No. 22-376

In The Supreme Court of the United States

LOUISVILLE-JEFFERSON COUNTY, KENTUCKY METRO GOVERNMENT; TONY FINCH, GARY HUFFMAN, TERRY JONES, JIM LAWSON, and SHAWN SEABOLT, Police Detectives, in their individual capacities; TROY PITCOCK and JAMES HELLINGER, Louisville Police Sergeants, in their individual capacities,

Petitioners,

vs.

JOHNETTA CARR,

Respondent.

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

MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE AND BRIEF OF AMICUS CURIAE INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION IN SUPPORT OF PETITIONERS

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MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION IN SUPPORT OF PETITIONERS

Pursuant to Supreme Court Rule 37.2(b), the International Municipal Lawyers Association ("IMLA") respectfully moves the Court for leave to file the attached amicus brief in support of Petitioners.

The Petition presents this Court with the opportunity to resolve: whether a pardon qualifies as "expunge[ment] by executive order" for purposes of invalidating a conviction and permitting a section 1983 suit to proceed under *Heck v. Humphrey*, 512 U.S. 477, 487 (1994). As the oldest and largest association of attorneys representing United States municipalities, counties, and special districts, IMLA has an interest in ensuring clarity of the law on this issue, which significantly impacts liability on public entities.

IMLA's mission is to advance the responsible development of municipal law through education and advocacy, by providing the collective viewpoint of local governments around the country on legal issues before the United States Supreme Court, the United States Courts of Appeals, and in state supreme and appellate courts. Because its members routinely face section 1983 litigation, IMLA is well-suited to provide this Court with practical insight regarding the adverse impacts of the Sixth Circuit's ruling on municipalities, which include protracted litigation, increased costs,

and difficulty in assessing and planning for potential liability.

IMLA timely notified the parties of its intent to submit its amicus brief at least 10 days prior to the deadline for filing the amicus brief and requested consent to the filing. Petitioners consented to the filing of this brief, and Respondent did not. IMLA respectfully moves the Court for leave to file the attached amicus brief in support of Petitioners.

Respectfully submitted,

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QUESTION PRESENTED

Do all pardons which restore civil rights and nullify punishment or legal consequences of a crime, regardless of the implications on the underlying conviction, sufficiently invalidate a conviction under *Heck v. Humphrey*, 512 U.S. 477 (1994)?

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STATEMENT OF IDENTITY AND INTEREST OF THE AMICUS CURIAE[1]

The International Municipal Lawyers Association ("IMLA") is a nonprofit, nonpartisan professional organization consisting of more than 2,500 members. The membership is composed of local government entities, including cities and counties, and subdivisions thereof, as represented by their chief legal officers, state municipal leagues, and individual attorneys. IMLA serves as an international clearinghouse of legal information and cooperation on municipal legal matters. Established in 1935, IMLA is the oldest and largest association of attorneys representing United States municipalities, counties, and special districts.

IMLA's mission is to advance the responsible development of municipal law through education and advocacy, and by providing the collective viewpoint of local governments around the country on legal issues before the United States Supreme Court, the United States Courts of Appeals, and in state supreme and appellate courts. IMLA and its members have a strong interest in this case because they believe in responsible governance at all levels and are heavily invested in the fair and efficient resolution of civil rights lawsuits. IMLA's members are among those greatly impacted by

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[1] This brief was not authored in whole or in part by counsel for any party. No person or entity other than amicus curiae made a monetary contribution towards preparation of this brief. The parties were timely notified of IMLA's intention to file this brief. Petitioners consented to the filing of the brief, and Respondent did not. A motion for leave to file accompanies this brief.

the uncertainty created by circuit courts' disparate application of *Heck*.

STATEMENT OF THE CASE

Amicus curiae IMLA joins in and refers to the Statement in the petition for writ of certiorari ("Pet.") at pages 2-4.

SUMMARY OF ARGUMENT

In *Heck v. Humphrey*, 512 U.S. 477, 484-87 (1994), the Court held that a 42 U.S.C. § 1983 claim, asserting unconstitutional conviction or imprisonment, is barred unless the plaintiff can demonstrate the underlying sentence or conviction was terminated in the plaintiff's favor. *Heck* identified four specific ways to make that showing: (1) reversal on direct appeal; (2) expungement by executive order; (3) declaration of invalidity by an authorized state tribunal; or (4) federal habeas corpus. *Id.* at 487. In *Carr v. Louisville-Jefferson Cnty.*, 37 F.4th 389, 394-95 (6th Cir. 2022), the Sixth Circuit characterized these four discrete procedures as nonexclusive "examples" of state procedures that invalidate a conviction and held that any "full and unconditional" pardon meets *Heck*'s invalidation requirement.

In so holding, *Carr* ignores the explicit language in *Heck* requiring "expunge[ment] by executive order,"

and undermines *Heck*'s goals of preventing parallel litigation and conflicting resolutions. 512 U.S. at 484-87. Under Kentucky law, Johnetta Carr's pardon did not establish her innocence, entitle her to expungement of her criminal record, or reflect on the underlying conviction at all. When the Sixth Circuit decided the pardon nonetheless qualified as an expungement by executive order, it reached a conclusion antithetical to *Heck* and that offends the principles of finality, consistency, and comity that underlie the doctrine.

The Sixth Circuit's ruling has broad implications that are troubling and creates uncertainty in the law that, as a practical matter, will expose local governments to increased litigation and liability, all to the detriment of the citizens they serve.

ARGUMENT

I. REVIEW IS NECESSARY TO CLARIFY WHEN A CONVICTION IS "EXPUNGED BY EXECUTIVE ORDER" FOR PURPOSES OF ALLOWING A SUIT TO PROCEED UNDER *HECK*.

Under *Heck*, 512 U.S. at 487, a damage claim relating to a conviction or sentence is "not cognizable under § 1983" unless it has been invalidated in one of four specific ways. Only where a conviction has been "[1] reversed on direct appeal, [2] expunged by executive order, [3] declared invalid by a state tribunal authorized to make such determination, or [4] called into question

by a federal court's issuance of a writ of habeas corpus" may a plaintiff bring a section 1983 claim to recover damages for the unlawfulness of that conviction. *Id.* at 486-87 (numbering added). This requirement is grounded in the Court's concerns for finality and consistency between criminal and civil judgments and intended to prevent the collateral attack of criminal judgments through the vehicle of a section 1983 action. *Id.* at 484-85; *McDonough v. Smith*, 139 S. Ct. 2149, 2156-57 (2019).

The lower courts have applied the Court's "expunged by executive order" language inconsistently, and the Sixth Circuit has now expanded its scope beyond what was contemplated in *Heck*. The Court should grant review to clarify its directive in *Heck* and preserve the important policy considerations underlying it.

A. The Federal Courts Are Inconsistently Applying The "Expunged By Executive Order" Exception To *Heck*.

There is no consensus among the lower courts on whether an executive pardon constitutes "expunge[ment] by executive order" and therefore lifts the *Heck* bar. 512 U.S. at 487. Three Circuits have answered that question, but none have agreed on a cogent or workable standard, and the Sixth Circuit has now broadly held that *any* full and unconditional pardon meets *Heck*'s requirement. The Court should grant review to resolve

the issue and provide much-needed clarity to municipalities throughout the country.

In *Wilson v. Lawrence Cnty., Mo.*, 154 F.3d 757, 760-61 (8th Cir. 1998), the Eighth Circuit held that a pardon fell into *Heck*'s "expunged by executive order" category where it stated on its face that it "obliterates" the conviction and listed as its rationale that "it is clear [the recipient] did not commit the crime for which he has been incarcerated." *Id.* at 759. In reaching its decision, the court noted that the dictionary definition of "expunge" is "'[t]o destroy; blot out; *obliterate*; erase; efface designedly.'" *Id.* at 761 (emphasis added). Relying on this definition, the court reasoned that a pardon that "states on its face that it 'obliterates said conviction'" falls within *Heck*'s reach. *Id.*

In *Savory v. Cannon*, 947 F.3d 409, 429-30 (7th Cir. 2020) (en banc), the Seventh Circuit held that a particular pardon constituted "expunge[ment] by executive order" because the pardon expressly authorized expungement of the *records* of the conviction. The court noted that it would be "strange" for a pardon that authorized the expungement of a conviction's record to not also expunge the conviction itself. *Id.* at 430. But the Seventh Circuit explicitly "le[ft] for another day" whether a pardon wouldn't qualify under different circumstances. *Id.*

Finally, a district court in the Fourth Circuit has held that a pardon lifted the *Heck* bar because its language—that new evidence "'place[d] a cloud upon the verdict and raise[d] a doubt concerning'" the

recipient's guilt—"substantially impugn[ed] and discredit[ed] his conviction." *Snyder v. City of Alexandria*, 870 F. Supp. 672, 681 (E.D. Va. 1994). The court noted that "not all pardons" will have this effect, because some are issued based on prison overcrowding, the recipient's rehabilitation, or "unusually sympathetic circumstances." *Id.* at 680-81.

Below, the Sixth Circuit departed from these carefully crafted precedents and held that *any* full and unconditional pardon, regardless of the reason for which it was granted or its effect on the underlying conviction, invalidates a conviction and lifts the *Heck* bar. *Carr*, 37 F.4th at 395. This case provides the Court with an opportunity to clarify the outer limits of *Heck*'s "expunged by executive order" language. 512 U.S. at 487. Doing so will permit municipalities to make fully-informed budgeting and insurance decisions and will prevent costly and difficult-to-defend lawsuits from redirecting local governments' resources as this issue percolates in the lower courts. *See* § II., *infra*.

B. A Political Pardon—That Does Not Establish Innocence, Entitle A Plaintiff To Expungement Of Her Criminal Record, Or Reflect At All On The Validity Of The Underlying Conviction—Is Not An Expungement By Executive Order Under *Heck*.

The Governor of Kentucky pardoned Carr, stating only that Carr is a "strong and highly motivated

woman with a very bright future" who "will contribute in powerful ways to society" and on whom "God clearly had His hand." App. 30; *see also* Ky. Const. § 77 (requiring a "statement of the reasons" for issuing a pardon). The pardon did not mention innocence, nor more importantly did it express *any* opinion on the circumstances under which the conviction arose. *See* App. 30. Although it is a "full and unconditional" pardon granted pursuant to the authority vested by the Kentucky Constitution, *id.*, that authority does not include the power to expunge the records *or the fact of* a conviction. *Fletcher v. Graham*, 192 S.W.3d 350, 363 (Ky. 2006) ("[W]hile a pardon will foreclose punishment of the offense itself, it does not erase the fact that the offense occurred, and that fact may later be used to the pardonee's detriment."); *Harscher v. Commonwealth*, 327 S.W.3d 519, 522 (Ky. Ct. App. 2010) (holding that in Kentucky, "a pardon does not automatically entitle the pardoned individual to expungement of his court records").

Classifying such a pardon as an "expunge[ment] by executive order" is contrary to both the language and policy of *Heck v. Humphrey*, 512 U.S. 477. The Court should grant review.

1. The pardon at issue here does not satisfy the express language of *Heck*, requiring a conviction be "expunged by executive order."

Heck holds that to bring a section 1983 claim for an "allegedly unconstitutional conviction," a plaintiff "must prove that the conviction or sentence has been reversed on direct appeal, *expunged by executive order*, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus." 512 U.S. at 486-87 (emphasis added). A section 1983 claim for damages "that has not been so invalidated is not cognizable." *Id.* at 487 (emphasis omitted). In other words, a section 1983 claim arising out of a conviction is not cognizable "unless and until the conviction or sentence is reversed, expunged, invalidated, or impugned by the grant of a writ of habeas corpus." *Id.* at 489. This language makes clear that *Heck* requires invalidation in one of four specific ways—three judicial methods or "expunge[ment] by executive order." *Id.* at 487.

Since *Heck*, courts have conflated "expunged by executive order" and "pardoned." *See*, *e.g.*, *Savory*, 947 F.3d at 429 ("In the context of discussing favorable terminations under *Heck*, [the Seventh Circuit has] often used 'pardon' or 'executive pardon' as synonyms for 'expunged by executive order.' "). Building upon this erroneous conflation, the Sixth Circuit held that *any* full pardon constitutes "expunge[ment] by executive order." *Carr*, 37 F.4th at 393, 395 (citing *Savory*, 947 F.3d at 429). But "expunge[ment] by executive order"

narrowly captures only those pardons that actually satisfy *Heck*'s invalidation requirement. 512 U.S. at 487. The Court should grant review to clarify this erroneous interpretation before it gains traction among the lower courts.

The *Heck* court specifically used the phrase "expunged by executive order," rather than "pardoned." 512 U.S. at 487. Had the Court intended any pardon to invalidate a conviction, it could, and likely would, have said so. When referring to an executive action affecting a conviction, "pardon" is more commonly used than "expungement by executive order." *See*, *e.g.*, U.S. Const. art. II, § 2 (granting the executive the power to grant "Pardons"); Ky. Const. § 77 (same).[2] The *Heck* Court specifically chose the term "expunged by executive order," 512 U.S. at 487, recognizing that the phrases carry different meanings.

To expunge and to pardon are two distinct actions. Black's Law Dictionary defines "pardon" as "[t]he act or an instance of officially nullifying punishment or other legal consequences of a crime" and "expunge" as "[t]o remove from a record, list, or book; to erase or destroy." (11th ed. 2019). The ordinary meanings of the terms are also distinct. "Pardon" is defined as: "the excusing of an offense without exacting a penalty"; "a release from the legal penalties of an offense"; and "excuse or forgiveness for a fault, offense, or discourtesy."

[2] A Westlaw search for "expungement by executive order" yields 45 cases and six secondary sources, while a search for "pardon" yields over 10,000 cases and 10,000 secondary sources (as of November 14, 2022).

Pardon, Merriam-Webster, https://www.merriam-webster.com/dictionary/pardon (last visited Nov. 14, 2022). In contrast, "expunge" is defined as: "to strike out, obliterate, or mark for deletion"; "to efface completely"; and "to eliminate from one's consciousness." *Expunge*, Merriam-Webster, https://www.merriam-webster.com/dictionary/expunge (last visited Nov. 14, 2022).

The Sixth Circuit focused on the distinction between the literal and figurative meanings of "expunge," concluding that the figurative definition, which does not require "'literal destruction,'" applies. *Carr*, 37 F.4th at 393 (quoting *Savory*, 947 F.3d at 429). This is because Kentucky does not permit literal expungement through executive action. *Harscher*, 327 S.W.3d at 522; Ky. Rev. Stat. Ann. § 431.073(1) (West 2022). But even using the figurative definition of "expunge," expungement requires some type of "eliminat[ion] from one's consciousness," while a pardon merely "excuse[s] or forgive[s] . . . an offense." In other words, to pardon is to forgive; to expunge is to forget. Nothing in Johnetta Carr's pardon indicates an intention to forget; rather, the express language of the pardon indicates it was issued in recognition of Carr's good character, a forward-looking consideration. *See* App. 30. As such, Carr's conviction was not "expunged."

The language surrounding "expunged by executive order" in *Heck* also offers insight. *Heck* lists four ways of invalidating a conviction, using the action verbs "reversed," "expunged," "declared invalid," and "called into question." 512 U.S. at 487. *Heck* later rephrases its directive as requiring the conviction be "reversed,

expunged, invalidated, or impugned." *Id.* at 489. Lessons in statutory interpretation prove useful: "Words in a list are generally known by the company they keep." *Logan v. United States*, 552 U.S. 23, 31 (2007). This adage is equally applicable here. Unlike "pardoned," the terms "reversed, expunged, invalidated [and] impugned" all connote a requirement that the conviction itself be negated in some sense, not merely forgiven. Thus, contrary to the Sixth Circuit's conclusion, a pardon that forgives the consequences of a conviction without in any way negating the conviction itself does *not* "'certainly seem to be within the reach of the Court's language.'" *Carr*, 37 F.4th at 393 (quoting *Snyder*, 870 F. Supp. at 868).

Several courts have recognized that pardons are rooted in forgiveness. *See*, *e.g.*, *Burdick v. United States*, 236 U.S. 79, 94 (1915) (holding that a pardon "carries an imputation of guilt"); *United States v. Noonan*, 906 F.2d 952, 955, 956 (3d Cir. 1990) (stating that "[t]he power to pardon is an executive prerogative of mercy" and noting that sometimes pardons are granted "when the validity of the conviction itself is not challenged"); *R.J.L. v. State*, 887 So. 2d 1268, 1281 (Fla. 2004) ("A pardon is the equivalent of forgiveness for a crime, it does not declare the pardoned individual innocent of the crime."); *State v. Blanchard*, 100 S.W.3d 226, 229-30 (Tenn. Ct. Crim. App. 2002) (noting a "significant and fundamental difference . . . between an acquittal and a pardon," the latter of which "implies guilt"; a pardoned individual "remains convicted, irrespective of the pardon"); *People v. Blocker*, 118 Cal.

Rptr. 3d 215, 219 (Cal. Ct. App. 2010) ("Guilt as the predicate for pardon is virtually a judicial truism, one commanding wide acceptance."). Likewise, the Kentucky legislature has recognized the incomplete effect of even a full pardon, by requiring "[a]ny person who has been . . . [g]ranted a full pardon" to petition the court for expungement before their conviction can be "vacated." Ky. Rev. Stat. Ann. § 431.073(1).

Although courts have conflated the terms "expunged by executive order" and "pardoned" in the past, *see Savory*, 947 F.3d at 429, every court to hold that a pardon constitutes "expunge[ment] by executive order" has explicitly reasoned that the pardon in some way obliterated, invalidated, or called into question the underlying conviction, as *Heck* requires, 512 U.S. at 487, 489. *See supra* Part I. Until the decision below, courts' conflation of "pardon" and "expunge[ment] by executive order" has been purely semantic (though erroneous). The Sixth Circuit, however, took it a step further and expanded "expunged by executive order" to include *any* full gubernatorial pardon. *Carr*, 37 F.4th at 395. This departure is contrary to *Heck*'s explicit, carefully chosen language.

Heck requires a conviction be "expunged by executive order." 512 U.S. at 487. The Sixth Circuit required only that the conviction be "pardoned," regardless of the intent behind or effect of that pardon. *Carr*, 37 F.4th at 395. The Court should grant review to compel the Sixth Circuit's compliance with the standards set out in *Heck*.

2. The Sixth Circuit's decision undermines *Heck*'s goals of consistency, finality, and comity.

The *Heck* court, borrowing from tort law, requires favorable termination of the underlying conviction in order to "'avoid[] parallel litigation'" and "'preclude[] the possibility of . . . two conflicting resolutions arising out of the same or identical transaction." 512 U.S. at 484. This requirement stems from "the hoary principle that civil tort actions are not appropriate vehicles for challenging the validity of *outstanding* criminal judgments." *Id.* at 486 (emphasis added). In *Heck*, the Court recognized, and sought to address, the issues that arise when a plaintiff brings a federal civil suit challenging the validity of a conviction that remains outstanding and valid under state law. *Heck* was intended to protect the "core principles of federalism, comity, consistency, and judicial economy." *McDonough*, 139 S. Ct. at 2158.

The Sixth Circuit's decision, however, permits precisely the parallel litigation leading to conflicting resolutions *Heck* seeks to avoid, and ignores the "core principles" *Heck* carefully considered. This is another reason warranting review.

In Kentucky, a pardoned conviction remains "outstanding," *Heck*, 512 U.S. at 486, unless and until the pardoned individual petitions a court to "vacate and expunge" that conviction. Ky. Rev. Stat. Ann. § 431.073. This is so even where the pardon is "full." *Id.* A Kentucky court will only grant a petition seeking

expungement where "circumstances warrant vacation and expungement." *Id.* Thus, under the Sixth Circuit's formulation, the recipient of a full pardon could simultaneously bring a state petition to vacate their conviction and a federal section 1983 claim arising out of the conviction. The state court could deny the petition, affirming the underlying conviction's validity (because the pardon was granted for other reasons), while the federal court grants damages necessarily based on the conviction's invalidity. This is precisely the "parallel litigation" and "possibility of . . . conflicting resolutions" *Heck* seeks to avoid. 512 U.S. at 484.

Likewise, a pardoned conviction may still be used as a later sentence enhancement. *E.g.*, *United States v. McMichael*, 358 F. Supp. 2d 644, 647-48 (E.D. Mich. 2005) (allowing penalty enhancement based on conviction for which criminal defendant had been pardoned; "[u]nlike expungement, a pardon serves only to eliminate the punishment arising from that particular conviction and restores basic civil rights"). Thus, an "invalid" conviction giving rise to damages under section 1983 could nonetheless remain "valid" enough to permit greater punishment for a crime. This too is an inconsistent result *Heck* sought to avoid.

As the Sixth Circuit recognized, federal law governs when a section 1983 claim accrues, but state law informs that inquiry. *Carr*, 37 F.4th at 395; *McDonough*, 139 S. Ct. at 2155. The Sixth Circuit only "look[ed] to state law for the limited purpose of determining whether a particular pardon is full and unconditional, such that it falls within the meaning of *Heck*." *Carr*, 37

F.4th at 395. But *Heck* does not require a full and unconditional pardon; it requires "expunge[ment] by executive order." 512 U.S. at 487; *see supra* § I.B.1. And even accepting the Sixth Circuit's conclusion that "*Heck* requires only that the conviction has been sufficiently invalidated to avoid parallel litigation and an inappropriate collateral attack on a conviction," *Carr*, 37 F.4th at 395, state law plainly demonstrates that pardons like the one at issue here do *not* sufficiently invalidate a conviction. Rather, they leave wide open the door for parallel litigation and conflicting resolutions—a door *Heck* specifically sought to close.

The Sixth Circuit lifted the *Heck* bar prematurely, permitting a section 1983 damages claim to serve as a "vehicle[] for challenging the validity of [an] outstanding criminal judgment[]," in direct contravention of *Heck*, 512 U.S. at 486. The Court should grant review.

II. REVIEW IS NECESSARY BECAUSE THE LACK OF CLARITY CONCERNING THE "EXPUNGED BY EXECUTIVE ORDER" EXCEPTION TO *HECK* CREATES UNCERTAINTY FOR LOCAL GOVERNMENTS, WHICH MAY BE EXPOSED TO OPEN-ENDED EXPOSURE TO COSTLY CLAIMS THAT DISRUPT ORDERLY FISCAL PLANNING.

Review is also warranted to prevent a potential deluge of costly, unpredictable, and difficult-to-defend lawsuits from redirecting local government resources.

The Sixth Circuit's formulation opens the door for section 1983 litigation anytime a conviction has been pardoned, which will increase already-costly section 1983 litigation and put a strain on municipal budgets. Since 1945, the federal government has issued 7,645 presidential pardons, with some presidents issuing as many as 1,913 pardons throughout their terms, and some issuing as few as 74. *Clemency Statistics*, U.S. Department of Justice, https://www.justice.gov/pardon/clemency-statistics (last visited Nov. 14, 2022). State-by-state statistics on gubernatorial pardons are harder to come by, but pardons issued by state governors and boards are similarly frequent and variable. *See 50-State Comparison: Pardon Policy & Practice*, Restoration of Rights Project, https://ccresourcecenter.org/state-restoration-profiles/50-state-comparisoncharacteristics-of-pardon-authorities-2/ (last visited Nov. 14, 2022). However, in states where issuance of pardons is characterized as "frequent/regular," the number of annual pardons granted can approach, and often greatly exceed, one hundred. *Id*. (Alabama: Prior to 2019, more than 800 pardons granted annually; Arkansas: About 100 grants each year; Connecticut: 763 pardons granted in 2018; Delaware: 2369 pardons issued over 8 year period; Georgia: 300 to 400 pardons issued; Louisiana: 167 pardons issued in single term; Nebraska: Between 50 and 100 pardons granted each year between 2002 and 2017; Oklahoma: More than 100 pardon grants annually; Pennsylvania: Approximately 150 pardons granted each year; South Carolina: 300-400 pardons granted per year).

Indeed, the pardon at issue here is one of 428 that then-Governor Bevin issued in the final days of his term. Ari Shapiro, *Outgoing Kentucky Gov. Matt Bevin Issues 428 Pardons, Many of Which Are Controversial* (Dec. 13, 2019, 4:26 PM) https://www.npr.org/2019/12/13/787952251/outgoing-kentucky-gov-matt-bevin-issues-428-pardons-many-which-are-controversial. Nor is the underlying lawsuit the only one to stem from these controversial pardons. *See West v. Louisville Jefferson Cnty. Metro Gov't*, No. 3:20-CV-00820-GNS, 2022 WL 468050, at *1, 3 (W.D. Ky. Feb. 15, 2022) (holding pardon issued by Governor Bevin that is "identical to that granted in *Carr*" did *not* invalidate the conviction under *Heck*).

Pardons are a ubiquitous component of the American political system, and the collateral consequences of their issuance should not be left to uncertain and costly litigation that consumes public, private and judicial resources, as courts struggle to apply a consistent interpretation of *Heck*. Moreover, the standard adopted by the Sixth Circuit here compounds the problem by expanding exposure to these costly suits where it is entirely improper.

Pardons are frequently issued for reasons that have nothing to do with the validity of the underlying conviction. *See Snyder*, 870 F. Supp. at 681-82 (recognizing pardons may be granted because the recipient "is deemed to have paid his societal debt and to be fully rehabilitated," "because of unusually sympathetic circumstances, or indeed even to relieve prison overcrowding"). On its face, Carr's pardon was granted

because of her good character. *See* App. 30. The Sixth Circuit's interpretation of *Heck* expands municipalities' exposure to lawsuits, even in instances where a pardon was issued for reasons having *nothing* to do with the underlying conviction. Such a rule is overly broad.

Moreover, under the Sixth Circuit's formulation, a potential section 1983 claim is never dead. Any number of years later, even posthumously, a governor may breathe life into a claim by granting a pardon. *See Savory*, 947 F.3d at 431 (holding the statute of limitations for a section 1983 claim begins to run when a pardon is issued, not when the plaintiff is released from custody). As a result, municipalities cannot predict when they will be subject to litigation or determine when the potential for litigation will end. These entities are left unable to calculate and plan for potential liability, and hamstrung in their defense of claims that, in many instances, are decades old. *See*, *e.g.*, *id.* at 412 (plaintiff filed section 1983 suit in 2017, after being pardoned in 2015, thirty-four years after his conviction).

Significant delays in litigation make it challenging, and in some cases nearly impossible, to defend these claims, often forcing defendants to settle costly lawsuits simply due to the lack of evidence, unavailable witnesses, or stale memories. *See Wilson v. Garcia*, 471 U.S. 261, 271 (1985) ("Just determinations of fact cannot be made when, because of the passage of time, the memories of witnesses have faded or evidence is lost.").

The practical implications of the Sixth Circuit's holding are far-reaching and detrimental to the orderly administration of justice, as well the ability of municipalities to engage in sound fiscal planning for potential liability. The Court should grant review.

CONCLUSION

For the foregoing reasons, Amicus Curiae International Municipal Lawyers Association submits that the petition for a writ of certiorari should be granted.

Respectfully submitted,

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