for civil rights violations. This Court should grant review and reverse.

ARGUMENT

THIS COURT, WHILE RIGHTLY RESTRAINING FEDERAL COURTS FROM IMPROPERLY INTERVENING IN STATE COURT LITIGATION, EXPLICITLY REJECTED IN *WOOLEY* THE LEGAL REASONING UPON WHICH THE LOWER COURT RELIES.

In the one hundred fifty years since the passage of the passage of the Ku Klux Klan Act and its famous "Civil action for deprivation of rights," now codified as 42 U.S.C. § 1983, this Court has done a great deal in defining the statute's scope and limits. The Fifth Circuit departed from those parameters and instead concocted a new rule improperly cutting off a group of people from any prospect of relief. Worse, the group cut off is arguably the best suited to raise such claims, and the only group with clear standing to bring such claims.

The decision below holds that no one may bring a § 1983 claim for prospective relief who has previously

been convicted of the same offense because of concerns that this would be a "collateral attack" on their previous conviction. But the Constitution cannot be properly defended if courts refuse to hear challenges to laws that may violate its protections. Moreover, this Court has previously rejected this very argument.

I. *Younger* Correctly Weighs Federalism Issues, Legal Principles, and Practical Concerns of Section 1983 Suits.

Deeply rooted in our Nation's system of federalism is "comity,"

> that is, a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways.

Younger v. Harris, 401 U.S. 37, 44 (1971). *Younger* and its progeny identify and remedy, through federal court abstention, a narrow problem: the potential for abuse in parallel court systems by playing one off the other. The *Younger* doctrine represents well-established equitable and legal principles.[2] Indeed,

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[2] As the Court explained: "The precise reasons for this longstanding public policy against federal court interference with state court proceedings have never been specifically identified, but the primary sources of the policy are plain. One is the basic doctrine of equity jurisprudence that courts of equity should not

federal courts had restrained themselves from intervening in State courts since the earliest days of the Republic. *Diggs & Keith v. Wolcott*, 8 U.S. (4 Cranch) 179 (1807). *See also Samuels v. Mackell*, 401 U.S. 66, 68-69 (1971) (extending *Younger* abstention to declaratory judgments under the same reasoning).

However, the principles discussed in *Younger* and *Samuels* "have little force in the absence of a pending state proceeding." *Lake Carriers Ass'n v. MacMullan*, 406 U.S. 498, 509 (1972). This is because, at such a stage:

> federal intervention does not result in duplicative legal proceedings or disruption of the state criminal justice system; nor can federal intervention, in that circumstance, be interpreted as reflecting negatively upon the state court's ability to enforce constitutional principles. In addition, while a pending state prosecution provides the federal plaintiff with a concrete opportunity to vindicate his constitutional rights, a refusal on the part of the federal courts to intervene when no state proceeding is pending may place the hapless plaintiff between the Scylla of intentionally

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act and particularly should not act to restrain a criminal prosecution, when the moving party has an adequate remedy at law and will not suffer irreparable injury if denied equitable relief." *Younger*, 401 U.S. at 43-44.

See also Joseph Story, COMMENTARIES ON EQUITY JURISPRUDENCE § 893 ("There are, however, cases in which Court of Equity will not exercise any jurisdiction by way of injunction to star proceedings at law. In the first place, they will not interfere to stay proceedings in any criminal matters, or in any cases not strictly of a civil nature.").

> flouting state law and the Charybdis of forgoing what he believes to be constitutionally protected activity in order to avoid becoming enmeshed in a criminal proceeding.

Steffel v. Thompson, 415 U.S. 452, 462 (1974).

II. The *Wooley* Court Expressly Considered the Collateral Effects of Granting Prospective Relief.

Similar to the equitable principles underpinning *Younger* and *Samuels*, this Court has considered the implication of *res judicata* and collateral estoppel in the realm of § 1983 claims. In *Wooley v. Maynard*, plaintiff Maynard had been cited and even jailed for three separate violations of New Hampshire's statute prohibiting the obscuring of "letters" on a car's number plate, interpreted to include the state's "Live Free or Die" motto. 430 U.S. 705, 712 (1977). New Hampshire argued that Maynard, by electing not to appeal any of his misdemeanor convictions, had failed to exhaust State remedies and should then be barred by *Younger*. Appellant's Br. at 7-8, *Wooley*, 430 U.S. 705.[3] New Hampshire in *Wooley* argued that the District Court had erred by not requiring Maynard to seek all remedies through the State proceeding and allowing the federal action as soon as the state trial court had issued an order, "apparently premised on the narrow analysis that the Appellees are seeking *only prospective relief* from further prosecution," but further noting that "[t]he action of the District Court

[3] Interestingly, on the brief for New Hampshire was then-Attorney General David H. Souter.

effectively nullified the prior State criminal proceedings against Appellee Mr. Maynard." *Id*. at 13.

This Court emphatically rejected that argument, relying on the fact that "the relief sought *is wholly prospective*, to preclude further prosecution . . . [Maynard] does not seek to have his record expunged, or to annul any collateral effects those convictions may have, *e.g.*, upon his driving privileges." *Wooley*, 430 U.S. at 711. The very same is true here.

III. *Heck* did not Overturn *Wooley*

In *Heck v. Humphrey*, this Court considered a related extension of the dual sovereignty and dual court system problem: after the closing of the state case, could § 1983 claims in federal courts be used to collaterally attack the basis of one's conviction in a State court? 512 U.S. 477, 479-80 (1994). Heck sued prosecutors and investigators responsible for his manslaughter conviction under § 1983 rather than filing a *habeas* petition. *Id*. at 479. This creative litigation raised many issues: *res judicata*, the avoiding of a *habeas* petition's exhaustion requirement, and the implication that a favorable judgment would necessarily question the legality of his conviction. The Supreme Court ruled on this last point.[4]

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[4] *But see Heck*, 512 U.S. at n.2 (noting that "Petitioner sought to challenge this premise in his reply brief, contending that findings validating his damages claims would not invalidate his conviction," but holding that this late change would not be considered, and the Court would "accept the characterization of the lower courts.").

Much as *Younger* relied on well-established legal principles as analogues for § 1983 claims, the *Heck* Court reasoned that a § 1983 claim based upon bad acts from law enforcement and prosecutors was, in essence, a tort claim for malicious prosecution, and thus had as a necessary element that the prior criminal proceedings had been terminated in favor of the accused. *Id*. at 484 (citing PROSSER AND KEETON ON LAW OF TORTS 874 (5th ed. 1984)). This "precludes the possibility of the claimant [sic] succeeding in the tort action after having been convicted in the underlying criminal prosecution, in contravention of a strong judicial policy against the creation of two conflicting resolutions arising out of the same or identical transaction." *Id.* (quoting 8 S. Speicer, AMERICAN LAW OF TORTS § 28:5, p. 24 (1991)).[5]

Heck did *not* purport to overturn *Younger*, *Samuels*, *Wooley* or any other cases. Indeed, these three cases are not even mentioned or cited in *Heck*, and *Heck* clearly can coexist with those cases. Applying *Heck* to an incarcerated "good-time credits" case, this Court noted that, "[o]rdinarily, a prayer for such prospective relief will not 'necessarily imply' the invalidity of a previous loss of good-time credits, and so may properly be brought under § 1983." *Edwards v. Balisok*, 520 U.S. 641, 648 (1997).

The Fifth Circuit applied *Heck* and *Edwards* to another "good-time credit" case in *Clarke v. Stalder*, 154 F.3d 186 (5th Cir. 1998). Completely ignoring this Court's warning in *Edwards* and previous ruling in *Wooley*, the Fifth Circuit held that prospective relief *does* necessarily implicate *Heck*. Twenty-seven years

[5] Justice Souter concurred in the judgment. *See supra* note 3.

later, *Clarke* stands in stark contrast to the rule in sister circuits, as noted by Petitioner. More importantly, it stands in stark contrast to this Court's cases which have made clear the narrow purpose of the *Heck* bar and its compatibility with cases like *Wooley*.

IV. The Lower Court's Decision Would Create Absurd Results if Left to Stand

The Fifth Circuit denied rehearing by a single vote, with three judges writing separate dissents from that denial. In considering the Petition for a Rehearing *en banc* in this case, Judge Oldham entertained a "simple hypothetical" in his dissent. Pet. App. 51a (Oldham, J., dissenting from denial of reh'g).

> Suppose that—after Olivier is convicted of violating the Ordinance—one of his fellow protestors brings a § 1983 suit. Let's call this fellow protestor Sam. Sam was with Olivier on May 1, 2021, but Sam was *not* arrested and convicted. Sam brings a § 1983 claim seeking prospective injunctive relief. If the district court were to grant relief and enjoin future enforcement of the Ordinance against Sam, that decision would undermine the legal reasoning of Olivier's previous conviction. But does that mean that Olivier's conviction somehow prohibits Sam from protecting his own constitutional rights? Of course not, because that would mean that *no one* could *ever* challenge a law after any other person had been convicted for violating it. If Olivier's suit is a

> collateral attack barred by *Heck*, how is it not a collateral attack when Olivier's friend brings it?

121 F.4th at 514-15 (internal citations omitted).

We need not wonder, as this Court has faced these facts before. In *Steffel v. Thompson*, discussed *supra*, this Court addressed an individual's § 1983 suit under much the same facts as Judge Oldham's hypothetical. 415 U.S. 452 (1974). Steffel had been distributing anti-Vietnam War handbills with a companion. *Id.* After Steffel's companion was charged under the Georgia criminal trespass law, Steffel brought suit. *Id.* While predating *Heck* and *Wooley*, this Court did discuss the *Younger-Samuels* principles and held that "[w]hen no state criminal proceeding is pending at the time the federal complaint is filed, federal intervention does not result in duplicative legal proceedings or disruption of the state criminal justice system." *Id.* at 462. Thus, this Court held that *Younger-Samuels* principles "were expressly limited to situations where state prosecution were pending." *Id.* at 457. This is despite the fact that, as Judge Oldham notes in his dissent, such a suit would obviously constitute the sort of "collateral attack" the Fifth Circuit holds is barred by *Heck*.

The Fifth Circuit's *Clarke* doctrine also serves to preclude the ideal plaintiffs in § 1983 suits. The very individuals with the strongest interest in and most direct knowledge of a law's constitutional defects are silenced. Such a rule also creates an arbitrary distinction between similarly situated plaintiffs based solely on the timing and outcome of law enforcement decisions. Indeed, the lower court admits that Olivier

"easily" meets the standing requirements. *See* Pet. App. 6a. *See also* Pet. App. 46a (Ho, J., dissenting from denial of rehearing en banc) ("Olivier would seem the ideal person to challenge future enforcement of the ordinance.").

CONCLUSION

This Court should grant the Petition for a Writ of Certiorari and reverse the judgment below.

Respectfully submitted,

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April 16, 2025