No. 20-____

IN THE
SUPREME COURT OF THE UNITED STATES

TAMATRICE WILLIAMS,
Petitioner,
v.

CITY OF SHERWOOD, ARKANSAS,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

State law determines whether an entity is a state or a local entity for purposes of Section 1983 liability. *McMillian* v. *Monroe County.*, 520 U.S. 781, 785–86 (1997). On January 23, 2020, the Arkansas Supreme Court held as a matter of first impression that local courts not yet reorganized into Arkansas state courts—like the Sherwood court at issue in this case—were municipal courts under the control of the municipality. *City of Little Rock* v. *Nelson*, 592 S.W.3d 633, 641 (Ark. 2020). Five days later, an Eighth Circuit panel, without citing *City of Little Rock*, held that Sherwood's district court was an Arkansas state court over which Sherwood had no control. The question presented is:

Should the opinion below be vacated, and this case remanded, for reconsideration in light of *City of Little Rock* v. *Nelson*?

RELATED PROCEEDINGS

United States District Court (E.D. Ark.):

Williams v. *City of Sherwood*, No. 4:18CV00097 JM (Aug. 17, 2018), reported at 2018 WL 9708622.

United States Court of Appeals (8th Cir.):

Williams v. *City of Sherwood*, No. 18-2982 (Jan. 28, 2020), reported at 947 F.3d 1107, petition for reh'g denied (Mar. 18, 2020).

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JURISDICTION

The Court of Appeals entered judgment on January 28, 2020. Petitioner obtained an extension of time to file a petition for rehearing or rehearing en banc, and she timely filed that petition on February 25, 2020. That petition was denied on March 18, 2020. Under this Court's March 19, 2020 order regarding COVID-19 public health concerns, this petition is timely filed on August 17, 2020. Petitioner invokes this Court's jurisdiction under 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const., amend. XIV, § 1 provides that:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. 1983 provides that:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person

within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Ark. Code § 16-17-1107 provides that:

> This subchapter shall not in any way limit the power and authority of local district courts currently existing. Except for the state district court judgeships created under this subchapter, a judge serving in another full-time or part-time local district court position shall continue to be an employee of the cities or counties, or both, that he or she serves and shall be paid according to state law.

Ark. Code § 16-17-1113 (text at App. 16).

STATEMENT

I. Petitioner sued Sherwood for the unconstitutional policies and practices of its municipal court.

Tamatrice Williams is a working mother of five. App. 44. In 1997, Williams "bounced" four checks due to insufficient funds. App. 44–45. These four bounced checks—which Williams used to buy groceries and other household necessities—ensnared her in a 20-year cycle of debt, arrest, and imprisonment.

Williams was convicted of writing bad checks in the City of Sherwood's "hot-check court." App. 45. The hot-check court, a division of Sherwood's municipal court, handled prosecutions for bad checks. App. 28. The City promoted hot-check proceedings to local businesses as an efficient way to pursue violators. App. 38–39. And the City derived significant revenues from these proceedings—fines and forfeitures were over 11 percent of the City's general fund and its third largest revenue source. App. 36. Further, proceedings in the hot-check court were closed to the public. App. 31–32. Before defendants entered the court, Sherwood required they waive their right to counsel, while standing in a line that began before seven o'clock in the morning. App. 31.

After her hot-check convictions, the city court forced Williams to attend "review hearings" in which the court would review her payment of fines, fees, and court costs. App. 31. When Williams missed a fine or fee payment, Sherwood's court would issue an arrest warrant and open a new criminal case, thereby

multiplying the fines and fees Williams owed. App. 32. Each new arrest warrant—sought by Sherwood officials, issued by Sherwood's court, and executed by Sherwood's police—caused another $300 in fees and costs. App. 33. The municipal court imposed these fees and costs (which city officials collected) without any inquiry into Williams's ability to pay. App. 34.

Williams did her best to pay her fines and fees, paying thousands of dollars on top of the fines, fees, costs, and restitution of her underlying hot-check convictions. App. 32–33, 45. When she fell behind on payments, Sherwood police arrested her 8 times, totaling about 160 days in jail. App. 45. Sherwood police made some of these arrests in front of her young children, including one on her daughter's birthday. App. 45. One arrest led her to spend 30 days in Sherwood's jail and Pulaski County prison over the holiday season from late December to January. App. 46. Sherwood officials threatened Williams at her job on 12 occasions, demanding that she produce $200 on the spot or be arrested. App. 46–47. Sherwood's threats and arrests were not merely publicly humiliating; they were financially damaging and caused Williams's employers to take disciplinary action against her. App. 46.

The hot-check court was, by city ordinance, a division of the Sherwood municipal court. App. 28. Although the court will become part of the state court system in 2021 (and is now called the "Sherwood District Court"), it was not, at the time of the challenged policies and practices, a state court. Ark. Code § 16-17-1113. This case concerns the City's conduct between 1996 and 2016. App. 25.

Williams sued the City of Sherwood under 42 U.S.C. 1983, alleging that the City unconstitutionally (1) jailed her for her inability to pay fines and fees; (2) imprisoned her without appointing counsel; (3) indefinitely and arbitrarily detained her; (4) used jail and threats of jail to collect fines and fees; and (5) issued and served invalid warrants based solely on nonpayment of these fines. App. 51–59. The United States District Court had jurisdiction over Williams's suit under 28 U.S.C.§ 1331 and 1343.

The district court dismissed the Complaint under *Heck* v. *Humphrey*, 517 U.S. 477 (1994), finding that Williams should have had her prior convictions vacated before suing under Section 1983. App. 12.

II. The court below held that Sherwood could not be liable because Sherwood's court was an Arkansas state court over which the City had no control.

Williams appealed, and the Eighth Circuit affirmed on grounds that had not been briefed by the parties. The Court of Appeals decided that Williams had failed to state a claim against Sherwood because the Sherwood District Court was an "Arkansas district court." App. 6. It likened Williams's claim to a 2007 case in which it held that a Missouri municipal court judge "was not a final municipal policymaker" because "the municipal court was a division of the state circuit court" and "the judge's jailing of the plaintiff 'was a judicial decision.'" App. 5 (quoting *Granda* v. *City of St. Louis*, 472 F.3d 565, 569 (8th Cir. 2007)). The court held, therefore, that Sherwood could

not be liable for the Sherwood district court's policies. App. 6. The panel's decision did not once mention Arkansas law in its analysis of Sherwood's court. *See* App. 4–6.

The panel's decision came just five days after the Arkansas Supreme Court decided the same issue. In *City of Little Rock* v. *Nelson*, the supreme court considered, as a matter of first impression, whether Arkansas cities can be held liable for the fee-collection policies of their municipal courts. *City of Little Rock* v. *Nelson*, 592 S.W.3d 633, 637, 640 (Ark. Jan. 23, 2020), *reh'g denied* (Mar. 19, 2020). It held that, in cities whose courts were not yet part of the state court system, judges were city employees whose actions could be imputed to the municipality for purposes of municipal liability. *Id.* at 640–41. This holding, as the dissent in *City of Little Rock* notes, conflicts with that in *Granda* v. *City of St. Louis*. *City of Little Rock* 592 S.W.3d at 645 (Hart, J., dissenting) ("In *Granda*, the Eighth Circuit squarely rejected the argument for municipal liability advanced in this case."). Only five days later, the panel issued its opinion in this case, relying heavily on *Granda* to interpret a question of Arkansas law and seemingly unaware of the nearly contemporaneous decision of the Arkansas Supreme Court.

Williams petitioned for rehearing, arguing that the Eighth Circuit should reconsider the case following *City of Little Rock*, but the petition was denied. App. 14. Williams now petitions for a writ of certiorari.

REASONS FOR GRANTING THE PETITION

Petitioner's case turns on whether Sherwood's municipal court is a municipal or state policymaker for purposes of Section 1983 liability. This Court's longstanding rule is that state law determines whether an official is a municipal policymaker. Just five days before the panel's opinion, the Arkansas Supreme Court decided as a matter of first impression that courts like Sherwood's are municipal, not state, officials. Review is warranted here because the decision below ignored the Arkansas Supreme Court's decision.

Review is also warranted because this Court has long held that courts of appeals have a duty to rehear cases when faced with new, on-point state-law decisions. *See Huddleston* v. *Dwyer*, 322 U.S. 232 (1944). Yet the court below refused to rehear this case following the Arkansas Supreme Court's conclusive decision on state law. When a court of appeals refuses to rehear cases in these circumstances, this Court regularly grants the petition, vacates the decision below, and remands for reconsideration.

I. Whether an official is a municipal or state actor is controlled by state law, which the decision below failed to apply.

This Court has repeatedly held that state law determines whether an official is a municipal policymaker for whose acts the municipality may be liable. *See McMillian* v. *Monroe County*, 520 U.S. 781, 785–86 (1997) ("[W]hether [an official] represents the

State or the county . . . is dependent on an analysis of state law."); *Jett* v. *Dallas Indep. Sch. Dist.*, 491 U.S. 701, 737 (1989) ("[W]hether a particular official has final policymaking authority is a question of state law." (cleaned up)); *City of St. Louis* v. *Praprotnik*, 485 U.S. 112, 123, (1988) (plurality) (same); *Pembaur* v. *City of Cincinnati*, 475 U.S. 469, 483 (1986) (plurality) (same).

Contrary to this Court's holdings, in this case the Court of Appeals ignored state law. It held that Sherwood could not be held liable for the acts of "duly elected . . . Arkansas district court judges." App. 5–6. But Arkansas law is newly settled: In *City of Little Rock* v. *Nelson*, the Arkansas Supreme Court held for the first time that if a city court "had not yet been reorganized as a state district court," then city court officials are city employees whose actions "may be imputed to the City." 592 S.W.3d 633, 640–41 (Ark. Jan. 23, 2020), *reh'g denied* (March 19, 2020). *City of Little Rock* was decided just five days before the panel decision and became final two months later.

In *City of Little Rock*, the Arkansas Supreme Court considered, as "a matter of first impression," whether an Arkansas city could be liable for the unconstitutional acts of its court. *City of Little Rock*, 592 S.W.3d at 640. The plaintiff alleged that Little Rock violated due process because its court forced all defendants to pay an installment-payment fee, even when defendants paid in full and not in installments. *Id.* at 637. After the jury decided in favor of the plaintiff, Little Rock appealed, arguing that it could not be held liable for a state judge's actions. *Id.* at 637, 640. The Arkansas Supreme Court therefore had to

determine whether the Little Rock District Court was a ***state*** district court or a ***local*** district court (a municipal court formerly known as a "city court").

Complicating the court's analysis was that Arkansas is currently transitioning from independent city courts to a unified state judiciary. Under reforms passed in 2007, the Arkansas General Assembly began reorganizing city courts into state-funded district courts with elected judges. 2007 Ark. L. Act 663 (S.B. 235). The timing of these reorganizations is staggered. The original pilot program began in 2008. *Id.* (enacting Ark. Code § 16-17-1103, "Creation of pilot state district court judgeships"). Reorganizations will continue through 2025. Ark. Code § 16-17-1116. Little Rock's court was reorganized in 2017. *City of Little Rock*, 592 S.W.3d at 640. Sherwood's court will be reorganized in 2021. Ark. Code. § 16-17-1113(a)(1), (m)(2)(E).

City of Little Rock held that municipal liability turns on whether its local district court had yet been reorganized as a state court. Cities are liable for "due process violation[s] arising from" unconstitutional district court policies if the local district court "had not yet been reorganized as a state district court." *City of Little Rock*, 592 S.W.3d at 641. The court cited statutes saying that a local district court judge "'shall continue to be an employee of the cities . . . that he or she serves.'" *Id.* at 640 (quoting Ark. Code § 16-17-1107). And although earlier reforms replaced city-appointed judges with elected ones, "the City was

responsible for funding the district court salaries and operational expenses." *Id.*[1]

Under *City of Little Rock*, Sherwood can be held liable for the acts of its municipal court. Sherwood's court will not be reorganized until 2021. Ark. Code. § 16-17-1113(a)(1), (m)(2)(E). The Sherwood District Court's unconstitutional actions "may therefore be imputed to the City" of Sherwood. *City of Little Rock*, 592 S.W.3d at 641.

Indeed, *City of Little Rock* expressly rejected the reasoning adopted by the opinion below. The opinion below reasoned that Sherwood could not be held liable because "[n]either the city council nor the mayor has the power to set judicial policy for Arkansas district court judges." App. 6. But *City of Little Rock* rejected the argument that the municipal judge's policies "may not be imputed to" the city because it "lack[ed] control and authority over the district court." 592 S.W.3d at 640. Instead, it held that, before a city's court is reorganized into a state

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[1] The Arkansas Supreme Court's decision was based in part on the Eighth Circuit's prior decisions regarding other Arkansas municipalities. *See Evans* v. *City of Helena-W. Helena*, 912 F.3d 1145, 1146 (8th Cir. 2019) (finding city could be liable for actions of Phillips County District Court, which had ***not*** been reorganized at the time of the alleged wrongdoing); *Justice Network, Inc.* v. *Craighead County*, 931 F.3d 753 (8th Cir. 2019) (finding city could not be liable for actions of Craighead County District Court, which ***had*** been reorganized at the time of the alleged wrongdoing).

court, its judge is "an employee of the City" and, therefore, could be a city policymaker. *Id.* at 641.

The Arkansas Supreme Court's interpretation of state law is binding on federal courts. And in this case its interpretation is conclusive, because whether an official is a state or city policymaker is determined by reference to state law. *See McMillian* v. *Monroe County*, 520 U.S. 781, 786 (1997). This Court should grant certiorari to vacate the decision below and remand the case for reconsideration in view of the Arkansas Supreme Court's recent, and controlling, decision.

II. The denial of rehearing violates *Huddleston* v. *Dwyer*, 322 U.S. 232 (1944), under which courts of appeals must rehear a submitted case when an intervening state supreme court decision decides a determinative issue of state law.

City of Little Rock was decided five days before the panel decision in this case. After the panel's decision, Williams moved for rehearing, which was denied. That denial violates this Court's longstanding rule, stated in *Huddleston* v. *Dwyer*, 322 U.S. 232, 236 (1944), that "a judgment of a federal court . . . must be reversed on appellate review if in the meantime the state courts have disapproved of their former rulings and adopted different ones."

Huddleston concerned precisely whether a circuit court of appeals must grant rehearing when faced with a new state supreme court decision on a

determinative issue of state law. In *Huddleston* the petitioners were unsuccessful on appeal, with the court of appeals relying on Oklahoma precedent. They requested rehearing, which was denied. A month later, the Oklahoma Supreme Court issued a decision that "superseded its earlier opinion on which the Circuit Court of Appeals had relied." *Id.* at 235. The petitioners then filed a second petition for rehearing, but that was also denied.

This Court held that the court of appeals erred in not reconsidering its earlier decision. State supreme courts are the final arbiters of state law: "[T]he duty rests upon federal courts to apply state law . . . in accordance with the then controlling decision of the highest state court." *Id.* at 236. That duty exists for as long as the case is still "*sub judice.*" *Id.* A court of appeals thus has a duty to reconsider a decision in which it applied state law when an intervening state supreme court decision changes the state law.

Here, as described in Part I, the Court of Appeals' decision was premised on the idea that the Sherwood District Court was an Arkansas state court over which Sherwood had no control. Days later, the Arkansas Supreme Court ruled to the contrary: Sherwood's court was a local court, its judge was an employee of the city who can be a city policymaker, and the court's policies can therefore be imputed to Sherwood. This holding, as the dissent noted, conflicts with *Granda* v. *City of St. Louis*, the decision on which the Eighth Circuit in this case relied. *City of Little Rock*, 592 S.W.3d at 645 (Hart, J., dissenting); App. 4 (discussing *Granda*, 472 F.3d 565, 566 (8th Cir.

2007)). In light of the Arkansas Supreme Court's recent decision, the Court of Appeals here had a duty to reconsider its decision. By failing to do so, it contradicted this Court's settled rule.

III. This Court regularly remands cases for reconsideration when courts of appeals fail to grant rehearing following new and controlling state-court precedent.

This Court has repeatedly remanded cases when lower courts fail to reconsider decisions after state law changes. In *Thomas* v. *American Home Products, Inc.*, 519 U.S. 913 (1996), this Court granted, vacated, and remanded the case after the Eleventh Circuit denied rehearing. The court of appeals had summarily affirmed a district court decision resting on state law grounds. But, after affirmance, the Georgia Supreme Court overruled a case on which the district court had relied. Still, the court of appeals refused to reconsider the case.

Concurring with the *Thomas* Court's decision to grant review and remand the case, Justice Scalia wrote that the "case falls squarely within our historical use of the GVR mechanism." *Id.* at 914. Just as an intervening U.S. Supreme Court decision is reason to grant a petition and remand for reconsideration, so an intervening state high court decision is reason to grant, vacate, and remand a case that rested on state law. *Id.* at 915. This court must consider simply whether "the federal-court decision on state law appears to contradict a subsequent decision of the state supreme court." *Id.* (emphasis omitted).

Again, in *Lords Landing Village Condominium Council* v. *Continental Insurance Co.*, this Court granted, vacated, and remanded the case following a state supreme court decision. 520 U.S. 893 (1997) (per curiam). Citing both *Huddleston* and *Thomas*, *Lords Landing* held that the "case fits within the category of cases in which we have held it is proper to issue a GVR order." *Id.* at 896. There, as in this case, the state supreme court decided a case just days before the court of appeals' decision. And the court of appeals, as in this case, denied a petition for rehearing. *Id.* at 895.

Together, *Huddleston*, *Thomas*, and *Lords Landing* recognize that courts of appeals have a "duty," *Huddleston*, 322 U.S. at 236, to reconsider a case if a state supreme court decision "cast[s] doubt on the soundness of the Court of Appeals' decision," *Lords Landing*, 520 U.S. at 895. "[W]here a federal court of appeals' decision on a point of state law had been cast in doubt by an intervening state supreme court decision, it became our practice to vacate and remand . . . ." *Thomas*, 519 U.S. at 913–14 (Scalia, J., concurring) (citation and quotation omitted).

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

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