No. _____

In the Supreme Court of the United States

THE CITY OF MAPLEWOOD, MISSOURI,
Petitioner,

v.

CECELIA ROBERTS WEBB, ET AL.,
Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I

Sovereign immunity bars a lawsuit to the extent the relief sought would operate against the State, even if the State is not a formally-named defendant. *See Lewis v. Clarke*, 137 S. Ct. 1285, 1290 (2017); *see also Republic of the Philippines v. Pimentel*, 553 U.S. 851, 863-873 (2008). Municipal corporations lack sovereign immunity. *Monell v. Dept. of Soc. Serv. of the City of New York*, 436 U.S. 658 (1978).

If a complaint formally names a "municipality" as the only defendant, yet defines the "municipality" to include not just the municipal corporation, but also a legally-distinct state entity, such that the relief sought would operate against the state entity, does sovereign immunity bar the lawsuit?

II

Municipal corporations can only be liable for constitutional deprivations resulting from an unlawful policy or custom in an area where state law gives them authority to act. *See McMillian v. Monroe County, Ala.*, 520 U.S. 781 (1997).

If resolution of the first question demonstrates that the state entity is vested with the sole authority to take the actions leading to the alleged constitutional deprivations, does this mean that the claims against the "municipality" defined as a municipal corporation necessarily fail as a matter of law?

PARTIES TO THE PROCEEDINGS

Petitioner The City of Maplewood, Missouri, was the defendant in the district court and the appellant before the Eighth Circuit. Respondents Cecelia Roberts Webb, Darron Yates, Robert Eutz, Anthony Lemicy, Krystal Banks, and Frank Williams were the plaintiffs in the district court and the appellees before the Eighth Circuit.

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INTRODUCTION

Over the past several years, numerous class action lawsuits have arisen across the country against municipal corporations under 42 U.S.C. § 1983 for alleged constitutional wrongdoings undertaken by municipal courts.[1] In this particular litigation – an interlocutory appeal on sovereign immunity grounds from the district court's denial of Maplewood's motion to dismiss the class action complaint – respondents Cecelia Roberts Webb, et al. (collectively "Motorists") have grouped together two separate entities under a single, formally-named defendant called "The City of Maplewood": (1) a municipal court division of Missouri's unified state judicial system; and (2) the municipal corporation of Maplewood. According to Motorists – all of whom have at various times been charged with violations of municipal ordinances – the municipal court division violated their constitutional rights by issuing arrest warrants when they failed to appear for court hearings, set bond on such warrants, imposed fees and payment plans on them as a result of ordinance violations, and refused to appoint them counsel, without taking into account their indigency.

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[1] *E.g., Odonnell v. Harris Cnty.*, 892 F.3d 147 (5th Cir. 2018); *Ward v. City of Norwalk*, 640 Fed. Appx. 462 (6th Cir. 2016); *McCullough v. City of Montgomery*, 2017 WL 956362 (M.D. Ala. March 3, 2017); *Walker v. City of Calhoun, Ga.*, 2017 WL 2794064 (N.D. Ga. June 16, 2017); *Cain v. City of New Orleans*, 184 F. Supp. 3d 379 (E.D. La. May 3, 2016). This is to say nothing of *Fant v. The City of Ferguson*, currently on interlocutory appeal to Eighth Circuit on similar issues (Cause No. 18-1472), and *Thomas, et al., v. City of St. Ann*, currently pending in the Eastern District of Missouri (Cause No. 4:16-cv-1302).

Two questions are presented for this Court's review:

1. On the one hand, in reviewing a claim of sovereign immunity "courts may not simply rely on the characterization of the parties in the complaint, but rather must determine in the first instance whether the remedy is truly sought against the sovereign." *See Lewis v. Clarke*, 137 S. Ct. 1285, 1290 (2017). On the other hand, municipal corporations are not state entities, and consequently do not enjoy sovereign immunity. *Monell v. Dept. of Soc. Serv. of the City of New York*, 436 U.S. 658 (1978).

What happens when a complaint formally names a "municipality" as a defendant but then defines that "municipality" to include not only the municipal corporation, but also a separate entity that is an arm-of-the-state, such the relief sought against such a defined "municipality" would operate against the state entity? Does that render the complaint "an action [that] is in essence against a State even [though] the State is not a named party," *Lewis*, 137 S. Ct. at 1290, thus barring the lawsuit on sovereign immunity grounds? *See id*.

This Court has repeatedly held that even if a formally-named defendant is not a sovereign entity, sovereign immunity nevertheless bars the lawsuit if the plaintiffs have structured the lawsuit in such a way that the relief they seek would operate against the interests of that entity. *E.g., Republic of the Philippines v. Pimentel*, 553 U.S. 851, 863-873 (2008) (dismissing the case under Fed. R. Civ. P. 19 where a sovereign entity was a required party but could not be joined due to sovereign immunity); *Mine Safety Appliance Co. v. Forrestal*, 326 U.S. 371, 373-374 (1945) (dismissing the

suit on the ground that the named defendant was sued in his official capacity, and not, as the plaintiff insisted, in his individual capacity). "[W]here sovereign immunity is asserted…dismissal of the action must be ordered where there is a potential for injury to the interests of the absent sovereign." *Pimentel*, 553 U.S. at 867. In other words, if the sovereign entity is the "real party in interest" to the lawsuit, sovereign immunity mandates dismissal, even if the formally-named party is not itself a sovereign entity. *See Lewis*, 137 S. Ct. at 1290.

The Eighth Circuit's ruling ignored this, instead concluding that the "real party in interest" test only applies when the formally-named defendant is either (1) a government official sued in an official capacity or (2) a state's arm or instrumentality. (Pet.App. at 4). It further concluded that Maplewood was attempting to use the "real party in interest" analysis to argue that municipal corporations are entitled to sovereign immunity. (Pet.App. at 4). The Eighth Circuit thus discarded *Lewis*'s admonition that "courts may not simply rely on the characterization of the parties in the complaint, but rather must determine whether the remedy is truly sought against the sovereign," *id*. at 1290, as well as *Pimentel*'s admonition that "[a] case may not proceed when a required-entity sovereign is not amenable to suit," *Pimentel*, 553 U.S. at 867, even if the formally-named defendant is not a sovereign entity. *See id*. This has created confusion and uncertainty over how the "real party in interest" test applies. Given the nationwide scope of these class action lawsuits involving municipal corporations and courts, it is proper for this Court to review this question on the merits.

Furthermore, the Eighth Circuit's ruling creates a split in principle between it on the one hand and the Third and Fourth Circuits on the other. Both of those courts, in the wake of *Lewis*, have held that the "real party in interest" test must be utilized even in the context of a formally-named, non-sovereign entity. *E.g., Cunningham v. Gen. Dynamics Info. Technology, Inc.*, 888 F.3d 640 (4th Cir. 2018); *In re Flonase Antitrust Litigation*, 879 F.3d 61 (3d Cir. 2017). This makes it all the more appropriate for this Court to grant review.

2. Municipal corporations can only be liable for constitutional deprivations resulting from an unlawful policy or custom in an area where state law gives them final policymaking authority. *McMillian v. Monroe County, Ala.*, 520 U.S. 781, 784-786 (1997). If the resolution of the sovereign immunity question posed above demonstrates that the arm-of-the-state is vested with the sole legal authority to take the actions leading to the alleged constitutional deprivations, does that mean that the claims against the "municipality" defined as a municipal corporation necessarily fail as a matter of law?

Completely ignoring *McMillian*, the Eighth Circuit concluded that even if the municipal court division had sovereign immunity, "that immunity would not shield the City from its separate liability if any." (Pet.App. at 4). In fact, if the municipal court is an arm-of-the-state entitled to sovereign immunity, then it necessarily follows that Maplewood as a municipal corporation cannot be a final policymaker in the area of Motorists' alleged constitutional deprivations, and consequently cannot be liable under § 1983. This Court should grant review to correct this departure from *McMillian*.

OPINIONS BELOW

The Eighth Circuit's opinion is reported at 889 F.3d 483 (8th Cir. 2018) and reprinted at pages 1 through 9 of Maplewood's appendix. The district court's opinion is unpublished but available at 2017 WL 2418011 (E.D. Mo. June 5, 2017); it is reprinted at pages 10 through 28 of the appendix.

JURISDICTION

The Eighth Circuit issued its opinion on May 4, 2018. (Pet.App. at 1). Maplewood timely petitioned for rehearing en banc, which the Eighth Circuit denied on June 13, 2018, (Pet.App. at 29), giving Maplewood up to and including September 11, 2018, to file its petition for a writ of certiorari. *See* Sup. Ct. R. 13. Accordingly, this Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Both the Eleventh Amendment and 42 U.S.C. § 1983 are reproduced on page 30 of the appendix. The text of Fed. R. Civ. P. 19 is reproduced on pages 31 through 32 of the appendix, while the relevant portions of the Missouri Constitution (Mo. Const. Art. V), the Missouri Revised Statutes (Mo. Rev. Stat. §§ 479, 483), and the Missouri Supreme Court Rules (Mo. S. Ct. R. 37) are reproduced on pages 33 through 50 of the appendix.

STATEMENT OF THE CASE

I. Summary of Motorists' allegations.

Motorists have filed a putative class action complaint alleging five counts under 42 U.S.C. § 1983 (Pet.App. at 51-125), vesting the district court with

subject matter jurisdiction under 28 U.S.C. § 1331. In addition, they allege one Missouri state law claim of unjust enrichment arising out of the § 1983 claims, (Count VII, Pet.App. at 120-121), bestowing supplemental jurisdiction upon the district court pursuant to 28 U.S.C. § 1367(a).[2] They have named "The City of Maplewood, Missouri," as the only formal defendant (Pet.App. at 51), defining it as a municipal corporation that "operates the Maplewood Municipal Court…." (Pet.App. at 56-57, ¶ 23).

The Eighth Circuit's opinion correctly summarizes Motorists' claims. Motorists allege that Maplewood, through the municipal court, violates their constitutional rights through an unlawful policy or custom. (Pet.App. at 2). According to Motorists, Maplewood "automatically issues an arrest warrant whenever someone ticketed for violating its traffic and vehicle laws fails to pay a fine or appear in court." (Pet.App. at 2). Upon being arrested, the motorist can either post bond without any prior hearing to determine his ability to pay, or sit in jail. (Pet.App. at 2). After the court issues the warrant, "a motorist cannot avoid it by voluntarily returning to the municipal court or paying the outstanding fine, but must either submit to a custodial arrest or retain a lawyer to argue a motion before the municipal judge to vacate the warrant." (Pet.App. at 2). The municipal judge demands the motorist's physical presence in court, and a failure to appear will result in the motorist's arrest. (Pet.App. at 2). Furthermore, the

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[2] The district court dismissed Count VI (Pet.App. at 13-14), and that count is not a subject of this petition.

municipal judge refuses to appoint counsel to indigent motorists. (Pet.App. at 115).

Motorists claim that these actions violate their due process and equal protection rights due to their alleged poverty and consequent inability to afford an attorney, post bond, or pay a fine. (Pet.App. at 2, 112-117, 120-121). They seek monetary damages, along with declaratory and injunctive relief ordering the municipal court division to take into account a motorist's claimed indigency prior to issuing warrants, setting bonds, imposing fines, and appointing or declining to appoint counsel. (Pet.App. at 112-117, 120-124).

II. Overview of Missouri's unified court system, including its municipal court divisions.

As the Eighth Circuit rightly observed, all of Motorist's allegations and requests for relief center on judicial and quasi-judicial actions of the municipal court division within Maplewood – that is, the issuance of arrest warrants for failure to appear for a court hearing, the setting or revoking of bonds on such warrants, the imposition of fines, the appointment or refusal to appoint counsel, and the determination of indigency. (Pet.App. at 2). Motorists have included this municipal court division within its definition of "the City of Maplewood" in their class action complaint. (Pet.App. at 56-57, ¶ 23). Consequently, their allegations cannot be understood absent an overview of the municipal court divisions within Missouri law and how they form part of Missouri's unified court system, an arm-of-the-state.

A. Long ago, Missouri voters abolished municipal courts as entities independent of the State, merging them with the rest of the Missouri state court system.

The State of Missouri's judicial power is "vested in a supreme court, a court of appeals…and circuit courts." Mo. Const. Art. V, § 1. The circuit courts have "original jurisdiction over all cases and matters, civil and criminal." Mo. Const. Art. V, § 14. Until approximately four decades ago, municipal courts within Missouri existed as entities separate and distinct from the Missouri state courts. *See Gregory v. Corrigan*, 685 S.W.2d 840, 842 (Mo. 1985); Mo. Const. Art. V, § 27.2. But in 1976, Missouri voters approved amendments to the Missouri Constitution that revamped the state court system. *Gregory*, 685 S.W.2d at 842. Once the amendments went into effect in 1979, the municipal courts "ceas[ed] to exist," Mo. Const. Art. V, § 27.2(d), their powers and jurisdiction having been transferred to the particular circuit court covering the relevant municipality's geographic location. *Id*.

Now that the municipal courts have been abolished, "[v]iolations of municipal ordinances *shall* be heard and determined *only* before divisions of the circuit court…." Mo. Rev. Stat. § 479.010 (emphasis added). The presiding judge of the circuit court, furthermore, has "general administrative authority over the judges and court personnel of all divisions of the circuit hearing and determining ordinance violations within [that particular] circuit." Mo. S. Ct. R. 37.04.

B. The judges and clerks of the municipal divisions, and their powers.

The 1976 amendments provide that "[e]ach circuit may have such municipal judges as provided by law…." Mo. Const. Art. V, § 23. Municipal corporations may determine, via ordinance, how to select such judges and their clerks. Mo. Rev. Stat. §§ 479.020.1, 479.060.1. Municipal corporations also pay the salaries of both the municipal judges and municipal clerks, as well as "other expenses incidental to the operation of the municipal divisions…." Mo. Rev. Stat. § 479.060.1. But Missouri law does not vest municipal corporations with any control or supervision over the municipal court divisions' judicial or quasi-judicial actions; rather, such control and supervision lies ultimately with the Missouri Supreme Court and, in very limited circumstances not relevant here, with the Missouri General Assembly. *See, e.g.,* Mo. Const. Art. V, §§ 4-5; Mo. S. Ct. R. 37.02; *State v. Reese*, 920 S.W.2d 94, 95 (Mo. 1996).

Judges selected pursuant to a municipal ordinance are "municipal judges of the circuit court and [preside over] divisions of the circuit court of the circuit in which the municipality…is located." Mo. Rev. Stat. § 479.020.5. They are "conservator[s] of the peace," Mo. Rev. Stat. § 479.070, and must maintain a written docket of each of their cases, which becomes a record of the circuit court. *Id*. They "have the power to administer oaths and enforce due obedience to all orders, rules, and judgments made by [them], and may fine or imprison for contempt committed before [them] while holding court, in the same manner and to the same extent as a circuit judge." *Id*.

The municipal clerks, furthermore, "constitute the clerical staff of the circuit court to perform the recordkeeping functions in the municipal divisions." Mo. Rev. Stat. § 483.241.3. Like the municipal judges, such municipal clerks are subject to the administrative authority of the presiding judge of the circuit court. Mo. S. Ct. R. 37.04. Either the municipal division judge or the municipal division clerk may sign an arrest warrant. Mo. S. Ct. R. 37.45(b)(6).

C. Legal procedure within the circuit court's municipal divisions.

The Missouri Supreme Court Rules govern the procedure for prosecuting, trying, and executing judgments on ordinance violations. Mo. S. Ct. R. 37.01. Ordinance violations are charged via information. Mo. S. Ct. R. 37.34. The municipal division then issues a summons for the defendant to appear at a court date. Mo. S. Ct. R. 37.43. If a defendant fails to appear in response to a summons, and the municipal division finds probable cause to believe an ordinance violation has been committed, the municipal division may issue an arrest warrant for the defendant. Mo. S. Ct. R. 37.44. Alternatively, the municipal division judge may, in lieu of issuing a summons, issue a warrant for the defendant's arrest if there exists reasonable grounds for the court to believe that the defendant will not appear upon such a summons. Mo. S. Ct. R. 37.43. In either case, the arrest warrant must contain, among other things, the defendant's name, the charged ordinance violation, the date the warrant was issued, the issuing jurisdiction, the conditions of release, and the signature of either the judge or clerk of the municipal division. Mo. S. Ct. R. 37.45.

Any defendant arrested for an ordinance violation has a right to be released from custody pending trial, Mo. S. Ct. R. 37.15(a), but the municipal judge may condition the defendant's release on the execution of a bond to ensure that the defendant is reasonably likely to appear at the court hearing on the ordinance violation. Mo. S. Ct. R. 37.15(c)(3). The judge may modify the bond amount upon a finding that the bond is excessive. Mo. S. Ct. R. 37.19(a)(2).

Should the municipal division judge "fail to set conditions for release," or if the judge "set[s] inadequate or excessive conditions" for release, the defendant may file an application for relief "in a higher court…." Mo. S. Ct. R. 37.22(a). "If the higher court finds that the accused is entitled to be released and no conditions therefor have been set or that the conditions are excessive or inadequate, the court shall make an order setting or modifying conditions for the release of the [defendant]." Mo. S. Ct. R. 37.22(b). In addition, Missouri courts, like the federal courts, provide that an individual who has exhausted his ordinary legal remedies for seeking release from custody may petition for a writ of habeas corpus on the ground that he "is restrained of his or her liberty in violation of the constitution or laws of the state or federal government." *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 545 (Mo. 2003).

Defendants charged with municipal violations have a right to counsel if a conviction would result in possible confinement. Mo. S. Ct. R. 37.50. "If any person charged with an ordinance violation…shall be without counsel upon a first appearance before a judge, it shall be the duty of the judge to advise the defendant

of the right to counsel," *id.*, and that the judge is willing to appoint counsel. *Id*. "Upon a showing of indigency," furthermore, "it shall be the duty of the judge to appoint counsel to represent the defendant." *Id*.

All defendants tried before a municipal division state judge in Missouri have a right to a trial de novo before a circuit judge or associate circuit judge of the State of Missouri. Mo. Rev. Stat. § 479.200.1. The defendant may then appeal the judgment of this second trial to the Missouri Court of Appeals. *See, e.g., City of Slater v. Burks*, 714 S.W.2d 534 (Mo. App. W.D. 1986).

If a defendant is found guilty of an ordinance violation and assessed a fine, the municipal division judge "shall order a stay of execution on the payment of the fine" if it "appears to the judge that the defendant does not have at that time the present means to pay the fine…." Mo. S. Ct. R. 37.65(a). The judge shall, in such a case, either "(1) [g]rant the defendant a specified period of time in within which to pay the fine in full, or (2) [p]rovide for the payment of the fine on an installment basis under such terms and conditions as the judge may deem appropriate." *Id*.

Should the defendant not pay the fine under the judge's conditions, the judge may issue an order for the defendant to appear in court at a future date to show cause. Mo. S. Ct. R. 37.65(c). If the defendant fails to appear at this subsequent hearing, "the court may issue a warrant to secure the defendant's appearance for a hearing on the order to show cause." *Id*. Furthermore, if the defendant defaults in paying the fine or any of its installations, "the judge may issue an

order to show cause why the defendant should not be held in contempt of court." Mo. S. Ct. R. 37.65(c).

If the defendant has already failed to appear at a previously-scheduled hearing on an order to show cause, the municipal division judge may, without a summons, "issue a warrant to secure the defendant's appearance for a hearing on the order to show cause." *Id*. "If following the show cause hearing the judge finds the defendant intentionally refused to obey the sentence of the court or to have made a good faith effort to obtain the necessary funds for payment, the judge may confine the defendant for a term not to exceed thirty days for contempt of court." *Id*.

Missouri law does not vest municipal corporations with any control over the above judicial and quasi-judicial actions.

III. Procedural history, including the Eighth Circuit's conclusions.

In the district court, Maplewood timely moved to dismiss Motorists' class action complaint on the ground that since Motorists had structured their complaint such that their requested relief would operate against the municipal court division, that court division was the real party in interest, and consequently sovereign immunity barred the lawsuit. The district court denied Maplewood's motion to dismiss on June 5, 2017, though it did "agree that the complaint's allegations [were] largely based on action taken by and in the municipal court…." (Pet.App. at 22-23). Maplewood then filed a timely notice of interlocutory appeal to the Eighth Circuit, which affirmed the district court's denial on May 4, 2018. (Pet.App. at 1-9).

Despite the fact that Maplewood never claimed that, as a municipal corporation, it was entitled to sovereign immunity, the Eighth Circuit affirmed the district court's ruling on the ground that the "real party interest" test as enunciated by this Court in *Lewis*, 137 S. Ct. at 1290-1291, did not bestow sovereign immunity upon municipal corporations. (Pet.App. at 4). It concluded that such a test was used "only to determine whether suits against a state's arm or instrumentality or employees in their official capacities are in essence against [the] State." (Pet.App. at 4) (internal quotation marks omitted).[3] This was due, in the Eighth Circuit's view, to the fact that this Court " 'has consistently refused to construe the [Eleventh] Amendment to afford protection to political subdivisions such as counties and municipalities, even though such entities exercise a 'slice of state power.' " (Pet.App. at 4) (quoting *Lake County Estates, Inc. v. Tahoe Reg. Planning Agency*, 440 U.S. 391, 401 (1970)).

In addition, the Eighth Circuit suggested – without holding – that to the extent the plaintiffs would attempt on remand to serve discovery subpoenas on state entities or officials, such entities or officials could object to such subpoenas and "raise a claim of sovereign immunity at that time." (Pet.App. at 8) (citing *Alltel Comm., LLC v. DeJordy*, 675 F.3d 1100 (8th Cir. 2012).

The Eighth Circuit denied both Maplewood's petition for rehearing en banc (Pet.App. at 29) as well

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[3] The Eighth Circuit also rejected Maplewood's argument that individual immunities such as judicial and quasi-judicial immunity barred the lawsuit (Pet.App at 4-8), but Maplewood does not seek review on this issue.

as Maplewood's motion to stay the mandate pending the filing of this petition for a writ of certiorari. Maplewood then filed with Justice Neil Gorsuch – in his capacity as Circuit Justice for the Eighth Circuit – an application to recall and stay the mandate pending the filing of this petition, which was denied on July 6, 2018. (Pet.App. at 126-127).

REASONS FOR GRANTING THE PETITION

I. The Eighth Circuit decided, in a manner conflicting with this Court's precedents, an important question of federal law that this Court has never settled, but should.

Certiorari is appropriate if a lower federal appellate court has either "decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court." *See* Sup. Ct. R. 10(c). So far as Maplewood has been able to determine, the two questions presented to this Court have never arisen before in the context of any sovereign immunity analysis. Nevertheless, this Court's prior rulings in *Lewis*, *Pimentel*, and *Forrestal* strongly weigh in Maplewood's favor, as they demonstrate that a lawsuit may not proceed where the relief sought would operate against a sovereign entity or potentially injure that sovereign's interests, since that would be an attempt by the plaintiff to litigate the sovereign entity's liability behind its back. *See Lewis*, 137 S. Ct. at 1290; *Pimentel*, 553 U.S. at 865-867; *Forrestal*, 326 U.S. at 374-375.

Nor are these issues mere novelties of first impression that have no practical, immediate significance in the real world. Throughout this country in the last several years, numerous class action lawsuits have arisen against municipalities alleging constitutional violations that are, in fact, targeted against municipal courts and their issuance of arrest warrants, bonds, and fines (see footnote 1, *supra*.). The issues presented here go to the heart of caselaw governing both sovereign immunity and municipal liability. Since, as further discussed below, there is no question that the municipal court division in Maplewood is an arm-of-the-state, this case presents an ideal opportunity for this Court to resolve them.

A. The municipal court division is an arm-of-the-state.

There is no question that, under this Court's sovereign immunity precedents, the municipal court division is an arm-of-the-state. For purposes of the Eleventh Amendment, an entity is an arm-of-the-state if "it is so closely tied to the State as to be the direct means by which the State acts…." *See Port Authority Trans-Hudson Corp. v. Feeney*, 495 U.S. 299, 313 (1990) (Brennan, J., concurring in the judgment). "[T]he critical inquiry is who may be legally bound by the court's adverse judgment, not who will ultimately pick up the tab." *Lewis*, 137 S. Ct. at 1292-1293.

Missouri law gives municipal corporations no legal authority over the judicial or quasi-judicial actions of the municipal court divisions. While these court divisions are funded by the municipal corporations, and not by the State, this does not change the fact that they are arms-of-the-state. "While state sovereign immunity

serves the important function of shielding state treasuries…the doctrine's central purpose is to accord the States the respect owed them as joint sovereigns." *Fed. Maritime Comn. v. South Carolina State Ports Authority*, 535 U.S. 743, 765 (2002) (internal quotation marks omitted). *Accord Regents of Univ. of Cal. v. Doe*, 519 U.S. 425 (1997) (ruling that state university's indemnification by the federal government did not divest it of sovereign immunity under the Eleventh Amendment). Not surprisingly, the Ninth Circuit concluded more than thirty years ago that California's county courts are arms-of-the-state, despite receiving almost all of their funding from local entities. *Greater L.A. Council on Deafness. Inc. v. Zolin*, 812 F.2d 1103, 1110 (9th Cir. 1987), superseded on other grounds as stated in *Alexis v. County of Los Angeles*, 698 Fed. Appx. 345 (9th Cir. 2017). Likewise, the Sixth Circuit concluded that the county courts of Michigan are state entities, even though they also receive their funding from local municipal corporations. *Pucci v. Nineteenth District Court*, 628 F.3d 752, 760-765 (6th Cir. 2010).

In light of this, there can be no serious question that the Missouri municipal court divisions are arms-of-the-state.

B. Under the "real party in interest" test, sovereign immunity bars this lawsuit (Question 1).

The Eighth Circuit's conclusion that a non-sovereign entity cannot use the real-party-in-interest test to argue for dismissal based on sovereign immunity is directly repugnant to this Court's precedents on several grounds. First, it wrongly concluded that the "real-party-in-interest test is used

only to determine whether suits against a State's arm or instrumentality or employees in their official capacity are in essence against [the] State." (Pet.App. at 4) (internal quotation marks omitted). On the contrary, courts must utilize the "real party in interest" test to determine whether the requested relief would operate against the State, *see Lewis*, 137 S. Ct. at 1290, "or interfere with the public administration, or if the effect of the judgment would be to restrain the Government from acting, or to compel it to act." *Duggan v. Rank*, 372 U.S. 609, 620 (1963) (internal citation and quotation marks omitted).

By including the municipal court division within its definition of the "City of Maplewood," Motorists have structured their lawsuit in such a way that the relief they seek against "Maplewood" would operate against the municipal court division as an arm-of-the-state. Even worse, they are asking the district court to enter declaratory and injunctive relief against the municipal court division curbing the manner in which it issues arrest warrants, sets or revokes bonds, imposes fines, and appoints or declines to appoint counsel. In other words, they are attempting to litigate a sovereign entity's liability "behind its back." *See Forrestal*, 326 U.S. at 375. If this does not amount to seeking relief that "restrain[s] the Government from acting, or . . . compel[s] it to act," *Duggan*, 372 U.S. at 620, what does?

The Eighth Circuit further concluded that Maplewood "cannot identify a single case that has used the test to find that a municipality itself had immunity." (Pet.App. at 4). But this misses the point: the "real party in interest" test bars this lawsuit not

because it bestows sovereign immunity upon Maplewood as a municipal corporation, but rather because Motorists – by defining "Maplewood" to include not just a municipal corporation, but also a state entity – have made an "indirect effort" to litigate against a non-consenting, immune sovereign. *See Forrestal*, 326 U.S. at 374-375 (1945).

In *Forrestal*, the plaintiff brought suit against the Under Secretary of the Navy alleging that he had refused to pay out full profits on several defense contracts. *Id*. at 371-372. Despite the fact that the complaint plainly indicated that the lawsuit was structured in a way that the requested relief would operate against the federal government, the plaintiff insisted that this was not the case, and that it was only seeking relief against the Under Secretary as an individual. *Id*. at 373-374. This Court would have none of it: the sole purpose of the litigation, it concluded, was to bind the government, and not the Under Secretary as an individual, to an adverse judgment. *Id*. at 374-375. Indeed, this Court concluded that the plaintiff could not even sustain a viable claim on the merits against the Under Secretary as an individual, but rather only against the federal government. *Id*. at 374."Under these circumstances, the government [was] an indispensable party" to the lawsuit, and because it had not consented to be sued, sovereign immunity mandated dismissal. *See id*. at 375. "In short, the government's liability [could] not be tried behind its back." *Id*. (internal quotation marks omitted).

Likewise, while Motorists insist they are not seeking to hold the municipal court division liable, but rather the municipal corporation of Maplewood, the

contents of their complaint and their requested relief plainly demonstrate otherwise. Just like the plaintiff in *Forrestal*, Motorists are attempting to circumvent sovereign immunity by not naming the state entity as a formal party to this lawsuit. This is exactly why this Court developed the "real party in interest" test in the first place: to prevent private litigants from making an "indirect effort" to bring suit against a nonconsenting sovereign "behind its back" by naming a non-sovereign as the formal defendant. *See id*.

This may also be likened to where Fed. R. Civ. P. 19 mandates dismissal due to a required, absent party's inability to be joined on the ground of sovereign immunity, a matter this Court squarely addressed in *Pimentel*. There, Merrill Lynch brought an interpleader against both the government of the Philippines and several private entities. *Pimentel*, 553 U.S. at 857-861. The government of the Philippines was dismissed due to sovereign immunity, but the Ninth Circuit ruled that the interpleader could still proceed against the non-sovereign entities. *Id*. at 859-861. This Court reversed, holding that the Philippines was a required party if Merrill Lynch was to obtain the relief sought. *See id.* at 865-867. But because the Philippines could not be joined due to sovereign immunity, the case could not go forward. *Id*.

Notably, in coming to this conclusion, *Pimentel* expressly relied upon *Forrestal* for support. *Pimentel*, 553 U.S. at 866-867 (citing *Forrestal*, 326 U.S. at 373-375). It observed that *Forrestal* "involv[ed] the intersection of joinder and the governmental immunity of the United States." *Pimentel*, 553 U.S. at 866, and that the lawsuit had to be dismissed "where the Under

Secretary of the Navy was sued in his official capacity, because the Government was a required entity that could not be joined when it withheld consent to be sued." *Id*. at 866-867. This Court then concluded that a lawsuit "may not proceed when a required-entity sovereign is not amenable to suit." *Id*. at 867. Rather, "dismissal of an action *must* be ordered where there is potential for injury to the interests of the absent sovereign." *Id*. (emphasis added).

Ignoring both *Forrestal* and *Pimentel*, the Eighth Circuit concluded that even if Motorists' lawsuit was ultimately directed towards the municipal court division, this only meant that Maplewood as a municipal corporation would have a defense on the merits, and not that it could argue for dismissal on the basis of sovereign immunity. (Pet.App. at 4). But had this Court adopted such a rationale in *Forrestal*, it would have allowed suit to proceed against the Under Secretary on the ground that even if the requested relief operated against the federal government, and not – as the plaintiff claimed – against the Under Secretary as a mere individual – then this would have provided the Under Secretary as an individual a defense on the merits, but not grounds for dismissal due to sovereign immunity. But recognizing that allowing the suit to go forward would impact and ultimately operate against the interests of the government, this Court ordered it dismissed. *Id*. at 374-375. The Eighth Circuit's failure to do the same here warrants this Court's review and correction.

Practically the same situation exists here that existed in *Forrestal* and *Pimentel*. Motorists have defined "Maplewood" to include the municipal court

division, and are seeking relief that would operate against that division's judicial and quasi-judicial acts. In other words, they are attempting to litigate that court's liability behind its back. *See Forrestal*, 326 U.S. at 375. Just as the non-sovereign entities in *Pimentel* could move for dismissal under Rule 19 due to the absent party's sovereign immunity, so too a non-sovereign entity should be able to move for dismissal due to sovereign immunity under the "real party in interest" test if the plaintiffs define that entity to include a sovereign entity and seek relief against it.

Even though the Eighth Circuit insisted the municipal court division was not the real party in interest, it tried to split the baby in half by "observing" that, on remand, any State entity or official, if it had a concern about submitting to discovery in this case, could raise an objection on sovereign immunity grounds to any subpoena Motorists serve on them. (Pet.App. at 8). "The district court," it continued, "may address in the first instance whether the subpoena can be quashed on that ground." (Pet.App. at 8). But in the Eighth Circuit, "[t]here is simply no authority for the position that the Eleventh Amendment shields government entities [as third parties] from discovery in federal court." *In re Missouri DNR*, 105 F.3d 434, 436 (8th Cir. 1997).

While the Eighth Circuit cited its earlier case of *Alltel Comm., LLC v. DeJordy*, 675 F.3d 1100 (8th Cir. 2012), in support of its suggestion that the municipal court division could raise a sovereign immunity objection to a discovery subpoena (Pet.App. at 8), that very case proves that the municipal court division, as a sovereign entity will suffer irreparable harm if this

lawsuit is not dismissed. In *DeJordy*, a private limited liability corporation sued its former senior vice president for breach of contract in a matter relating to the Oglala Sioux Tribe. *Id*. at 1101-1102. The tribe was not a named party to the case. *Id*. at 1102. The corporation served a third party discovery subpoena on the tribe, and the tribe moved to quash the subpoena on the ground of sovereign immunity, which the district court denied. *Id*. The district court relied upon *Missouri DNR* as grounds for overruling the tribe's sovereign immunity objections. *DeJordy*, 675 F.3d at 1104.

The Eighth Circuit ruled that the tribe's objection should have been sustained on sovereign immunity grounds, but only because "tribal immunity is not congruent with that which the Federal Government, or the States, enjoy." *Id*. at 1104 (internal quotation marks omitted). It then concluded that *Missouri DNR* was not controlling in the context of tribal sovereign immunity, as opposed to a state's assertion of sovereign immunity. *See DeJordy*, 675 F.3d at 1104.

In light of these holdings, it is difficult to see how the district court, on remand, will be willing to sustain any sovereign immunity objection to a third party subpoena issued to the municipal court division, since it is bound to follow *Missouri DNR*. But there is no question that Motorists' requested relief would operate against that court's judicial and quasi-judicial acts. It is guaranteed, therefore, that opposing counsel will not only seek document production from the court division, but also seek to depose its judge, clerks, and other personnel regarding their judicial and quasi-judicial actions. *DeJordy* is cold comfort to the municipal court division.

In any event, the above suggestion by the Eighth Circuit ignores this Court's direction "that where sovereign immunity is asserted, and the claims of the sovereign are not frivolous, dismissal of the action must be ordered where there is a potential for injury to the interests of the absent sovereign." *Pimentel*, 553 U.S. at 867. Being able to lodge a mere objection to a subpoena is insufficient – the case must be dismissed.

The Eighth Circuit attempted to further buttress its conclusions by noting that political subdivisions may not claim sovereign immunity even if, as such subdivisions, they exercise a " 'slice of state power.' " (Pet.App. at 4) (quoting *Lake County*, 440 U.S. at 401. This is irrelevant for two reasons: first, Maplewood as a municipal corporation has no legal control over the municipal court division to begin with, and thus is not a political subdivision exercising a "slice of state power." Rather, Motorists have defined "Maplewood" to include not only a municipal corporation, but also *the State itself* in the form of the municipal court division.

Second, *Lake County*'s language about political subdivisions not being entitled to sovereign immunity even though they exercise a "slice of state power" was made in the context of examining whether a bi-state entity was entitled to sovereign immunity. *Lake County*, 440 U.S. at 400-401. This Court has also applied the "slice of state power" analysis to instances where it is undisputed that the entity in question is still a local entity even when exercising the function in question. *E.g.*, *North. Ins. Co. v. Chatham Cnty.*, 547 U.S. 189, 193-195 (2006). It does not apply in a situation like this, where a "municipality" has been defined to include not only a municipal corporation, but

also a legally-separate state entity. This means that the relief sought will operate against the State itself, *see Duggan*, 372 U.S. at 620, and not a local political subdivision exercising a "slice of state power."

C. The Eighth Circuit's opinion creates a conflict in principle between it on the one side and the Third and Fourth Circuits on the other. (Question 1, continued).

The Eighth Circuit's conclusion that *Lewis*'s real party in interest test only applies to causes of action against either a formally-named arm-of-the-state or formally-named government officials sued in their official capacity creates a split in principle between it and both the Third and Fourth Circuits. This is another reason for this Court to grant review. *See* Sup. Ct. R. 10(a) (stating that a conflict between federal appellate courts on an important matter is one ground for the Court granting review). In *Cunningham v. Gen. Dynamics Info. Technology, Inc.*, 888 F.3d 640 (4th Cir. 2018), the Fourth Circuit upheld a private corporation's entitlement to sovereign immunity, since the entity was fulfilling a statutorily-imposed duty. *See id*. at 650. It cited to *Lewis* and other cases holding that sovereign immunity bars an action even if the State is not a formally-named party. *See id*.

Likewise, in *In re Flonase Antitrust Litigation*, 879 F.3d 61 (3d Cir. 2017), the Third Circuit had to confront whether sovereign immunity barred enforcement of a class action settlement agreement between two private parties against the State, even though the State had never formally signed the settlement agreement, but rather was merely an

absent class member. *Id*. at 63-64. The Third Circuit ruled that the State was a real party in interest in the original lawsuit, despite not signing onto the settlement agreement. *Id*. at 66. The Third Circuit noted that, under *Lewis*, it had to "look beyond 'the characterization of the parties in the complaint' and, instead, scrutinize the requested remedy's effects to ensure that it does not infringe upon an unnamed sovereign's immunity…." *Flonase*, 879 F.3d at 66 (quoting *Lewis*, 137 S. Ct. at 1290). As a result, the court continued, it had to apply this test "when considering whether a claim implicates the rights of a state acting as an absent class member." *Id.* The Third Circuit concluded that sovereign immunity barred enforcement of the settlement against the State. *Id*. at 68-70.

While the issues confronting the Fourth and Third Circuits were not identical to the issues present in this case, both courts nevertheless recognized that *Lewis*'s requirement of looking beyond the formally-named party to whether the State is the real party in interest apply even outside of official capacity claims or claims formally naming an arm-of-the-state. The Eighth Circuit's refusal to do the same creates a split in principle between it and the Third and Fourth Circuit's, giving this Court all the more reason to grant review.

D. The resolution of the above sovereign immunity issue necessarily means that Maplewood as a municipal corporation cannot be liable under § 1983. (Question 2).

Turning to the second issue – if the resolution of the sovereign immunity issue demonstrates that the relevant state law vests the arm-of-the-state, and not the municipal corporation, with the authority to take the actions forming the basis for the constitutional deprivation, does this mean that Motorists' claims against "Maplewood" defined as a municipal corporation necessarily fail as a matter of law? Without any substantive analysis, the Eighth Circuit merely observed that if the municipal court division was entitled to immunity, "that immunity would not shield the City from its separate liability, if any," (Pet.App. at 4), and ruled that it could not exercise pendent appellate jurisdiction over this portion of the interlocutory appeal. (Pet.App. at 8-9). It came to this conclusion despite its earlier en banc ruling in *Lockridge v. Bd. of Trustees*, 315 F.3d 1005 (8th Cir. 2003) (en banc), holding that pendent appellate jurisdiction attaches to the merits of a lawsuit if resolving an immunity issue on interlocutory appeal "necessarily resolves" the case on the merits. *Id.* at 1012-1013.

Municipal corporations can only be liable under § 1983 for constitutional deprivations arising out of an unlawful policy or custom in an area where state law vests the municipal corporation to act. *McMillian v. Monroe County, Ala.*, 520 U.S. 781, 785-786 (1997). Critically, the Court's cases in this area "instruct us to

ask whether governmental officials are policymakers for the local government in a particular area, or on a particular issue." *Id*. at 785. This is a matter of state law. *Id*. at 786. "[O]ur understanding of the actual function of a governmental official, in a particular area, will necessarily be dependent on the definition of the official's functions under relevant state law." *Id*. Federal courts are not "justified in assuming that municipal policymaking authority lies somewhere other than where the applicable law purports to put it." *City of St. Louis v. Praprotnik*, 485 U.S. 112, 126 (1988) (plurality opinion). As the Eighth Circuit itself recently put it, "there are no de facto final policymakers – only de jure." *Soltesz v. Rushmore Plaza Civic Ctr.*, 847 F.3d 941, 948 (8th Cir. 2017).

As Maplewood demonstrated above, the municipal court divisions in Missouri are arms-of-the-state, and Missouri law vests them with the exclusive authority to issue arrest warrants, set or recall warrant bonds, impose fines, and appoint counsel – all of the actions forming the basis for Motorists' claims. This necessarily means that, to the extent Motorists define Maplewood as a municipal corporation, their § 1983 claims against it must fail since Missouri law does not vest municipal corporations with any final policymaking authority over such actions.

CONCLUSION

In light of the importance of these issues, along with the split in principle the Eighth Circuit has created between it and the Third and Fourth Circuits, this Court should grant review of these two questions on the merits.

Respectfully submitted,

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