No. 24-993

IN THE
Supreme Court of the United States

GABRIEL OLIVIER, *Petitioner,*
v.
CITY OF BRANDON, ET AL., *Respondents.*

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

BRIEF OF LOCAL GOVERNMENT LEGAL CENTER AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

R. TRENT MCCOTTER
Counsel of Record
SEPARATION OF POWERS CLINIC
COLUMBUS SCHOOL OF LAW
THE CATHOLIC UNIVERSITY OF AMERICA
3600 John McCormack Rd.
Washington, DC 20064
(202) 706-5488
mccotter@cua.edu

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Constitutions, Statutes, and Ordinances

Other Authorities

INTEREST OF *AMICUS CURIAE*[1]

The Local Government Legal Center ("LGLC") is a coalition of government organizations formed in 2023 to provide education to local governments regarding the Supreme Court and its impact on local governments and officials and to advocate for local government positions at the Supreme Court in appropriate cases. The National Association of Counties, the National League of Cities, and the International Municipal Lawyers Association are the founding members of the LGLC. The International City/County Management Association is an associate member of the LGLC.

The National Association of Counties ("NACo") is the only national organization that represents county governments in the United States. Founded in 1935, NACo provides essential services to the nation's 3,069 counties through advocacy, education, and research.

The National League of Cities ("NLC"), founded in 1924, is the oldest and largest organization representing U.S. municipal governments. NLC works to strengthen local leadership, influence federal policy, and drive innovative solutions. In partnership with 49 state municipal leagues, NLC advocates for over 19,000 cities, towns, and villages where more than 218 million Americans live.

---

[1] No counsel for any party has authored this brief in whole or in part, and no entity or person other than *amicus curiae* and its counsel made any monetary contribution intended to fund the preparation or submission of this brief.

The International City/County Management Association ("ICMA") is a nonprofit professional and educational organization of more than 9,000 appointed chief executives and assistants serving cities, counties, towns, and regional entities. ICMA's mission is to create excellence in local governance by advocating and developing the professional management of local governments throughout the world.

The International Municipal Lawyers Association ("IMLA") has been an advocate and resource for local government attorneys since 1935. A nonpartisan, nonprofit, professional association of counsel, IMLA's membership is composed of more than 2,500 local government entities (including cities, counties, and subdivisions thereof), as represented by their chief legal officers, state municipal leagues, and individual attorneys. 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 Supreme Court of the United States, the United States Courts of Appeals, and state supreme and appellate courts.

Amici offer their perspective on why the rule sought by Petitioner would undermine principles of federalism and harm local governments and their constituents by encouraging preemptive and costly federal litigation in matters properly reserved to state courts.

SUMMARY OF THE ARGUMENT

This Court has explained that "*whenever* 'a judgment in favor of the plaintiff would necessarily imply' that his prior conviction or sentence was invalid," he must demonstrate favorable termination of that conviction. *McDonough v. Smith*, 588 U.S. 109, 119 (2019) (emphasis added). Because the inquiry looks to the "judgment," *McDonough*, 588 U.S. at 119, the *Heck* bar is the same "no matter the relief sought (damages or equitable relief)," *Wilkinson v. Dotson*, 544 U.S. 74, 82 (2005).

Given the holdings in *McDonough* and *Wilkinson*, this case boils down to a single question: would a judgment in Petitioner's favor here necessarily imply the invalidity of his prior conviction? If yes, he must show favorable termination regardless of the form of relief he seeks and regardless of whether he was ever imprisoned. If no, he need not show favorable termination at all. *See* Part I.A, *infra*.

The answer is yes, because Petitioner brings a facial challenge to the very same ordinance under which he was previously convicted. *See* Part I.B, *infra*. Holding a statute facially unconstitutional would logically imply the invalidity of a prior conviction under that statute. Even while partially supporting Petitioner, the United States candidly acknowledges that "[i]t is true that if a plaintiff with a prior conviction prevails in a facial challenge (or an as-applied challenge that covers his past conduct), the federal-court decision would imply a legal infirmity in his prior conviction." United.States.Br.21. Under this

Court's precedents, that should be the end of the inquiry.

In addition to being inconsistent with *McDonough* and *Wilkinson*, Petitioner's attempts to evade the favorable-termination requirement run headlong into the logic and text of *Heck* itself. *See* Part I.C, *infra*.

Plaintiffs like Petitioner are not out of luck. States across the country provide mechanisms for plaintiffs like Petitioner to obtain favorable termination, meaning they may yet be able to sue down the road. *See* Part II, *infra*.

The Court should not lightly set aside the favorable-termination requirement, which reflects important federalism concerns with federal courts allowing civil claims to undermine still-standing state and local convictions. That concern exists regardless of whether the plaintiff was ever in custody, or whether he seeks injunctive relief. *See* Part III.A, *infra*.

Further, adopting Petitioner's framework would have serious negative repercussions for local governments' fiscs, even when plaintiffs do not prevail. *See* Part III.B, *infra*. Perhaps counterintuitively, those risks are even greater in cases seeking injunctive relief because they are harder to settle and thus more likely to result in runaway litigation expenses.

Because favorable termination is required, and because Petitioner has not (yet) obtained it, this Court should affirm.

ARGUMENT

I. Favorable Termination Is Required "Whenever" a Judgment Would Call a Conviction Into Question, "No Matter the Relief Sought."

Petitioner's § 1983 claim triggers the favorable-termination requirement because a federal court decision holding that the local ordinance under which he was convicted is facially unconstitutional would necessarily imply his conviction under that same ordinance was invalid. His attempts to evade that logical outcome run headlong into this Court's precedent.

A. *Heck* Focuses on the Implications of the Judgment, Not the Relief Sought or the Plaintiff's Custodial Status.

In *Heck v. Humphrey*, 512 U.S. 477 (1994), the Court addressed whether a § 1983 claim is "cognizable … at all" when it "call[s] into question the lawfulness of conviction or confinement," *id.* at 483. To be sure, the plaintiff in *Heck* did not seek injunctive relief, and he had access to habeas because he was in custody at the time—but the Court's analysis did not turn on either of those aspects.

Rather, the Court concluded that "civil tort actions are not appropriate vehicles for challenging the validity of outstanding criminal judgments." *Id.* at 486. That applied regardless of whether the end result might be money or an injunction, and the Court acknowledged numerous mechanisms *beyond* federal habeas relief by which a plaintiff could satisfy the

favorable-termination requirement, such as executive clemency, which does not require the recipient to have *ever* been in custody. *Id.*; *see* Part II, *infra* (providing summaries of such mechanisms in many States).

The text and logic of *Heck* thus establish that the exact form of relief sought (e.g., damages v. injunctions) and the plaintiff's custodial status are irrelevant to the favorable-termination requirement. What matters is whether the plaintiff seeks "a judgment" that "would necessarily imply the invalidity of [her] conviction or sentence." 512 U.S. at 487.

This Court's later opinions confirm this view. In 2019, *McDonough* held that favorable termination is required "*whenever* 'a judgment in favor of the plaintiff would necessarily imply' that his prior conviction or sentence was invalid." 588 U.S. at 119 (emphasis added). A clearer statement of the requirement is hard to imagine—and again, there is no limitation based on custodial status or whether the plaintiff also seeks injunctive relief. And in *Wilkinson*, the Court emphasized again that this rule applies "no matter the relief sought (damages or equitable relief)." 544 U.S. at 82.

Accordingly, when it comes to the *Heck* bar, questions about whether the plaintiff is or was in custody, as well as whether he seeks damages or injunctive relief, are all beside the point. The only

question is whether a judgment in his favor would necessarily imply his prior conviction is invalid.[2]

Petitioner tries to evade this conclusion by saying *Heck* applies only if his suit would "necessarily invalidate a conviction or sentence." Pet.Br.13; *see id.* at 25 ("invalidate official actions"). But the test is whether a judgment in his favor would "imply" his prior conviction is invalid, *McDonough*, 588 U.S. at 119, not whether it would literally invalidate the conviction. No § 1983 suit—regardless of the relief sought or the plaintiff's custodial status—can literally invalidate a prior conviction, so that cannot be the test.

Even when he pays lip service to the "imply" language, he immediately reframes it as whether relief would "change a past conviction or sentence." Pet.Br.21; *see also id.* at 33 (noting the "imply" language but then shifting immediately to whether the claim would literally "annul" or "expunge" official action). But again, that is not and has never been the test. It is telling that Petitioner feels the need to keep reframing the *Heck* bar as applying only in a circumstance that no § 1983 suit would ever present.

The dissent below similarly argued that a request for injunctive relief is different because "[i]njunctions

---

[2] This is also in line with *Edwards v. Balisok*, 520 U.S. 641 (1997), which held that "an injunction requiring prison officials to date-stamp witness statements at the time they are received" would "not 'necessarily imply' the invalidity" of a sentence, *id.* at 648. That confirms injunctive relief is not somehow special for *Heck* purposes, but rather depends on the specifics of the underlying claim.

do not work backwards to invalidate official actions taken in the past." Pet.App.50a. True enough, but neither does a damages claim. A successful § 1983 damages claim does not invalidate anything. Rather, it would *imply* the plaintiff's prior conviction was invalid—just like a facial injunction would.

Accordingly, there is no basis for treating the two forms of relief differently for *Heck* purposes. The *Heck* bar applies the same regardless of the relief sought and regardless of whether the plaintiff has ever been in custody—as this Court has held for years.

B. Petitioner Must Show Favorable Termination, Including for Facial Injunctive Relief.

With the test properly framed, the outcome of this case is clear: Petitioner must show favorable termination. His arguments to the contrary should be rejected.

Petitioner's Claim Implies the Invalidity of His Prior Conviction. An injunction against a specific ordinance as *facially* unconstitutional necessarily implies the invalidity of Petitioner's conviction under that same ordinance because it means each and every application of that ordinance was unconstitutional, including Petitioner's own conviction. As this Court has recognized, a "conviction under an unconstitutional law is not merely erroneous, but is illegal and void." *Montgomery v. Louisiana*, 577 U.S. 190, 203 (2016).

Even the United States, while gamely trying to support Petitioner on QP1, candidly admits that "[i]t

is true that if a plaintiff with a prior conviction prevails in a facial challenge (or an as-applied challenge that covers his past conduct), the federal-court decision would imply a legal infirmity in his prior conviction." United.States.Br.21. Of course it does. And, under *McDonough*, that is the end of the inquiry.

Put another way, Petitioner wants an injunction from a federal court allowing him to do exactly what he was convicted for in state court. It defies logic to contend that this injunction would not cast doubt on the validity of his prior conviction. He has been convicted under a law that—if he has his way—is unconstitutional in every application.

The Seventh Circuit once faced a similar ploy and properly rejected it. In *Rainey v. Samuels*, 130 F. App'x 808 (7th Cir. 2005), the plaintiff sought "an injunction against operation of the statute that undergirds the state court's decision" finding he had abused and neglected his children, *id.* at 810. The court held this request for an injunction was "not an appropriate use of 42 U.S.C. § 1983 for the reasons given in *Heck*." *Id.* In particular, an injunction would "set up a collateral attack; if the statute is unconstitutional then the [state court] judgment is invalid and [plaintiff's] parental rights must be restored." *Id.* But "§ 1983 may not be used to obtain relief that implies the invalidity of a state court's judgment that binds the federal plaintiff *in personam*." *Id.*

The Seventh Circuit instantly recognized that an injunction against the very same statute under which

the plaintiff was just convicted would *necessarily* "impl[y] that the [state-court] judgment [was] invalid." *Id.* The claim was therefore barred unless the plaintiff could show favorable termination.

Similarly, if Petitioner has his way, he will be the subject of a still-standing state conviction under the same ordinance that a federal court has ruled is unconstitutional in every application. The two cannot be logically reconciled, and that is why favorable termination is required.

The Facial Nature of Petitioner's Challenge Is Relevant. To be clear, it is possible the outcome of QP1 would be different if this were not a facial challenge. There is no way to avoid implying the invalidity of a conviction under a law the plaintiff then challenges as unconstitutional in every application. But it is at least conceptually possible that an as-applied injunction against a law would not necessarily suggest a prior conviction under that law was invalid. *See* United States.Br.21. The Court need not resolve that issue here, however.[3]

The "Fellow Protestor" Example Proves Petitioner Is Wrong. Petitioner, the United States, and the dissent below contend it is illogical to say Petitioner cannot seek an injunction against the relevant ordinance, while a "fellow protestor" who

[3] The Court could also DIG this case on this basis and await a case where the plaintiff does not bring a facial challenge, let alone one that has already been rejected on the merits in a separate lawsuit, as here.

hasn't been convicted could bring such a suit. Pet.App.51; Pet.Br.34; United.States.Br.22.

But that outcome is entirely logical. The *Heck* bar applies only to plaintiffs who have already been convicted, so of course there will be a different analysis where a suit is brought by a fellow protestor who has *not* been convicted. Analogizing Petitioner to an unconvicted protestor ignores the premise of *Heck*. Also, this is why the test has always been whether the relief sought would imply the invalidity of the *plaintiff's own* conviction, not some non-party's conviction. *McDonough*, 588 U.S. at 199. The point is to stop a party from indirectly attacking his *own* conviction. Almost any suit could potentially have collateral consequences on non-parties, but *Heck* has never considered those consequences relevant. All that matters is the effect on the plaintiff's own state-court judgment.

This "fellow protestor" example also unintentionally shows why injunctive relief is not special. It is true that a fellow protestor's suit for facial injunctive relief, if successful, would suggest Petitioner's conviction is invalid. But that conclusion applies just the same to a claim solely for damages. Accordingly, the fellow protestor example does nothing to explain why injunctive relief must somehow be different under *Heck*. Rather, it just fights the premise that *Heck* looks to whether victory would imply the invalidity of the plaintiff's *own* conviction (if any), rather than the validity of some non-party's conviction.

Finally, the fellow protestor example necessarily assumes that an injunction against a statute does indeed imply the invalidity of a conviction under that same statute, which is something Petitioner otherwise refuses to accept. That matches common sense, but Petitioner cannot admit it because it would mean he must show favorable termination under *McDonough*.

C. Nor Does the *Heck* Bar Apply Only to Claims Sounding in Malicious Prosecution.

In a last-ditch effort, Petitioner tries to fundamentally reframe *Heck* itself. Pet.Br.26; *see also* United.States.Br.16. He argues that *Heck* requires favorable termination only for claims analogous to malicious prosecution, and because his allegations do not do so, he therefore need not show favorable termination.

Petitioner is incorrect here, too. To be sure, *Heck* looked to the elements of malicious prosecution, but its holding extended beyond just § 1983 claims that sound in malicious prosecution. Rather, the favorable-termination requirement is triggered in any case where "a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence," regardless of how plaintiff describes the alleged underlying constitutional violation. *Heck*, 512 U.S. at 487.

On that point, the Court was clear that "civil tort actions are not appropriate vehicles for challenging the validity of outstanding criminal judgments." *Id.* at 486. *Heck* did not say "malicious prosecution actions" must prove favorable termination. Rather, it said

"civil tort actions" writ-large. And Petitioner acknowledges a request for injunctive relief is a form of tort action. Pet.Br.30.

But even setting that aside, Petitioner's argument still fails. That is because there is no such thing as a claim that impugns a prior conviction but does not require favorable termination. *Heck* held that analogizing to a common-law tort with favorable termination is the *only* way a plaintiff can bring a § 1983 claim impugning his underlying conviction.

To fully understand, start with Justice Souter's separate opinion, which argued that the majority's reference to malicious prosecution was off base because, under the common law, a malicious prosecution claim was unavailable if the person had ultimately been convicted. 512 U.S. at 496 (Souter, J., concurring in judgment).

In response, the *Heck* majority held that this "would simply demonstrate that *no* common-law action, *not even* malicious prosecution, would permit a criminal proceeding to be impugned in a tort action, *even after* the conviction had been reversed. That would, if anything, strengthen our belief that § 1983, which borrowed general tort principles, was not meant to permit such collateral attack." *Id.* at 484 n.4 (emphases in original).

In other words, the default rule is that a "criminal proceeding" cannot "be impugned in a tort action." *Id.* The only way to avoid that is to bring a claim tracking a common-law analogue that allowed an attack on a prior conviction—but the only ones the Court

recognized are malicious prosecution and abuse of process, both of which require favorable termination.

Viewed correctly, the availability of a malicious prosecution analogue—with its favorable-termination requirement—is actually a significant *benefit* for plaintiffs challenging their convictions. Without it, they could not bring their tort claims at all. Accordingly, it does Petitioner no benefit to say his claim is not akin to malicious prosecution.

II. Individuals Like Petitioner Can Still Obtain Favorable Termination.

Requiring favorable termination does not mean plaintiffs like Petitioner could never successfully bring a § 1983 claim. *Heck* itself recognized that federal habeas relief is only one of the ways by which a plaintiff could obtain favorable termination.

For example, *Heck* held that a conviction could be "expunged by executive order"—e.g., a pardon. *Heck*, 512 U.S. at 486–87. The conviction also could be "declared invalid by a state tribunal authorized to make such determination," *id.*, a power that many state courts possess through statutory grants of authority or pursuant to their inherent authority.

Mississippi. The State where this case arose has numerous mechanisms available for non-custodial plaintiffs to obtain the requisite favorable termination. Mississippi's statutory habeas provision allows "[a]ny person sentenced by a court of record of the State of Mississippi" to "file a motion to vacate, set aside or correct the judgment or sentence" for a lengthy list of reasons, including a claim that the

"conviction or the sentence was imposed in violation of the Constitution of the United States." Miss. Code Ann. § 99-39-5(1). That is what Petitioner claims here.

The United States suggests that Petitioner may be time-barred from seeking relief under this provision. United.States.Br.22. Even if true, it makes no sense to allow a plaintiff to evade the favorable-termination requirement by failing to comply with available state-law options, too. That would encourage parties to sandbag and never even try to obtain favorable termination through state mechanisms.

In any event, Mississippi also allows for expungement of certain first-time crimes within five years after all terms of the conviction are completed. Miss. Code Ann. § 99-19-71(2). Further, the Mississippi Governor has the power "to grant reprieves and pardons." Miss. Const. art. 5, § 124.

Petitioner has obtained none of these forms of favorable termination.[4]

Texas and Louisiana. Turning to the other States in the Fifth Circuit: Texas's statutory habeas provision is broad. It extends to noncustodial individuals so long as the applicant suffers from "any

---

[4] Petitioner claims that requiring favorable termination here would "impose[] an exhaustion requirement," Pet.Br.38, but that argument is foreclosed by *Heck*, which held that the favorable-termination requirement "do[es] not engraft an exhaustion requirement upon Section 1983, but rather den[ies] the existence of a cause of action" in the first place. *Heck*, 512 U.S. at 489. Accordingly, the requirement is not that Petitioner must *try* to obtain one of these forms of relief (i.e., exhaust them), but that he must *actually obtain* one of them.

collateral consequences" because of the conviction. Tex. Code Crim. Proc. art. 11.07(3)(c). That includes "adverse consequences to the applicant's present and future employment opportunities." *Ex parte Dennis*, 665 S.W.3d 569, 573 (Tex. Crim. App. 2022). Further, the Texas Governor, acting on a recommendation from the Board of Pardons and Paroles, also has the power to pardon offenses, *see* Tex. Const. art. IV, § 11, which could potentially provide a plaintiff with "expunge[ment] by executive order," *Heck*, 512 U.S. at 487.

Louisiana similarly allows its Governor, acting with a recommendation from the Board of Pardons, to "pardon those convicted of offenses against the state." La. Const. art. IV, § 5(E)(1). The State Constitution even *automatically* pardons, upon completion of the sentence, *all* "first offender[s] convicted of a non-violent crime" or specified violent crimes who were "never previously convicted of a felony." *Id.*

Other States. California has a procedure where defendants who have faithfully completed their period of probation can have a court "set aside the verdict of guilty" and "dismiss the accusations or information against the defendant and except as noted below, the defendant shall thereafter be released from all penalties and disabilities resulting from the offense of which they have been convicted." Cal. Penal Code § 1203.4. Further, the Governor of California has pardon and clemency powers. Cal. Const., art. V, § 8, subd. (a); Cal. Penal Code § 4800.

Florida Rule of Criminal Procedure 3.850 provides a mechanism for defendants to seek relief from their

sentences based on specific grounds, such as constitutional violations, lack of jurisdiction, involuntary pleas, or sentences exceeding the maximum authorized by law. Further, Rule 3.800(a) permits correction of illegal sentences "at any time," provided the court records demonstrate entitlement to relief on their face. The Governor of Florida can also grant clemency. Fla. Const., art. IV, § 8.

Illinois's Constitution grants the Governor wide powers to pardon and grant clemency, Ill. Const., art. V, § 12, and prisoners may also file petitions with the Illinois Prisoner Review Board.

In New York, defendants may move to vacate a judgment under New York Criminal Procedure § 440.10 on specific grounds, including lack of jurisdiction, fraud, constitutional violations, false evidence, newly discovered evidence, or mental incapacity during proceedings.

The list could go on, but suffice it to say that every state in the country has forms of favorable termination that remain available to a sizable portion of convicts who have completed a prison sentence or were never imprisoned in the first place.

III. The Favorable-Termination Requirement Protects Federalism and Local Fiscs.

Allowing plaintiffs like Petitioner to proceed without showing favorable termination would impose serious harms on federalism and local governments' fiscs.

A. Federalism Animates the Favorable-Termination Rule.

The favorable-termination requirement reflects federal courts' concerns about interfering with a still-standing state-court conviction. That concern exists regardless of whether the plaintiff is in custody and regardless of whether he seeks injunctive relief.

Section 1983 claims are limited to actions taken by state and local officials, and thus any § 1983 claim implying the invalidity of a conviction will necessarily implicate state interests in "finality and consistency" in their own convictions. *Heck*, 512 U.S. at 485. Without the favorable-termination requirement, there would be "'unnecessary friction' between the federal and state court systems by requiring the federal court entertaining the Section 1983 claim to pass judgment on legal and factual issues already settled" or abandoned in state court. *Vega v. Tekoh*, 597 U.S. 134, 151–52 (2022); *see McDonough*, 588 U.S. 120 (noting the importance of the "core principles of federalism, comity, consistency, and judicial economy" in the context of § 1983 claims).

"[F]ederal intervention imposes significant costs on state criminal justice systems" by "'disturb[ing] the State's significant interest in repose for concluded litigation,' and undermin[ing] the States' investment in their criminal trials." *Shinn v. Ramirez*, 596 U.S. 366, 377 (2022). The "'trial of a criminal case in state court [is] a decisive and portentous event.'" *Id.* Accordingly, "[a]n attack in federal court on any 'state judicial action' concerning a state conviction must proceed with 'proper respect for state functions,'

because the federal courts are being asked to 'try the regularity of proceedings had in courts of coordinate jurisdiction.'" *Skinner v. Switzer*, 562 U.S. 521, 541 (2011) (Thomas, J., dissenting) (alteration omitted); *see District Attorney's Office for Third Jud. Dist. v. Osborne*, 557 U.S. 52, 76 (2009) (Alito, J., concurring) ("We have long recognized the principles of federalism and comity at stake when state prisoners attempt to use the federal courts to attack their final convictions.").

The favorable-termination requirement ensures that federal courts tread carefully in this area, allowing federal civil claims to proceed only when the conviction has already been undermined by a subsequent favorable termination made either under the restrictive federal habeas regime or by the state itself pursuant to its own laws. That concern exists just the same regardless of whether the plaintiff is (or ever was) in custody, and regardless of whether his claim is framed as one for malicious prosecution or as seeking only injunctive relief against the same statute under which the plaintiff was convicted. All that matters is whether the federal claim implicitly attacks the validity of the prior conviction.

B. A Ruling in Petitioner's Favor Will Subject All Manner of Local Ordinances to Section 1983 Attack.

A ruling in Petitioner's favor cannot be limited to minimize the damage to federalism. In fact, the opposite would occur because convicts would be greatly incentivized to skip potential state remedies and head straight to federal court to seek damages,

fees, and injunctions. Every criminal conviction, regardless of how routine or minor, could serve as the basis for such a suit, including misdemeanors where criminal defendants are likely to plead out and accept a suspended sentence or a fine in lieu of jail time.[5]

The following are just a small sample of ordinances with potential criminal liability that could easily lead to a flood of § 1983 claims under Petitioner's framework, all while forgoing available state remedies.

Parades. Local governments typically require permits to hold a parade, given traffic and public-safety concerns.[6] The relevant ordinances often impose potential criminal liability for certain

---

[5] According to a 2022 Bureau of Justice Statistics study, the "average percentage of [misdemeanor] cases resulting in a sentence of imprisonment was 50% … [and] the average court ordered probation in 25% of cases … and a fine in 36%" of cases. Tom Rich & Kevin M. Scott, *Data on Adjudication of Misdemeanor Offenses: Results from a Feasibility Study* (U.S. Dep't of Justice, NCJ 305157, Nov. 2022), https://bjs.ojp.gov/media/67951/download.

[6] For example, in 2013, the National Transportation Safety Board (NTSB) sent a letter to *amici* NLC, NACo, and ICMA, among others, regarding a fatal parade accident associated with a train collision. In the letter, the NTSB indicated *amici* should "encourage [their] members to require, as a part of the parade and special event approval process, that organizations create a written safety plan" that addresses certain safety elements. Nat'l Transp. Safety Bd., *Safety Recommendation Letter*, H-13-43 (Dec. 2, 2013), https://www.ntsb.gov/safety/safety-recs/RecLetters/H-13-041-045.pdf.

violations.[7] But parades are also fertile ground for lawsuits about speech. *E.g.*, *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557 (1995). Rather than challenge any fines or convictions through state processes like appeals or clemency, individuals who have been cited or charged with parade-rule violations will deliberately forgo those routes and jump straight to federal court to seek damages, attorney's fees, and injunctions against those very same ordinances. Ruling for Petitioner would thus create an incentive to evade state procedure and remedies.

Administration of Elections. States have a variety of laws to ensure elections run smoothly and without interference, and violations of some of these

---

[7] For example, Baltimore City code requires that anyone organizing or participating in a parade obtain a permit from the Department of Transportation. Baltimore, Md., City Code art. 19, § 50-31(b) (2021). Subsection (e) makes violation of the permit requirement a misdemeanor, punishable by up to a $500 fine and/or up to 60 days' imprisonment. Baltimore, Md., City Code art. 19, § 50-31(e) (2021); *see also* Lubbock, Tex., Code of Ordinances § 20.10.032 (2023) (making it a misdemeanor to promote or sponsor a parade, demonstration, or recreational street use on public streets or alleys without a permit); Austin, Minn., City Code § 7.14 (2024), (providing that sponsoring or participating in a parade without first obtaining a city permit constitutes a misdemeanor); Battle Creek, Mich., Code of Ordinances § 1020.17 (2025) (prohibiting conducting a parade on city streets without a permit, with violations punishable as misdemeanors).

laws are misdemeanor offenses.[8] Counties are responsible for administering elections, and county officials enforce state election laws as a part of those duties.[9] Petitioner's proposed *Heck* exceptions could result in a deluge of § 1983 lawsuits against county officials who are seeking to maintain the integrity of our Nation's election laws.

Unlawful Hunting/Trapping. Many localities have restrictions on the discharge of firearms and of trapping animals within designated areas, with potential criminal liability for violations.[10] Rather

---

[8] For example, N.C. Gen. Stat. § 163-274 makes it a misdemeanor for, among other things, any person to "interfere with the possession of any ballot box, election book, ballot" or for any person to impersonate an election official "while in the discharge of duties in the registration of voters." In Texas, it is a Class C misdemeanor for any person to be unlawfully present at a polling place. *See* Tex. Elec. Code § 61.003. And in Ohio, a person commits a misdemeanor offense by "loitering in or about a registration or polling place during registration or the casting and counting of ballots so as to hinder, delay, or interfere with the conduct of the registration or election" or attempting to "intimidate an election officer, or prevent an election official from performing the official's duties." Ohio Rev. Code § 3599.24(A).

[9] *See, e.g.*, Ohio Rev. Code § 3501.11 (setting forth duties of county board of elections); Fla. Stat. § 102.031 (authorizing election board to "maintain order at the polls and enforce obedience to its lawful commands during an election and the canvass of the votes.").

[10] For example, the City of Maple Valley, Washington, prohibits any person from hunting, capturing, trapping, or disturbing any animal or bird within the city limits. Maple Valley, Wash., Mun. Code § 9.05.395(C)(1) (2021). Breaking this rule is a

than ensuring respect for still-standing convictions for violating those ordinances, Petitioner's approach would encourage those individuals to forgo state remedies altogether and file suit in federal court, seeking damages, fees, and injunctions.

Unlawful Encampments. As this Court recently recognized, many local governments are facing a homelessness crisis. *See City of Grants Pass v. Johnson,* 603 U.S. 520, 525 (2024). Some local governments have passed public camping bans, which can take various forms, but all seek to address the homelessness crisis and the health, safety, and welfare of the locality's residents, and these ordinances are sometimes punishable as misdemeanors and may carry prison time.[11] Under Petitioner's approach, individuals who have been cited for violations will challenge them not through direct appeals, but rather through affirmative § 1983 lawsuits.

---

misdemeanor. Maple Valley, Wash., Mun. Code § 9.05.395(D)(1) (2021)*; see also* Springdale, Ohio, Code of Ordinances § 135.15 (1996) (prohibiting hunting wildlife or domestic animals by any means within city limits; violation is a fourth-degree misdemeanor); Fredericksburg, Va., City Code § 54-7.1 (2024) (creating restrictions on hunting within the city limits, and making violations of those restrictions a class 3 misdemeanor); Twin Falls Cnty., Idaho, Code §§ 5-3-3 to -4 (2023) (making it unlawful to hunt in county parks and a violation a misdemeanor).

[11] *See* Grants Pass, Or., Mun. Code § 5.61.010 (2023); Mt. Pleasant, Tex., Mun. Code § 90.29 (2023); Sacramento County, Cal., Code of Ordinance § 9.120.070.

Sexually Oriented Businesses (SOBs). Like parades, SOBs implicate serious government health and morality concerns, *see City of Renton v. Playtime Theatres, Inc.* 475 U.S. 41 (1986),[12] but also potentially implicate First Amendment claims. Many local governments have zoning and permitting provisions addressing SOBs,[13] and violations of those schemes can be subject to misdemeanor charges or even jail time.[14] Again, under Petitioner's approach, that makes convicts of those provisions the perfect plaintiffs to launch federal lawsuits, with zero incentive to attempt to obtain state remedies for their still-standing infractions.

* * *

Again, these are just a small sampling of the types of convicts who—under Petitioner's framework—will skip state remedies like appeals or state habeas, and head straight to federal court to seek damages and fees, as well as injunctions against the *exact same*

---

[12] *See also Los Angeles v. Alameda Books, Inc.* 535 U.S. 425 (2002) (concluding the city could reasonably rely on a comprehensive study that concluded a higher concentration of sexually oriented businesses was associated with higher crime rates).

[13] *See* Maricopa Cnty., Ariz., Ordinance P-10 (1998) (requiring a license for an adult-oriented business); City of Lemoore, Cal., Muni. Code § 9-4D-14 (2023) (setting forth zoning restrictions on SOBs and specifying conditions to obtain a permit for a SOBs); New Carlisle, Ohio, Mun. Ordinance § 870.08 (2025) (requiring permit for SOBs).

[14] *See* Maricopa Cnty., Ariz., Ordinance P-10 § 23 (1998); Lemoore, Cal., Mun. Code § 1-4-1 (2023); New Carlisle, Ohio, Mun. Ordinance. § 870.024-25 (2025).

statute under which they were just convicted in state court. Petitioner's approach has dramatic negative consequences for federalism and thus defies the logic of *Heck* itself.[15]

C. A Ruling for Petitioner Will Cause Serious Damage to Local Governments' Fiscs.

Aside from federalism harms, Petitioner's framework would also impose serious financial burdens on localities, forcing them to divert resources away from essential public services to defend against federal lawsuits arising from minor local offenses.

Defendants' litigation costs are significant even when the plaintiff never prevails. Defendants must hire counsel to defend the case, which itself imposes a significant cost. And plaintiffs know that the availability of attorney's fees for § 1983 claims could mean the locality could have to pay both its own legal fees and those of the plaintiff. *See* Thomas A. Eaton & Michael L. Wells, *Attorney's Fees, Nominal Damages, and Section 1983 Litigation*, 24 Wm. & Mary Bill Rts.

---

[15] Adopting Petitioner's view could also have serious unintended pragmatic consequences for plaintiffs. For example, if favorable termination is not an element, then the claim arises earlier in time (i.e., the plaintiff need not wait until he receives favorable termination before he can sue). That results in statutes of limitation beginning earlier, and thus bars claims even when challengers later obtain favorable termination. That unpalatable result caused the *en banc* Seventh Circuit (including then-Judge Barrett) to reverse its precedent and hold by a lopsided vote that favorable termination is required for non-custodial plaintiffs. *See Savory v. Cannon*, 947 F.3d 409 (7th Cir. 2020) (*en banc*).

J. 829, 837 (2016); Maureen Carroll, *Fee-Shifting Statutes and Compensation for Risk*, 95 Ind. L.J. 1021, 1039 (2020) (Section 1988 "'reflects a heavy reliance on attorneys' fees' in order to secure compliance"); Philip Matthew Stinson Sr. & Steven L. Brewer Jr., *Federal Civil Rights Litigation Pursuant to 42 U.S.C. §1983 as a Correlate of Police Crime*, 30 Crim. Just. Pol'y Rev. 223, 227 (2019) (attributing the "explo[sion]" of § 1983 litigation in cases alleging police misconduct in part to the availability of attorney's fees under § 1988).

Perhaps counterintuitively, suits seeking injunctive relief raise this concern even more acutely because the plaintiffs are less likely to want to settle for cash considerations, and defendants are unlikely to settle in the form of an agreement not to enforce their existing, valid laws—especially when the plaintiff himself was just convicted under that same law, as occurred here. In such cases, there is little benefit to making an offer of judgment under Rule 68 to minimize runaway attorney's fees. *See Marek v. Chesny*, 473 U.S. 1, 9–12 (1985). This all means that § 1983 cases seeking injunctive relief are more likely to drag on, with defendants incurring greater litigation expenses while facing a commensurately greater attorney-fee bill from the plaintiff in the event he ever actually prevails.

This means the costs of injunctive cases can be higher in injunction cases than in damages cases. For example, Tennessee was forced to pay over $842,000 in attorney's fees to two groups of plaintiffs who obtained only a preliminary injunction. *Tennessee State Conference of NAACP v. Hargett*, No. 3:19-cv-

00365, 2021 WL 4441262 at *11 (M.D. Tenn. Sept. 28, 2021). And New York paid nearly $350,000 in attorney's fees to a group of plaintiffs who obtained only a temporary injunction pending appeal. *See Chrysafis v. Marks,* No. 21-cv-2516, 2023 WL 6158537 at *3, *12 (E.D.N.Y. Sept. 21, 2023).

These costs have a significant and deleterious effect on local governments, which often have balanced-budget requirements, limiting their ability to absorb significant unbudgeted litigation expenses.[16] Localities already face serious budget shortfalls. By one recent, conservative estimate, "roughly half of Americans live in States that report short-term budget gaps, potential long-term deficits, or both."[17] And conditions have drastically worsened in recent years. County budgets lost more than $144 billion through the 2021 financial year, while in late 2020, cities saw revenues drop by 21% and expenditures jump by 17%.[18] Local governments

---

[16] *See Achieving a Structurally Balance Budget*, Gov't Fin. Offs Ass'n (Feb. 28, 2012), https://www.gfoa.org/materials/achieving-a-structurally-balanced-budget. Often, States directly impose such balanced-budget requirements on their local governments. *See e.g.*, *id.*; Colo. Rev. Stat. § 29-1-103(2); Ga. Code Ann. § 36-81-3; N.C. Gen. Stat. § 159-8(a); Wash. Rev. Code § 35.33.075.

[17] *See* Josh Goodman, *State Budget Problems Spread*, Pew (Jan. 9, 2024), https://www.pew.org/en/research-and-analysis/articles/2024/01/09/state-budget-problems-spread).

[18] *Analysis of the Fiscal Impact of COVID-19 on Counties* 4, NACo (May 2020), https://www.naco.org/sites/default/files/documents/NACo_COVID-19_Fiscal_Impact_Analysis_1.pdf;

project these problems will only get worse in coming years.[19] And the federal government has also become less willing to fund local governments,[20] leading to litigation in some instances.[21]

The only realistic options to address extra litigation costs are "cutting spending or raising revenues," both of which come at the expense of everyday citizens.[22] Cutting spending would mean

---

New Survey Data Quantifies Pandemic's Impact on Cities, NLC (Dec. 1, 2020), https://www.nlc.org/post/2020/12/01/new-survey-data-quantifies-pandemics-impact-on-cities-municipal-revenues-down-twenty-one-percent-while-expenses-increase-seventeen-percent/.

[19] Daniel Vock, *Cities Stare Down Huge Budget Gaps*, Route Fifty (May 9, 2023), https://www.route-fifty.com/finance/2023/05/cities-stare-down-huge-budget-gaps/386139/ (noting "[m]any city governments," including New York City, Oakland, Milwaukee, San Francisco, Seattle, Washington, D.C., are "suddenly confronting bad budget news, as . . . local economies continue to adjust to post-pandemic conditions").

[20] Kamolika Das, *Sweeping Federal Tax and Spending Changes Threaten Local Governments,* Inst. on Taxation & Econ. Pol'y, June 3, 2025, https://itep.org/sweeping-federal-tax-and-spending-changes-threaten-local-governments/.

[21] *See e.g.,* Compl., *Washington v. FEMA,* No. 1:25-cv-12006 (D. Mass. July 16, 2025) (alleging over $4 billion in cuts); Compl., *Colorado v. H.H.S.* No. 1:25-cv-00121 (D. RI April 1, 2025) (alleging $11 billion in cuts); Compl., *Appalachian Voices v. EPA,* No. 1:25-cv-01982 (D.D.C. June 25, 2025) (alleging $3 billion in cuts).

[22] *See, e.g.*, Gabrial Petek, *The 2022-23 Budget: State Appropriations Limit Implications,* Cal. Legis. Analyst's Off.

reduced funding for education, infrastructure, law enforcement, public health, roads, and housing.[23] And raising revenues may not be possible because state law often hamstrings efforts to impose new local taxes.[24] And of course, even if local governments can pass such measures, taxpayers will be the ones to bear the brunt of the effects of petitioners' rule.

* * *

Petitioner's proposed framework would exact a terrible price on federalism. It would also burden local governments with cost-prohibitive litigation. The Court should not overrule its prior decisions requiring favorable termination whenever a judgment would imply the invalidity of the plaintiff's conviction or

---

(Mar. 30, 2022), https://lao.ca.gov/Publications/Report/4583; *cf. also Montana Department of Revenue Biennial Report* 50*,* Mont. Dep't of Rev. (Dec. 15, 2022), https://revenue.mt.gov/files/DOR-Publications/Biennial-Reports/July-1-2020-June-30-2022-Biennial-Report/Biennial-Report-7-1-2020-6-30-2022-Complete.pdf ("[W]ith the requirements to have a balanced budget, state and local governments can only cut taxes for one group by raising taxes for another or by cutting services.").

[23] Urban Institute*, State and Local Backgrounds,* https://www.urban.org/policy-centers/cross-center-initiatives/state-and-local-finance-initiative/state-and-local-backgrounders/state-and-local-expenditures (last visited Sept 26, 2025).

[24] *See, e.g.*, National Association of Counties*, Counties Struggle with State Revenue Limitations, Mandates*, (Nov. 11, 2016), https://www.naco.org/articles/counties-struggle-state-revenue-limitations-mandates ("State caps such as restricting the types of taxes counties may impose, limits on tax rates and total revenues collected, and an obstacle-strewn approval process financially handcuff counties.").

sentence—regardless of the exact form of relief requested or whether the plaintiff is or ever was imprisoned.

CONCLUSION

For the foregoing reasons, *amicus* urges the Court to affirm.

Respectfully submitted,

R. TRENT MCCOTTER
Counsel of Record
SEPARATION OF POWERS CLINIC
COLUMBUS SCHOOL OF LAW
THE CATHOLIC UNIVERSITY OF AMERICA
3600 John McCormack Rd.
Washington, DC 20064
(202) 706-5488
mccotter@cua.edu

October 20, 2025