

**In the Supreme Court of the United States**

JANICE HUGHES BARNES, INDIVIDUALLY AND AS REPRESENTATIVE OF THE ESTATE OF  
ASHTIAN BARNES, DECEASED,

*Petitioner*

*v.*

ROBERTO FELIX JR.; COUNTY OF HARRIS, TEXAS,

*Respondents.*

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*ON WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT*

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**MOTION FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT AND  
FOR DIVIDED ARGUMENT**

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Pursuant to Supreme Court Rules 28.4 and 28.7, the State of Texas, on behalf of a fifteen-State coalition of amici, (collectively, the Amici States), respectfully requests that the Court divide oral argument for Respondent, Roberto Felix Jr., and allow the undersigned 10 minutes of argument time on behalf of the Amici States. This case implicates the States' core sovereign interests in the enforcement of their laws and the safety of their citizens, which are distinct from those of the Respondent. Respondent supports this motion and has agreed to cede 10 minutes to the Amici States. Counsel for Petitioner has represented that she takes no position on this motion.

1. As this Court has recognized, “[p]aramount among the States’ retained sovereign powers is the power to enact and enforce any laws that do not conflict with federal law.” *Cameron v. EMW Women's Surgical Ctr., P.S.C.*, 595 U.S. 267, 277 (2022). Amici States seek leave to participate in argument because the position that Petitioners advocate

directly jeopardizes that interest by curtailing the leeway that police officers need “to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary,” to protect themselves and others. *Graham v. Connor*, 490 U.S. 386, 397 (1989). The result is likely to be that officers—on whom Amici States depend to enforce their laws and protect their citizens—will “be induced to act with an excess of caution or otherwise to skew their decisions in ways that result in less than full fidelity to the objective and independent criteria that ought to guide their conduct.” *Forrester v. White*, 484 U.S. 219, 223 (1988).

In recognition of the important and independent interests of the States, this Court has often granted motions for divided arguments. *See, e.g., Health & Hosp. Corp. v. Talevski*, 143 S. Ct. 300 (2022); *Tenn. Wine & Spirits Retailers Ass’n v. Blair*, 586 U.S. 1062 (2019); *Gamble v. United States*, 586 U.S. 1019 (2018); *Gill v. Whitford*, 582 U.S. 965 (2017); *Oneok, Inc. v. Learjet, Inc.*, 574 U.S. 1059 (2014); *Kennedy v. Louisiana*, 552 U.S. 1293 (2008); *Smith v. Texas*, 549 U.S. 1104 (2007).

2. Granting leave to participate in oral argument would be particularly appropriate here as Harris County—Sergeant Felix’s employer and the party who would normally be expected to represent the broader sovereign interests at stake—has declined to participate in the proceedings before this Court. As a result, the participation of Amici States will neither lengthen nor complicate the argument beyond what was to be expected at the time review was granted.

In abandoning its defense of Respondent, the County has claimed “that the issues affecting the legal interests of [Sergeant] Felix and the County in this case overlap entirely, [and] Harris County believes [Sergeant] Felix will more than adequately represent those interests.” Letter from Seth Hopkins to Scott Harris (Dec. 13, 2024). Respectfully, Amici States do not agree—and, tellingly, Sergeant Felix is supporting this motion.

Respondent’s interest in this litigation is chiefly (and appropriately) receiving a favorable resolution of the claims he faces for monetary damages and protecting his reputation.

By contrast, the Amici States’ interest is in the broader impacts of that eventual resolution. Although section 1983 suits are nominally against officers in their individual capacities, as a practical matter, States and their political subdivisions, such as Harris County, will often bear the cost. This can be the direct cost of indemnifying their officers for part or all of settlements and judgments—some of which have been so large that the affected “jurisdictions disband[ed] their police forces.” Aaron L. Nielson & Christopher J. Walker, *Qualified Immunity and Federalism*, 109 Geo. L.J. 229, 267 n.29 (2020) (quotation omitted). Or it can be the indirect impact on police incentives that inherently follow “Monday morning quarterbacking” by individuals far removed in time and space from any real danger. *Harmon v. City of Arlington*, 16 F.4th 1159, 1165 (5th Cir. 2021); accord *Graham*, 490 U.S. at 396.

Amici States also have unique insight into the impact adopting Petitioner’s view of the Fourth Amendment would have on the related qualified immunity analysis. This interaction should not be ignored because as courts and commentators alike recognize, the mere

prospect of standing trial is enough to give an officer pause about taking a necessary action in a dangerous situation, “even when they [are] confident that no judgment [will] be satisfied from their personal resources.” John C. Jeffries, Jr., *In Praise of the Eleventh Amendment and Section 1983*, 84 VA. L. REV. 47, 51 n.17 (1998); *see also, e.g., Pearson v. Callahan*, 555 U.S. 223, 231 (2009). Although Respondent briefly discusses qualified immunity (Resp.Br.47), Amici States have addressed this issue much more comprehensively (States.Br.20-25), as it affects *their* capacity “to preserve [officers’] ability to serve the public good or to ensure that talented candidates were not deterred by the threat of damages suits from entering public service.” *Wyatt v. Cole*, 504 U.S. 158, 167 (1992).

3. Allowing undersigned counsel 10 minutes of argument time would assist the Court in understanding both the law relevant to this case and the impact the Court’s decision will have on the functions of Amici States. *See* Sup. Ct. R. 28.4. It would also free Respondent from having to discuss state-specific issues that are not of direct import to him. Petitioner would suffer no prejudice from the Amici States’ participation in oral argument of this case as the total time allotted to the two sides would remain unchanged.

CONCLUSION

The Court should grant the motion and allow Amici States to participate in oral argument.

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