No. _____

In The
Supreme Court of the United States

PRISCILLA EVERETTE-OATES,

Petitioner,

v.

BETH WOOD, in her individual capacity;
T. VANCE HOLLOMAN, in his individual capacity;
ROBIN HAMMOND, in her individual capacity;
SHARON EDMUNDSON, in her individual capacity,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In a claim alleging conspiracy to conceal evidence against a public official who was falsely charged with embezzlement, can multiple municipal defendants win summary judgment solely on the basis that one defendant has prosecutorial immunity and was otherwise deemed not liable under 42 U.S.C. § 1983?

STATEMENT OF RELATED CASES

Everette-Oates v. N. Carolina Dep't of State Treasurer, No. 5:16-CV-623-FL, 2016 WL 10805746 (E.D.N.C. Sept. 28, 2016).

Everette-Oates v. N. Carolina Dep't of State Treasurer, No. 5:16-CV-623-FL, 2017 WL 2269524 (E.D.N.C. May 23, 2017)

Everette-Oates v. Chapman, No. 5:16-CV-623-FL, 2017 WL 4933048 (E.D.N.C. Oct. 31, 2017)

Everette-Oates v. Chapman, No. 5:16-CV-623-FL, 2018 WL 5621963 (E.D.N.C. Oct. 30, 2018)

Everette-Oates v. Chapman, No. 5:16-CV-623-FL, 2020 WL 231378 (E.D.N.C. Jan. 14, 2020),

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The opinion of the U.S. Court of Appeals for the Fourth Circuit (App. 1) is reported at ___ Fed. Appx. ___, 2021 WL 3089057 (4th Cir. July 22, 2021). The opinion of the Eastern District of North Carolina granting Respondents' motion for summary judgment (App. 1) is reported at 2020 WL 231378 (E.D.N.C. Jan. 14, 2020).

JURISDICTION

The judgment of the Court of Appeals was entered on July 22, 2021. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISION

42 U.S.C. § 1983 states: "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."

INTRODUCTION

42 U.S.C. § 1983 provides a remedy for the violation of constitutional rights, including the concealment of evidence that would exonerate a criminal defendant. That broad and remedial statute also recognizes that government defendants cannot conspire with each other to deprive a citizen of her constitutional rights. In this case, Petitioner Precilla Everette-Oates alleges that Respondents conspired to violate her rights in suppressing exculpatory financial records relating to her prosecution for municipal embezzlement. She further alleged that all Respondents conspired to violate the Fourth Amendment by causing Lolita Chapman, a financial crimes agent with the State Bureau of Investigation, and the sole investigator, to testify falsely before the grand jury, which indicted Everette-Oates. The district court found, and the Fourth Circuit agreed, that Petitioner failed to show the Respondents conspired to cause Chapman to testify falsely. The lower courts also held that the record does not support a finding of liability against Chapman in her dealings with the prosecutor prior to her grand jury testimony. These holdings, the Fourth Circuit held, necessarily mean that Petitioner cannot prevail against the other municipal defendants

even though she proffered evidence that they separately conspired among themselves to suppress the exculpatory documents.

The Fourth Circuit's holding exposes a Circuit split on the standards guiding conspiracies under § 1983. Unlike the narrow test in the Fourth Circuit, other Circuits do not require the defendants in a § 1983 conspiracy case to share the precise objectives in depriving the plaintiff's constitutional rights. Under the standards in those Circuits, the plaintiff may prevail upon a showing that certain defendants sought a different unconstitutional objective than the defendant who was dismissed from the case. What matters is that the remaining defendants "'reached an understanding' to deprive [the plaintiff] of [her] constitutional rights," *Jutrowski v. Twp. of Riverdale*, 904 F.3d 280, 293–94 (3d Cir. 2018), even if those rights are separate apart from the violations that the plaintiff unsuccessfully sought to prove against one defendant. Most of the Circuits share the broad standard adopted by the Third Circuit in *Jutrowski*. The Fourth Circuit applies the minority rule, which served to dismiss Everette-Oates' claims against the remaining defendants entirely. This Court should grant the petition to provide clarification and uniformity to this unsettled area of law.

STATEMENT OF THE CASE

A. Introduction.

This case involves a small town in North Carolina and its Mayor, who was arrested and charged with embezzlement after State officials investigated the Town's finances and determined that the Mayor had misused her Town credit card for personal use. The prosecutor ultimately dropped all charges after she became aware of a trove of documents that the State officials had long maintained in their offices but had not previously turned over the prosecutor's office. Those documents demonstrated that the prosecution against the Mayor could not proceed any further.

B. The North Carolina Local Government Commission takes control over the Town's finances.

In 2012, Priscilla Everette-Oates was serving her second term as mayor of Princeville, North Carolina. (App. 3). For years, Princeville had been struggling financially because of a history of hurricanes and severe flooding. (*Id.*) Following an independent audit of the Town's finances for the 2011 fiscal year, the Local Government Commission ("LGC"), a state entity that monitors the fiscal and accounting practices of local governments, assumed control of the Town's finances in July 2012, managing its day-to-day financial operations. (App. 4). That month, the LGC also voted to impound the Town's financial records. (*Id.*)

As part of its new oversight role over the Town, the LGC appointed Respondent Sharon Edmundson, Director of the Fiscal Management Section, as the finance officer for the Town. LGC staff removed some of the Town's financial records to its offices in Raleigh. The impounded Town financial records were stored in several different locations in the LGC offices. Edmundson had responsibility for the Town records in the LGC offices. Edmundson, Respondent T. Vance Holloman (a Certified Public Accountant), and the LGC had sole custody of the records, which remained in LGC offices at all times relevant to this case. Edmundson kept records in her office that she was "accessing at least initially on a regular . . . basis." (App. 30). These documents, and their belated release to the prosecutor on the eve of Petitioner's criminal trial, lie at the heart of this case.

On September 19, 2012, Edmundson sent a letter to Everette-Oates and Princeville's Town Commissioners detailing the LGC's concerns about charges made to Everette-Oates's municipal credit card. (App. 32). Edmundson claimed that many of those charges were improperly supported, either because they lacked documentation in the form of receipts or because it was not clear they related to legitimate town business. (*Id*.) Included in the second category was a series of charges connected to a local "Economic Development Committee" ("EDC") that the LCG believed had not been adequately described or verified. (*Id.*)

C. Everette-Oates is indicted for embezzling town funds.

Meanwhile, the Office of the State Auditor began auditing Everette-Oates's use of Town funds. In April 2013, it issued a finding that Everette-Oates and other Town officials had used town credit cards for questionable expenditures and failed to document certain reimbursements. (App. 5). The State Auditor's office referred the case to the District Attorney, which opened a criminal investigation. Defendant Lolita Chapman, a financial crimes agent with the State Bureau of Investigation, was the sole investigator. (*Id.*)

Chapman focused the investigation on two main issues. First, for charges without receipts, Chapman evaluated whether appropriate business purposes could be identified. And second, for charges for which Everette-Oates had cited the EDC as the approved business purpose, Chapman investigated whether the EDC existed, authorized for Town business. (App. 5).

After Chapman provided her investigative file to the District Attorney, Everette-Oates was charged with 17 felony counts of embezzlement. (App. 5-6). Tonya Montanye, the lead prosecutor, focused on purchases that lacked a sufficient business justification, with or without receipts. In particular, given her understanding that the EDC did not exist, she focused on charges listing that committee as a justification for the expenditures. (App. 6). Montanye reviewed the proposed indictment with Chapman, and according to

Everette-Oates, Chapman affirmed Montanye's belief about the EDC's non-existence. (*Id.*)

Respondent Edmundson spoke with Montanye and Chapman about the indictment that referenced the credit card charges and lack of documentation. (App. 37). Edmundson discussed with Montanye a schedule of receipts that Edmundson prepared, that included the credit card charges that were the basis of the indictment. (*Id.*) In meetings with Chapman and Respondents Edmundson, Holloman, Robin Hammond (the LGC's counsel), and the District Attorney, the prosecutors reviewed the allegations they intended to include in the indictment. (*Id.*)

On August 5, 2013, a grand jury indicted Everette-Oates on all 17 counts. (App. 6). Chapman was the only witness to testify before the grand jury. (*Id.*) As a result of her indictment, Everette-Oates was arrested. (*Id.*)

D. Exonerating documents are found in the LGC's offices.

Following the indictment, because the LGC still held the Town's financial documents, Everette-Oates's defense lawyer sent the LGC a subpoena and a public records request seeking all relevant records, including receipts relating to this case. The LGC did not fully comply with repeated production requests – from both Everette-Oates and the prosecutors – and even moved to quash the subpoenas. (App. 6-7). The criminal court denied the motion to quash and, in September 2014,

the judge ordered that the LGC allow defense counsel and the prosecution to conduct an on-site inspection of the records held at the LGC's office. (App. 7).

That two-day inspection revealed a storage closet filled with Princeville financial documents – many more documents than the LGC had suggested it possessed – as well as additional records kept by Edmundson in her office, disclosed only on the second day. (*Id.*) The lawyers discovered two files in particular. One folder was labeled "Economic Development Committee," containing documents related to Princeville's economic development efforts. Another folder, in Edmundson's office, was labeled, "Appears to be receipts from . . . the mayor," containing receipts for Everette-Oates's credit card expenditures, each accompanied by a hand-written explanation. (*Id.*). None of those receipts or documents had previously been disclosed to Everette-Oates or to prosecutors. (*Id.*). Following the site visit, Respondent Hammond estimated that LGC had in its possession 35,000-50,000 pages of documents. (App. 39). If Respondent Edmundson had not invited the attorneys into her office, the credit card receipt documentation would never have been discovered. (*Id.*). When searching the LGC offices, and upon seeing the folder marked "Economic Development Committee," Montanye said, "well . . . here goes my case." (App. 55).

E. The charges are dropped against Everette-Oates.

As a consequence of these documents that turned up at the LGC offices, in March 2015, Montanye recommended that the District Attorney dismiss the charges against Everette-Oates, citing both evidentiary issues and credibility concerns with certain witnesses. The indictment was dismissed on March 18, 2015. (App. 39). The LGC returned financial control to the Town of Princeville on August 4, 2015. (*Id.*)

LOWER COURT OPINIONS

Pursuant to 42 U.S.C. § 1983, Everette-Oates brought this action on November 10, 2015, alleging *inter alia* that the defendants had conspired to influence Chapman's grand jury testimony against her, and to otherwise violate the Fourth Amendment.

Early motion practice set forth the guiding legal standards for Everette-Oates' § 1983 claim. To prevail on a claim alleging concealment or fabrication of evidence, "plaintiff must allege that a police officer 'deliberately or with a reckless disregard for the truth made material false statements . . . or omitted from [an] affidavit material facts with the intent to make, or with reckless disregard of whether they thereby made, the affidavit misleading.'" (*Everette-Oates v. North Carolina Dept. of State Treasurer*, 2016 10805746, at *9 (E.D.N.C. Sept. 28, 2016)) (citing *Miller v. Prince George's Cty., MD*, 475 F.3d 621, 627 (4th Cir. 2007); *Manuel v. City of Joliet, Ill.*, 137 S. Ct. 911, 914, 919

(2017) (holding that plaintiff stated a § 1983 claim based on a Fourth Amendment violation where "a judge relied on allegedly fabricated evidence to find probable cause that he had committed a crime," particularly "police fabrications about [seized pills'] content" asserted to be illegal substances)).

Following discovery, the district court granted Defendants' motion for summary judgment on all claims. As to Plaintiff's claim against Chapman, the district court held she cannot be held liable for her grand jury testimony under *Rehberg v. Paulk*, 566 U.S. 356 (2012), which confers immunity for grand jury testimony and related activities. (App. 43-45).

Moreover, the district court held, as to Chapman's personal involvement in Everette-Oates' arrest, the record demonstrated that "defendant Chapman had information in her SBI file and supplied from the other defendants and their staff that was a sufficient basis to find probable cause that plaintiff had engaged in criminal offenses alleged in the indictment." (App. 51). This made the question of whether the EDC existed or was authorized as a part of the Town business a disputed issue "subject to competing evidence available to defendant Chapman at the time leading up to the indictment." (App. 52). Chapman therefore could not be held liable for concealment or fabrication of evidence in violation of the Fourth Amendment. (App. 52-53). Moreover, the district court held, "the fact that additional original receipts were located in defendant Edmundson's office in September 2014 is not material to the issue of whether defendant Chapman concealed

or fabricated evidence prior to the indictment in August 2013. There is no plausible basis to infer purposeful concealment of receipts by or from defendant Chapman, because the presence of Town financial records in the LGC offices was known by prosecutors in and before August 2013." (App. 57). On the basis of this and other findings, the district court held, Everette-Oates cannot hold Chapman liable for conspiring to conceal evidence against her. (App. 55-60).

Turning to Everette-Oates' claim that the remaining defendants conspired with Chapman, the district court held they are entitled to summary judgment, as well. "Plaintiff's conspiracy claim fails as an initial matter because plaintiff has not shown an underlying deprivation of a constitutional right. As set forth in the preceding section, plaintiff has not demonstrated a genuine issue of material fact that defendant Chapman concealed or fabricated evidence before the grand jury. Absent an underlying constitutional violation by defendant Chapman, the remaining defendants cannot be liable for causing Chapman to violate plaintiff's rights or conspiring to deprive plaintiff of her constitutional rights." (App. 62) (citing *Hinkle v. City of Clarksburg*, 81 F.3d 416, 421 (4th Cir. 1996) (stating that a plaintiff must show that defendants "acted jointly in concert and that some overt act was done in furtherance of the conspiracy which resulted in [plaintiff's] deprivation of a constitutional right"); *Clark v. Link*, 855 F.2d 156, 161 (4th Cir. 1988) (stating, in dismissing § 1983

conspiracy action, "[i]f there is no violation of a federal right, there is no basis for a section 1983 action")).

The Fourth Circuit affirmed, holding that Chapman was immune from liability for her grand jury testimony, and, in any event, she turned over all her files to Montanye, undermining any claim that Chapman had deliberately concealed or misrepresented evidence against Everette-Oates. (App. 14-16). As for Everette-Oates' claims against the remaining defendants, "as the district court reasoned, because Everette-Oates has failed to make out a Fourth Amendment violation, she cannot show the underlying "deprivation of a constitutional right" required to support a § 1983 conspiracy claim." (App. 17). The Fourth Circuit added that the summary judgment record also does not show "that the various defendants acted in concert with the conspiratorial objective of causing Chapman to testify falsely to the grant jury." (App. 17-18).

REASONS FOR GRANTING THE PETITION

The Fourth Circuit's ruling conflicts with other federal circuits on when municipal officials may be held liable for conspiracy under § 1983 when the plaintiff cannot prove they conspired with a nonliable defendant on a specific constitutional violation.

Both the district court and the Fourth Circuit held that Everette-Oates could not proceed against Respondents Edmonson, Hollman, and Hammond

because she was unable to assert a claim against Defendant Chapman, who enjoyed absolute immunity under *Rehberg v. Paulk*, 566 U.S. 356 (2012), and also did not conceal any evidence in favor of Plaintiff. But even if Petitioner cannot proceed against Chapman, that is no reason she cannot pursue a § 1983 conspiracy claim against the remaining Defendants, who enjoy no immunity and, separate and apart from their dealings with Chapman, jointly withheld thousands of documents from the prosecutor, who moved to dismiss the charges against Everette-Oates once she saw the documents pursuant to the criminal court's order allowing the prosecutor and Everette-Oates' attorneys to inspect the LGC offices. Supreme Court review is warranted because Everette-Oates's § 1983 conspiracy claim against Respondents would have prevailed in other Circuits, which do not follow the Fourth Circuit's narrow test guiding these claims.

A. Section 1983 carries a broad mandate to hold municipal defendants liable for the violation of constitutional rights.

In narrowing liability against defendants on the basis they did not conspire with Defendant Chapman, the Fourth Circuit undermined the scope and import of § 1983, the landmark civil rights law that allows "[e]very person" to seek redress for the violation of their constitutional rights. The statute reads, in part:

> 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.

Section 1983 was enacted following the Civil War to provide a federal remedy for civil rights violations. "The specific historical catalyst for the Civil Rights Act of 1871 was the campaign of violence and deception in the South, fomented by the Ku Klux Klan, which was denying decent citizens their civil and political rights." *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 70 (1989). However, § 1983 allows redress for nearly *all* constitutional rights. "[T]he debates show that one strong motive behind its enactment was grave congressional concern that the state courts had been deficient in protecting federal rights." *Allen v. McCurry*, 449 U.S. 90, 98–99 (1980). The statute "should be read against the background of tort liability that makes a man responsible for the natural consequences of his actions." *Monroe v. Pape*, 365 U.S. 167, 187 (1961). "Section 1983 was thus a product of a vast transformation from the concepts of federalism that had prevailed in the late 18th century when the anti-injunction statute was enacted. The very purpose of § 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights – to protect the people from unconstitutional action under color of state law, 'whether that action be executive, legislative, or judicial.'" *Mitchum*

v. Foster, 407 U.S. 225, 242 (1972). In sum, "this statute has become one of the primary sources of relief for those individuals who seek redress for violations of their constitutional rights." *Harrington v. Grayson*, 764 F. Supp. 464, 466 (E.D. Mich. 1991) (citing M. Schwartz and J. Kirklin, *Section 1983 Litigation: Claims, Defenses, and Fees* (1986)).

It is against this backdrop that this Court should view Everette-Oates' claims. Even if Plaintiff cannot prove that Respondents conspired with Defendant Chapman to violate her constitutional rights, a § 1983 remedy is available against them. Even without sharing Chapman's objectives, these Respondents nonetheless sought to violate Everette-Oates' rights in other ways, in particular, by concealing the exculpatory documents at the LGC offices.

B. The Fourth and Sixth Circuits require all conspirators to have the same conspiratorial objective.

Everette-Oates is not asking this Court to review the Fourth Circuit's ruling on Defendant Chapman's immunity from liability, or even whether Chapman is liable without the immunity afforded grand jury witnesses. But even accepting the Fourth Circuit's analysis on Chapman, that cannot allow the remaining defendants to escape liability for conspiring to violate Everette-Oates' rights under the Constitution.

The leading case on civil conspiracy under § 1983 is *Adickes v. S.H. Kress & Co.*, 398 U.S. 144 (1970),

where this Court held the plaintiff sufficiently alleged that private and public actors conspired to violate the Fourteenth Amendment. "Private persons, jointly engaged with state officials in the prohibited action, are acting 'under color' of law for purposes of the statute. To act 'under color' of law does not require that the accused be an officer of the State. It is enough that he is a willful participant in joint activity with the State or its agents.'" *Id*. at 152 (quoting *United States v. Price*, 383 U.S. 787, 794 (1966)).

This language does not require the plaintiff to prove that each conspirator engaged in identical conspiratorial goals. Yet, the Fourth Circuit applies such a standard. "While they need not produce direct evidence of a meeting of the minds, Appellants must come forward with specific circumstantial evidence that each member of the alleged conspiracy shared the same conspiratorial objective." *Hinkle v. City of Clarksburg, W.Va.*, 81 F.3d 416, 421 (4th Cir. 1996) (citing *Hafner v. Brown*, 983 F.2d 570, 576–77 (4th Cir. 1992); *Abercrombie v. City of Catoosa, Okl*, 896 F.2d 1228, 1230–31 (10th Cir. 1990); *Fonda v. Gray*, 707 F.2d 435, 438 (9th Cir. 1983)); *see also Pahssen v. Merrill Cmty. Sch. Dist.*, 668 F.3d 356, 368 (6th Cir. 2012) (applying *Hinkle* in citing the same standard). On that basis, Everette-Oates' claim against the defendants other than Chapman was dismissed on summary judgment. Yet, the Fourth Circuit is an outlier. Other Circuits apply a broader test under which Plaintiff's claim would have survived summary judgment.

C. Other Circuits do not require the conspirators to have the same conspiratorial objective so long as they act in concert to commit an unlawful act.

The majority rule applies a broader standard in proving a conspiracy under § 1983. The First Circuit holds that "[t]o establish his claim for civil rights conspiracy, [the plaintiff] must show that 'two or more persons act[ed] in concert to commit an unlawful act, or to commit a lawful act by unlawful means.' The principal elements that [the plaintiff] must satisfy in this instance are the existence of 'an agreement between the parties to inflict a wrong against or injury upon another, and an overt act that results in damages.' " *Alston v. Int'l Ass'n of Firefighters, Loc. 950*, 998 F.3d 11, 33 (1st Cir. 2021) (quoting *Earle v. Benoit*, 850 F.2d 836, 844 (1st Cir. 1988)).

In the Second Circuit, to prevail on a § 1983 conspiracy claim, the plaintiff must show "(1) an agreement between a state actor and a private party; (2) to act in concert to inflict an unconstitutional injury; and (3) an overt act done in furtherance of that goal causing damages." *Ciambriello v. Cty. of Nassau*, 292 F.3d 307, 324–25 (2d Cir. 2002) (citing *Pangburn v. Culbertson*, 200 F.3d 65, 72 (2d Cir. 1999)); *see also id*. at 324 ("Put differently, a private actor acts under color of state law when the private actor is a willful participant in joint activity with the State or its agents") (citing *Adickes, supra*); *Cine SK8, Inc. v. Town of Henrietta*, 507 F.3d 778, 792 (2d Cir. 2007) ("Although a conspiracy 'need not be shown by proof of

an explicit agreement,' a plaintiff must demonstrate at least that 'parties have a tacit understanding to carry out the prohibited conduct' ").

The Third Circuit applies a similar standard. "To prevail on a conspiracy claim under § 1983, a plaintiff must prove that persons acting under color of state law 'reached an understanding' to deprive him of his constitutional rights." *Jutrowski v. Twp. of Riverdale*, 904 F.3d 280, 293–94 (3d Cir. 2018) (quoting *Adickes*, 398 U.S. at 150-52).

In the Fifth Circuit, "[t]o support a conspiracy claim under § 1983, the plaintiff must allege facts that suggest 'an agreement between the . . . defendants to commit an illegal act' and 'an actual deprivation of constitutional rights." *Cinel v. Connick*, 15 F.3d 1338, 1343 (5th Cir. 1994) (quoting *Terwilliger v. Reyna*, 4 F.4th 270, 285 (5th Cir. 2021)).

The Seventh Circuit similarly holds that "[t]o establish Section 1983 liability through a conspiracy theory, a plaintiff must demonstrate that: (1) a state official and private individual(s) reached an understanding to deprive the plaintiff of his constitutional rights, and (2) those individual(s) were willful participants in joint activity with the State or its agents." *Dix v. Edelman Fin. Servs., LLC*, 978 F.3d 507, 518 (7th Cir. 2020) (quoting *Brokaw v. Mercer County*, 235 F.3d 1000, 1016 (7th Cir. 2000)).

As well as the Eighth Circuit: "To prevail on a § 1983 conspiracy claim, Drew must show that (1) the defendants agreed to deprive him of his constitutional

rights; (2) 'at least one of the alleged coconspirators engaged in an overt act in furtherance of the conspiracy,' and (3) [Drew] was injured by that overt act." *Burbridge v. City of St. Louis, Missouri*, 2 F.4th 774, 782–83 (8th Cir. 2021).

The Ninth Circuit also recognizes that the conspirators need not seek the same "unity of purpose" so long as they have "a meeting of the minds in an unlawful arrangement." *See Lacey v. Maricopa Cty.*, 693 F.3d 896, 935 (9th Cir. 2012) ("'A civil conspiracy is a combination of two or more persons who, by some concerted action, intend to accomplish some unlawful objective for the purpose of harming another which results in damage.' To prove a civil conspiracy, the plaintiff must show that the conspiring parties 'reached a unity of purpose or a common design and understanding, *or a meeting of the minds in an unlawful arrangement*.' To be liable, each participant in the conspiracy need not know the exact details of the plan, but each participant must at least share the common objective of the conspiracy") (quoting *Gilbrook v. City of Westminster*, 177 F.3d 839, 856 (9th Cir. 1999)) (emphasis supplied).

In the Tenth Circuit, "we have generally held a federal conspiracy action brought under either of these statutes requires at least a combination of two or more persons acting in concert and an allegation of a meeting of the minds, an agreement among the defendants, *or a general conspiratorial objective*." *Brooks v. Gaenzle*, 614 F.3d 1213, 1227–28 (10th Cir. 2010), *abrogated on other grounds by Torres v. Madrid*,

141 S. Ct. 989 (2021) (citing *inter alia Salehpoor v. Shahinpoor*, 358 F.3d 782, 785, 789 (10th Cir. 2004)). The highlighted language demonstrates that the conspirators do not have to share a specific goal in violating the plaintiff's rights.

The Eleventh Circuit also requires the plaintiff only to prove that "the parties 'reached an understanding' to deny the plaintiff his or her rights. The conspiratorial acts must impinge upon the federal right; the plaintiff must prove an actionable wrong to support the conspiracy." *Grider v. City of Auburn, Ala.*, 618 F.3d 1240, 1260 (11th Cir. 2010) (quoting *Bendiburg v. Dempsey*, 909 F.2d 463, 468 (11th Cir. 1990)).

D. Since Everette-Oates would have prevailed had this case arisen in a different Circuit, this Court should grant certiorari to settle upon a uniform rule that complies with § 1983's broad mandate to provide relief the victims of civil rights violations.

The Fourth Circuit held the remaining defendants cannot be held liable because Everette-Oates cannot prove a constitutional violation against Chapman. (App. 17). Demonstrating that the Fourth Circuit was adhering to that Circuit's "same conspiratorial objective" test in *Hinkle*, 81 F.3d at 421, the Court of Appeals emphasized as an alternative holding that the summary judgment record does not "allow for a finding that the various defendants acted in concert with the

conspiratorial objective of causing Chapman to testify falsely to the grand jury." (*Id.*) That holding does account for the conspiracy that these remaining defendants had among themselves to suppress the numerous documents in the LGC offices, which led to Everette-Oates' exoneration of any criminal charges. The district court, applying the Fourth Circuit standard, held similarly, stating that Plaintiff failed to show "'that each member of the alleged conspiracy shared the same conspiratorial objective' and 'positively and tacitly came to a mutual understanding to accomplish a common and unlawful plan.'" (App. 62) (quoting *Hinkle*, 81 F.3d at 421).

The Fourth Circuit's narrow standard guiding civil conspiracies under § 1983 resulted in the dismissal of Everette-Oates' claims against all the municipal defendants on the basis that she could not show liability against Chapman. But the fact that the Fourth Circuit held that Chapman did not violate Plaintiff's constitutional rights, either because of what the Court of Appeals deemed her forthright interactions with the prosecutor, or through her grand jury testimony, does not mean the remaining defendants, who each knew about the secret trove of documents in the LGC's offices, are also free from liability for their roles in the conspiracy. As the Fourth Circuit saw it, the remaining defendants may not have been liable for the § 1983 violation that Everette-Oates had alleged against Chapman. But Fourth Circuit law does not allow for liability against Respondents for their own conspiracy to suppress the documents.

Put another way, while the Fourth Circuit suggested that Chapman's actions meant she shared a different goal than the remaining defendants, as demonstrated above, under precedent governing these cases in other Circuits, those defendants are still liable for the violation of Plaintiff's constitutional rights to be free from the concealment of evidence that would result in an unlawful prosecution in violation of the Fourth Amendment. While Everette-Oates could not prevail against these defendants under Fourth Circuit standards, she would have prevailed under the test that applies in the other Circuits. For that reason this Court should grant this petition to iron out the test guiding civil conspiracies under § 1983.

The need for Supreme Court intervention on this issue is particularly acute in light of the many ways that law enforcement and government officials may violate constitutional rights in the course of an arrest. Various municipal officers may conspire to violate constitutional rights in different ways, but they may all nonetheless share an intent to harm the plaintiff. In the context of a criminal prosecution or a citizen's interaction with the police, the officers and/or public officials may be separately liable for false arrest, malicious prosecution, the fabrication of evidence, the suppression of evidence, or false testimony. Yet, however these officials may seek to deprive the victim of her constitutional rights, even if they seek to do so through methods that would thus violate different amendments to the Constitution, the end result is the same: they conspired to violate the Constitution. That

is what Everette-Oates alleges here, and, as demonstrated above, the majority of the federal Circuits recognize that such conspiracies may violate § 1983. Granting this petition for certiorari will allow this Court to adopt a uniform rule that disallows the Fourth Circuit's narrow interpretation of this statute.

CONCLUSION

This Court should grant certiorari.

Dated: October 2021

Respectfully submitted,

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