

No. 25-1146

IN THE
Supreme Court of the United States

ANGELO PESAVENTO, *et al.*,

Petitioners,

v.

EDDIE L. BOLDEN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

**BRIEF OF INTERNATIONAL MUNICIPAL
LAWYERS ASSOCIATION AS *AMICUS
CURIAE* IN SUPPORT OF PETITIONERS**

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INTEREST OF AMICUS¹

The International Municipal Lawyers Association (IMLA) is the nation’s largest organization devoted to the advancement of local government law. Founded in 1935, IMLA comprises 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. As a non-profit, non-partisan, professional organization, 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 state appellate courts. IMLA brings to the Court’s attention the uncertainty and cost improperly imposed on local governments through the award of prejudgment interest on noneconomic damages—and seeks from this Court a clear rule invalidating such awards.

SUMMARY OF ARGUMENT

This case asks whether prejudgment interest may be awarded on noneconomic damages, such as a section 1983 plaintiff’s alleged emotional distress damages arising from a constitutional violation. Answering this question requires revisiting and reaffirming the basic principle at the heart of prejudgment interest—it is intended to

1. No counsel for a party authored this brief in whole or in part, and no person or entity other than amicus, its members, and its counsel made a monetary contribution to the preparation or submission of this brief. All parties were timely notified of IMLA’s intent to file this brief and consented.

restore to a plaintiff the benefit that would have otherwise existed from the use of money wrongfully denied to the plaintiff by a defendant.

The rule espoused by the Seventh Circuit in the case below, in conflict with three sister Circuits, ignores this basic principle and overlooks the nature of noneconomic damages, which by definition do not reflect a plaintiff's loss of use of money. In this context, rather than providing the intended remedy, an award of prejudgment merely confers a windfall onto the plaintiff, who now recovers for a harm (deprivation of the use of money) never suffered in the first place.

That windfall, when erroneously allowed, will often come at the particular expense of states, local governments, and school districts, which operate under tight budgets and resource constraints and are particularly vulnerable to the heightened risk created by the rule enumerated in the Seventh Circuit's decision. As IMLA explains below, that risk creates significant uncertainty in a government's assessment of whether and how to defend against potentially meritless or excessive claims.

This Court should grant certiorari and use this case to set a bright-line rule that prejudgment interest may not be awarded for noneconomic damages such as emotional distress.

ARGUMENT

I. Local Governments Need Certainty

This case tells a story that, when replicated nationwide, saddles taxpayer-funded government entities at every

level with significant risk and debilitating uncertainty. At trial, Plaintiff Bolden asked for \$44 million as a remedy for a variety of emotional, psychological, and intangible physical harms, both past and future, arising from his wrongful imprisonment (i.e. noneconomic damages). App. 3a.² The jury, having considered his evidence of these harms, awarded him compensatory damages in a lump sum of \$25 million. App. 4a. It did so on a general verdict form that did not apportion any specific amount of the award to particular harms or periods of time. App. 13a. To this, the district court then added prejudgment interest, alchemizing the jury’s blanket award into a verdict of \$32,629,446.51, an increase of more than thirty percent, collectible in full from the City of Chicago. App. 4a.

To understand the significance of this issue beyond the boundaries of this case—and of the City of Chicago—this Court need only look to the district court’s remarks on its prejudgment interest award. Had the City wished to avoid paying such substantial interest, the district court reasoned, the City could have simply settled the case rather than taken its chances at trial. Because it did not do so, the district court viewed the prejudgment interest award as necessary not just to make Bolden whole by providing him the value he would have derived from use of that money had he received it at the moment of his incarceration—regardless of the fact that Bolden would not have had the use of such money even had he never been incarcerated in the first place—but also to force the City “to internalize the costs of [its] own decision-making.” App. 17a, 26a. In other words, prejudgment interest as

2. Citations to “App.” refer to the Appendix to the Petitioners’ Petition for Writ of Certiorari.

approved and applied in this case is designed to compel local governments to price into their litigation decisions the full range and measure of their potential responsibility for a plaintiff's harm.

But this framework ignores the mathematical reality at the heart of cases like this. Noneconomic damages cannot be calculated through a mathematical formula; they are “established through the subjective discretion of the jury.” *Monessen Sw. Ry. v. Morgan*, 486 U.S. 330, 348 n.5 (1988) (Blackmun, J., concurring in part and dissenting in part) (citing *Poleto v. Consol. Rail Corp.*, 826 F.2d 1270, 1278 n.14 (3d Cir. 1987)). Thus, the interest amount—which, according to the district court, supposedly incorporates the additional denial of the plaintiff's use of money by a local government defendant's decision to defend the claim rather than settle it immediately—cannot be reliably ascertained until after the decision to defend is made, and, if the plaintiff ultimately prevails, the jury uses its discretion to create an amount of noneconomic damages.

Viewed through this lens, it is clear that prejudgment interest does not serve the purpose envisioned by the courts below. Instead, it does the opposite. It broadens the range of potential outcomes in each case for noneconomic damages. This, in turn, raises the variance with respect to a local government's aggregate liability in categories of cases in which large claims of noneconomic damages are the norm. This increased variance and resulting uncertainty makes it harder, not easier, for local governments to “internalize the costs” of their decision to defend rather than settle.

This is particularly true for lawsuits brought under section 1983 for alleged constitutional deprivations. These

claims already represent a significant proportion of lawsuits filed against local governments, and of lawsuits filed in federal court as a whole. Roger A. Hanson & Henry W.K. Daley, *Challenging the Conditions of Prisons and Jails: A Report on Section 1983 Litigation* at iii (Dec. 1994). And the floodwaters have only risen higher with time. U.S. Courts, *U.S. District Courts—Civil Cases Commenced, by Nature of Suit, During the 12-Month Periods Ending Sept. 30, 2021 through 2025 (Table C-2A)*, https://www.uscourts.gov/sites/default/files/document/jb_c2a_0930.2025.pdf (showing year-over-year growth in new civil rights actions initiated in federal district courts); U.S. Courts, *Over Two Decades, Civil Rights Cases Rise 27 Percent* (Jun. 9, 2014), <https://www.uscourts.gov/data-news/judiciary-news/2014/06/09/over-two-decades-civil-rights-cases-rise-27-percent>.

While high in volume, these cases are often meritless and rarely meet with success. Hanson & Daley at 36. But even though success is rare, a single successful claim can represent an enormous cost to a local government defendant. As an example, plaintiffs who, like Bolden, prevailed on wrongful incarceration claims have received an aggregate of over \$4 billion in largely noneconomic damages. Nat'l Registry of Exonerations, *Compensation by the Numbers: Federal Civil Rights Lawsuit Compensation* (Mar. 2026), <https://exonerationregistry.org/sites/exonerationregistry.org/files/documents/Table%202%20-%20Civil%20Compensation%20March%202026.pdf>. And in the majority of states, the average prevailing section 1983 plaintiff received multiple millions of dollars in damages. *Id.*

Thus, in this universe of claims characterized by high volume and low rate of success, the cost of a local

government defendant's incorrect decision to defend instead of settle is already high. Making prejudgment interest available in these claims introduces an accelerant to potential damages in each such lawsuit. Local government defendants, stewards of taxpayer money, are left to guess whether that accelerant will amount to nothing, or touch flame and create disaster. When decisions like the Seventh Circuit's aggravate this risk of a backbreaking verdict, these defendants must choose whether to simply absorb that risk, or mitigate it by spending that taxpayer money settling numerous claims that may have no merit.

Ironically, the rule espoused by the Seventh Circuit makes it more difficult for litigating parties to reach a settlement agreement. Noneconomic damages are intrinsically nebulous because they cannot be calculated by reference to objective measures and methods. *See Limone v. United States*, 579 F.3d 79, 105 (1st Cir. 2009) (“There is no scientific formula or measuring device which can be applied to place a precise dollar value on matters such as restraint of freedom, fright, anxiety, loss of face, or emotional scarring.” (cleaned up)). That is exactly why this task—to calculate the noncalculable—is “peculiarly within a jury’s ken[.]” *Rivera Castillo v. Autokirey, Inc.*, 379 F.3d 4, 14 (1st Cir. 2004) (citation omitted). Thus, the precise value of a noneconomic injury only comes into focus (or, more accurately, into existence) when the jury determines that value—at the *end* of the litigation process. Before that, settlement negotiations are frustrated because the parties lack a shared understanding of the value of the claim. *See* Dan B. Dobbs, Paul T. Hayden, & Ellen M. Bublick, *The Law of Torts* § 383 (2d ed. Apr. 2026) (“If damage awards for emotional harm are erratic because

they have no objective measurement, settlement will be erratic, too[.]”); *see also Consorti v. Armstrong World Indus., Inc.*, 72 F.3d 1003, 1010 (2d Cir. 1995) (“Widely varying jury verdicts make it difficult for risk bearers to structure their behavior to efficiently manage risk.”), *judgment vacated on other grounds by* 518 U.S. 1031 (1996).

When a claim’s already ambiguous value is made more so by the possibility of prejudgment interest, the parties must bridge a wider divide to reach a settlement. Settlement is therefore less likely to happen, which means more claims proceed deeper into litigation. And the notoriously long lifespan of section 1983 cases (the case below spanned over six years, largely due to delays caused by the COVID-19 pandemic), along with local government defendants’ inability to control the pace of that litigation, only balloons both the risk posed by prejudgment interest and the consequent cost of mitigating that risk. When settlement becomes more difficult even as the cost of failing to settle rises, local government defendants can compensate only by offering higher amounts from the public coffers, often to resolve claims of little or no merit.

This feedback loop imposes painful consequences on local governments in each jurisdiction that holds to the rule espoused by the Seventh Circuit here. These tax-funded entities already face significant resource constraints and difficult budgeting decisions and tradeoffs. Prejudgment interest as conceived by the courts below injects yet more volatility into an already volatile demand on those resources, clouds budgeting decisions with even more uncertainty and risk, and extracts a higher price when forecasts by well-meaning public officials turn out

wrong. It inhibits the ability of these entities to carry out their mandate to provide valuable public services, to the detriment of their tax-paying constituents. While the Seventh Circuit acknowledged that prejudgment interest is “not meant to penalize[,]” the practical effect of its decision is exactly that—local government defendants are punished for not knowing from the origin of a lawsuit that the jury would find against them, or punished for delays in resolution resulting not from their own fault but from the dynamic this decision creates. App. 5a.

And, as explained below and in Petitioner’s brief, awarding prejudgment interest on noneconomic damages hamstring local governments in service of a goal that was never the purpose of prejudgment interest to begin with. At bottom, decisions like the Seventh Circuit’s below create significant uncertainty and cost to local governments in exchange for the illusion of offering a remedy to plaintiffs which is, underneath that illusion, just a windfall providing them with something they never had to lose in the first place. This exchange serves nobody—not the law, not local governments, and not the tax-paying public they serve.

This case, therefore, presents a suitable vehicle for this Court to provide a uniform resolution to this issue across all jurisdictions. A clear rule that categorically disallows prejudgment interest on noneconomic damages not only would restore the concept to its original purpose, but would also provide local governments with the clarity and certainty they need to evaluate cases like Bolden’s and make appropriate litigation decisions, as the courts below have professed hope that they will.

II. The Seventh Circuit's Opinion Sharpens the Existing Divide Between Circuits

The decision below reads like the unremarkable affirmation of a longstanding and uncontroversial proposition. It is not.

The Seventh Circuit looked to *Hillier v. Southern Towing Co.*, 740 F.2d 583 (7th Cir. 1984), as confirming and continuing the historic availability of prejudgment interest on noneconomic damages in admiralty cases. App. 6a. But *Hillier* got that history wrong. It relied upon three cases as support for this proposition, but none actually provided that support. 740 F.2d at 586.

In *Petition of Marina Mercante Nicaraguense, S.A.*, the court awarded the claimants some amount of noneconomic damages in addition to significant sums of economic damages, and summarily instructed that prejudgment interest be applied to “[a]ll awards to the claimants herein[.]” 248 F. Supp. 15, 29-36 (S.D.N.Y. 1965). Beyond this terse clause, the court provided no discussion of the law on prejudgment interest’s application to noneconomic damages. *Id.* at 36.

In *Hamilton v. Canal Barge Company, Inc.*, the plaintiffs were awarded damages for harms both economic (loss of financial contributions) and noneconomic (pain and suffering and loss of society). 395 F. Supp. 978, 992 (E.D. La. 1975). As in *Petition of Marina Mercante Nicaraguense*, the court awarded prejudgment interest on the total award in cursory fashion. The court stated that plaintiffs had “suffered the loss of the use of the money” awarded in damages, but failed to grapple with the fact

that the plaintiffs had *not* been deprived of the use of any money at the time they suffered their *noneconomic* harms. *Id.*

In *Drachenberg v. Canal Barge Company, Inc.*, the Fifth Circuit affirmed a district court judgment awarding prejudgment interest on an award of both economic and noneconomic damages. 621 F.2d 760, 762 (5th Cir. 1980). But the defendants there did not appeal the interest issue, so the court did not address it at all. *Id.* at 762-63.

These three cases are too flimsy to carry the weight placed upon them by *Hillier* and the Seventh Circuit below. They do not align themselves in a longstanding tradition of applying prejudgment interest to noneconomic damages. They do not examine the propriety of assessing prejudgment interest on noneconomic damages in light of its goal to compensate plaintiffs for the loss of use of their money. They do not address the issue at all. As such, the foundation crumbles from under the Seventh Circuit's notion that its decision merely affirmed a "settled precedent." App. 9a.

What results from the faulty decision below is a deepened divide between the circuits. While the Seventh Circuit attempted to skirt this chasm by questioning whether the split even exists, *see* App. 9a n.1, the fact is that the Third, Fourth, and Tenth Circuits have all come out the other way on this issue and recognized that the animating purpose of prejudgment interest is not served by its assessment on noneconomic damages.

The Third Circuit, in *Poleto v. Consolidated Rail Corporation*, approved of the district court's segregation

of economic harms from noneconomic harms in crafting a prejudgment interest award in a claim brought under the Federal Employers' Liability Act. 826 F.2d 1270, 1277-78 (3d Cir. 1987). In so doing, it took pains to emphasize that the purpose of prejudgment interest—to make a plaintiff whole by restoring the value they might have derived from the use of money lost as a result of the defendant's wrongdoing—is incompatible with the nature of noneconomic damages, which are “inherently nonpecuniary” and untethered to the plaintiff's financial resources. *Id.* at 1278 n.14 (citing *Greater Westchester Homeowners Assoc. v. City of Los Angeles*, 603 P.2d 1329, 1338 (Cal. 1979)). Following the *Poleto* court's well-reasoned dictate, courts in the Third Circuit appropriately preclude prejudgment interest on noneconomic damages as a matter of law. *See, e.g., Robinson v. Fetterman*, 387 F. Supp. 2d 483, 485 (E.D. Pa. 2005) (“The purpose of prejudgment interest is to make a party whole. The plaintiff's damages here were unliquidated. There was no economic loss.” (citing *Monessen*, 486 U.S. at 335)).

The Fourth Circuit, in *Gilliam v. Allen*, held a district court abused its discretion in amending a judgment to add prejudgment interest to a jury verdict for compensatory damages on both economic and noneconomic damages. 62 F.4th 829, 848-49 (4th Cir. 2023). Relying on precedent from this Court, the Fourth Circuit noted that prejudgment interest “classically applies” where a plaintiff has been “deprived of the use of a determinate sum of money”—for example, when “there is a delayed payment of a contractual obligation.” *Id.* at 848 (citing *West Virginia v. United States*, 479 U.S. 305, 308, 310 (1987)). It then concluded that the judgment at issue, which conflated economic and noneconomic harms both past and future

without differentiation, based on evidence that did not include “any proof for loss of use of money[,]” made the calculation of prejudgment interest “impossible” and necessarily the “product of speculation, amounting to a double recovery” or simply punishment. *Id.* at 849.

The Tenth Circuit, in *White v. Chafin*, affirmed the district court’s denial of prejudgment interest on a judgment “primarily” comprised of noneconomic damages. 862 F.3d 1065, 1068 (10th Cir. 2017). The court rejected the plaintiff’s assertion that such damages were “incurred instantly at a discrete point in time” and that he was therefore entitled to compensation for his delayed remedy resulting from the defendant’s decision to defend the lawsuit. *Id.* at 1068-69. The Tenth Circuit also rejected contrary authority from the Ninth Circuit, stating simply that prejudgment interest “was unnecessary” to make the plaintiff whole. *Id.* (citing *Barnard v. Theobald*, 721 F.3d 1069 (9th Cir. 2013)).

These three circuits stand athwart the majority of seven, which (incorrectly) hold otherwise. *See* App. 9a n.1 (collecting cases). The rule in those seven circuits commits the question to the discretion of the district court, on the basis that noneconomic damages accrue the moment the harm is suffered and a plaintiff is denied the use of that money by a defendant’s delay in paying it voluntarily by settlement or otherwise by judgment. *E.g.*, *Barnard*, 721 F.3d at 1078 (citing *Schneider v. County of San Diego*, 285 F.3d 784, 789 (9th Cir. 2002)). Put differently, the rule provides that a defendant who loses at trial should have foreseen their loss and settled the case immediately, and that their failure of foresight represents a separate compensable harm to the plaintiff. The Seventh Circuit’s

decision below further entrenches this divide and strengthens the majority on the wrong side of this issue.

As a practical outcome of this rule, section 1983 defendants in lawsuits like Bolden's in jurisdictions awarding prejudgment interest on top of awards of noneconomic damages operate under heavy uncertainty and high stakes. They are faced with a painful choice: defend and take on the risk that every wrong decision will carry amplified damages, or purchase certainty at a significant price by settling these claims—a significant proportion of which fail on the merits when reached—at a higher frequency. For local governments navigating the perennial raft of section 1983 lawsuits seeking sizeable noneconomic damages, there is no correct choice. In fact, the choice itself hampers important public functions, and the costs ripple through their respective tax-paying constituencies.

This case presents a clean and suitable vehicle for this Court to take up and provide clarity on this issue. There are no predicate issues of fact to be resolved. The damages award at issue is purely noneconomic. The single question presented is one of law. The Court should take this opportunity to announce a uniform rule that upholds the true purpose of prejudgment interest and provides needed clarity to local governments across all jurisdictions.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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