No. 25-_____

IN THE
# Supreme Court of the United States

MIAMI TOWNSHIP BOARD OF TRUSTEES,
*Petitioner*,

v.

ROGER DEAN GILLISPIE AND MATTHEW SCOTT MOORE,
*Respondents*.

**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit**

## PETITION FOR A WRIT OF CERTIORARI

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November 20, 2025

## QUESTION PRESENTED

Ohio Revised Code § 2744.07(B) requires a political subdivision to indemnify an employee for certain qualifying judgments. This includes civil-rights judgments under 42 U.S.C. § 1983. *See* Ohio Rev. Code § 2744.09. The statute places no cap or limit on the indemnification and provides no mechanism for local subdivisions (which have limited authority to raise and spend money) to receive necessary funds from the State. Miami Township, Ohio has been ordered to indemnify a $45 million Section 1983 judgment against a former employee – an amount more than 10 times the Township's General Fund annual budget. Miami Township argued below that, as applied, such an immediate and unconditional indemnification requirement amounts to an imposition of *respondeat superior* liability on the Township, even though this Court has held that § 1983 does not countenance *respondeat superior* liability for local government entities. *See Monell v. Department of Soc. Servs.*, 436 U.S. 658, 691 (1978) ("[A] municipality cannot be held liable under § 1983 on a *respondeat superior* theory."). The question presented is:

Whether, as applied, Ohio Revised Code § 2744.07(B) violates the Supremacy Clause of the United States Constitution because it creates de facto *respondeat superior* liability forbidden by Section 1983 and thereby is preempted by Section 1983.

## PARTIES TO THE PROCEEDINGS

Petitioner Miami Township Board of Trustees was the intervenor in the district court proceedings and the intervenor-appellant in the court of appeals proceedings. The Amended Complaint (Dist. Ct. Dkt. #18 (Jan. 27, 2014)) had listed the City of Miami Township as a defendant; those claims subsequently were dismissed by the district court (Dist. Ct. Dkt. #298 (Sept. 21, 2020)). Two years later, following intervening developments that implicated the interests of the Township, the Township filed a motion to intervene, which the district court granted (Dist. Ct. Dkt. #392 (Oct. 11, 2022)).

Respondent Roger Dean Gillispie was the plaintiff in the district court proceedings and an appellee / cross-appellant in the court of appeals proceedings.

Respondent Matthew Scott Moore was a defendant in the district court proceedings and an appellee / cross-appellant in the court of appeals proceedings.

Robert Miller was a defendant in the district court proceedings and is listed as an appellee on the Sixth Circuit dockets for Nos. 23-3999 and 23-4001 (although not for No. 23-4000), but he did not participate in the court of appeals proceedings. The magistrate judge had recommended that plaintiff's claims against Robert Miller be dismissed (Dist. Ct. Dkt. #191 (May 1, 2019)), and the district court judge adopted that recommendation (Dist. Ct. Dkt. #217 (July 1, 2019)).

Plaintiff's Amended Complaint listed several other individuals and entities as defendants – Tim Wilson, Thomas Angel, Marvin Scothorn, John DiPietro, Stephen Gray, and other unidentified members of the Miami Township Police Department; Montgomery County, Ohio; Kenneth M. Betz, Denise Rankin,

Ralph Nickoson, and other unidentified employees of the Miami Valley Regional Crime Lab; Motors Liquidation Company f/k/a General Motors Corporation; General Motors, LLC f/k/a General Motors Company and NGMCO, Inc.; and Rick Wolfe, Keith Stapleton, David Burke, Robert Burke, and other unidentified persons – but the claims against these defendants were dismissed at various stages of the district court proceedings, leaving Matthew Scott Moore as the only remaining defendant.

## RELATED CASES

Decisions Under Review

*Gillispie v. Miami Township, Ohio, et al.* (6th Cir. June 23, 2025) (Nos. 23-3999, 23-4000, 23-4001) (denying rehearing)

*Gillispie v. Miami Township, Ohio, et al.*, 2025 WL 1276900 (6th Cir. May 2, 2025) (Nos. 23-3999, 23-4000, 23-4001) (affirming district court)

*Gillispie v. City of Miami Township, et al.*, 2024 WL 1895434 (S.D. Ohio Apr. 30, 2024) (No. 3:13-cv-416) (denying motion to enforce and granting motion for stay)

*Gillispie v. City of Miami Township, et al.*, 2024 WL 897592 (S.D. Ohio Mar. 1, 2024) (No. 3:13-cv-416) (denying motion to enforce and granting motion for stay)

*Gillispie v. City of Miami Township, et al.*, 2023 WL 11922094 (S.D. Ohio Nov. 8, 2023) (No. 3:13-cv-416) (order regarding declaratory judgment)

*Gillispie v. City of Miami Township, et al.*, 2023 WL 4868486 (S.D. Ohio July 31, 2023) (No. 3:13-cv-416) (denying motions for judgment as a matter of law, for a new trial, and to alter or amend judgment)

Other, Related Decisions

*Gillispie v. Miami Township, et al.*, 2019 WL 1929727 (S.D. Ohio May 1, 2019) (No. 3:13-cv-416) (report and recommendation regarding disclosure of grand jury testimony)

*Gillispie v. Miami Township, et al.*, 2019 WL 2603571 (S.D. Ohio June 25, 2019) (No. 3:13-cv-416) (adopting report and recommendation regarding disclosure of grand jury testimony)

*Gillispie v. City of Miami Township, et al.*, 2020 WL 5629677 (S.D. Ohio Sept. 21, 2020) (No. 3:13-cv-416) (order in connection with motions for summary judgment)

*Gillispie v. Miami Township, Ohio, et al.* 18 F.4th 909 (6th Cir. Nov. 30, 2021) (No. 20-4119) (dismissing appeal of summary-judgment order)

*Gillispie v. City of Miami Township, et al.*, 2022 WL 1307019 (S.D. Ohio May 2, 2022) (No. 3:13-cv-416) (order granting limited discovery and denying motion to reconsider order denying motion for summary judgment)

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OTHER MATERIALS

Petitioner Miami Township Board of Trustees petitions for a writ of certiorari to review the judgment of the Sixth Circuit in this case.

## OPINIONS BELOW

The opinion of the court of appeals (App. 1a-42a) is not reported but is available at 2025 WL 1276900. The orders of the district court (App. 43a-46a, 47a-58a, 59a-76a, 77a-202a) are not reported but are available at 2024 WL 1895434, 2024 WL 897592, 2023 WL 11922094, and 2023 WL 4868486, respectively.

## JURISDICTION

The Sixth Circuit entered judgment on May 2, 2025, and denied a petition for rehearing on June 23, 2025. App. 215a-216a. On September 15, 2025, Justice Kavanaugh extended the time for filing a petition for a writ of certiorari to and including November 20, 2025. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

## CONSTITUTION, STATUTES, AND RULES INVOLVED

The Supremacy Clause of the U.S. Constitution, art. VI, cl. 2; 42 U.S.C. § 1983; relevant provisions of the Political Subdivision Tort Liability Act, Ohio Rev. Code § 2744.01 *et seq.*; and Federal Rule of Civil Procedure 5.1 are reproduced at App. 217a-222a.

## INTRODUCTION

This case involves an issue of significant importance to local governments arising out of an unprecedented indemnification order against Miami Township. That order, issued under Ohio Revised Code § 2744.07(B), requires the Township to pay a $45 million judgment under 42 U.S.C. § 1983 against a former employee – even though both courts below determined the Township could not be held liable under Section 1983

according to this Court's decision in *Monell v. Department of Social Services*, 436 U.S. 658 (1978). The Township argued below that Ohio Revised Code § 2744.07(B), as applied, violates the Supremacy Clause by essentially reimposing the very liability *Monell* denies. In declining to address that argument, the courts below saddled the Township with crushing debt and the "constitutional problems" to which *Monell* was sensitive. *Id.* at 693. The importance of this case for local governments, and the unprecedented burden it imposes on Miami Township, merit this Court's review.

In *Monell*, this Court held that municipalities may not be held liable under Section 1983 "unless action pursuant to official municipal policy of some nature caused a constitutional tort." *Id.* at 691. Accordingly, "a municipality cannot be held liable *solely* because it employs a tortfeasor—or, in other words, a municipality cannot be held liable under § 1983 on a *respondeat superior* theory." *Id.*

Moreover, this Court has been clear that States cannot use state law to import vicarious liability back into Section 1983, where Congress intended none. *See Moor v. County of Alameda*, 411 U.S. 693, 700 (1973) (rejecting attempt "to adopt into federal [Section 1983] law the California law of vicarious liability for municipalities"). Yet that is precisely what § 2744.07(B) does. By imposing an unqualified and ultimate indemnification obligation on local subdivisions, § 2744.07(B) recreates the very *respondeat superior* liability *Monell* rejected. Other courts have recognized that such state-law circumvention violates *Moor*. *See*, *e.g.*, *Hoa v. Riley*, 78 F. Supp. 3d 1138, 1148 (N.D. Cal. 2015) ("[I]mporting a state law right to . . . indemnification into Section 1983 would conflict with

the policies underlying Section 1983 and contravene the guidance in *Moor*.").

Because § 2744.07(B), as applied here, reimposes the very *respondeat superior* liability this Court rejected in *Monell*, it conflicts with and is thus preempted by Section 1983, as construed by this Court. *See Mutual Pharm. Co. v. Bartlett*, 570 U.S. 472, 475 (2013) ("Under the Supremacy Clause, state laws that require a private party to violate federal law are pre-empted and, thus, are 'without effect.'") (quoting *Maryland v. Louisiana*, 451 U.S. 725, 746 (1981)).

The Township raised its preemption argument below, but the lower courts never adjudicated it, finding – for legally and factually incorrect reasons – that the claim was untimely. *See* App. 38a-42a (noting district court's legal error but affirming based on incorrect premise that the Township could have raised its claim sooner after the verdict). The Township does not seek error correction of that timeliness ruling; instead, it urges this Court to review the preemption arguments that the lower courts ignored. However unusual, review is warranted here because the unprecedented indemnification order in this case raises questions of immense importance for local governments and conflicts with this Court's decisions in *Monell* and *Moor*.

## STATEMENT

On December 13, 2013, Roger Dean Gillispie ("Gillispie") filed a complaint in the Southern District of Ohio asserting claims under 42 U.S.C. § 1983 against Matthew Scott Moore ("Moore"), Miami Township ("Township"), and others based on a wrongful imprisonment that commenced in the 1990s. On September 21, 2020, the district court granted summary judgment in favor of the Township on all of Gillispie's

claims against the Township under *Monell v. Department of Social Services*, 436 U.S. 658 (1978).

When Gillispie's case went to trial in November 2022, Moore, the detective who investigated and charged Gillispie with crimes of rape, of which Gillispie was convicted in 1991, was the sole defendant. Two Section 1983 claims were submitted to the jury: that Moore violated Gillispie's right to a fair trial (1) by suppressing material evidence, in particular reports that eliminated Gillispie as a suspect, in violation of *Brady v. Maryland*, 373 U.S. 83 (1963), and (2) through unreliable identifications. The jury found in Gillispie's favor on both claims, awarding Gillispie $45 million in compensatory damages; judgment was entered against Moore in that amount – the largest civil-rights verdict ever in Ohio.

Prior to trial, the Township moved to intervene because of Ohio Revised Code § 2744.07(B) – a provision in the Ohio Political Subdivision Tort Liability Act that requires a political subdivision to indemnify an employee for certain qualifying judgments. The district court granted the motion to intervene on October 11, 2022, finding that the facts underlying both actions would be the same. App. 203a-214a.

The Township filed its Intervenor Complaint for Declaratory Judgment and Relief on October 13, 2022, seeking an order declaring that the Township had no duty to defend or indemnify Moore under § 2744.07 because Moore was not acting in good faith and was acting outside the scope of his employment or official responsibilities – two exceptions to a political subdivision's duty to indemnify in § 2744.07(B). The Township participated at trial, but the court limited its participation to questioning, argument, and submitting proposed jury instructions and interrogatories

on the discrete issues of good faith and scope of employment under § 2744.07(B).

At trial, after the jury entered its verdict in favor of Gillispie and against Moore, the jury answered three special interrogatories: "was it proven by a preponderance of the evidence that Matthew Scott Moore was not acting in good faith?"; "was it proven by a preponderance of the evidence that Matthew Scott Moore was acting manifestly outside the scope of his employment or official responsibilities as a police officer with Miami Township?"; and "was it proven by a preponderance of the evidence that Matthew Scott Moore was not acting within the scope of his employment or official responsibilities as a police officer with Miami Township?" App. 89a. The jury answered "no" to each.

On August 23, 2023, after resolving all post-trial motions, the court ordered the Township and Moore to file briefs "that resolve[] the claim for declaratory judgment." Dist. Ct. Notation Order (Aug. 23, 2023). The Township raised several constitutional challenges to § 2744.07(B), including that, as applied, § 2744.07(B) violates the Supremacy Clause of the U.S. Constitution, art. VI, cl. 2, because it imposes de facto liability on a political subdivision that Section 1983 prohibits under *Monell*. Moore briefed the constitutional challenges in his response.

The district court rejected the Township's arguments and concluded its constitutional challenge was not timely raised under Federal Rule of Civil Procedure 5.1,[1] even though the Township had served Rule

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[1] Rule 5.1, as relevant, states: "A party that files a pleading, written motion, or other paper drawing into question the constitutionality of a federal or state statute must promptly: (1) file a

5.1 notice on the Ohio Attorney General. App. 73a-76a. The court ordered the Township to indemnify Moore in the full amount of the verdict entered against him. App. 76a.

The Township appealed the district court's decisions, including the court's refusal to address the Supremacy Clause challenges and its order that the Township must indemnify Moore for the full amount of the Section 1983 judgment rendered against him.

On May 2, 2025, the Sixth Circuit affirmed the entirety of the district court's decisions. App. 1a-42a. The Sixth Circuit upheld the district court's dismissal of Gillispie's *Monell* claims, finding that Gillispie had "failed to demonstrate that any reasonable jury could find Miami Township liable for a *Monell* supervisory liability claim." App. 15a. The Sixth Circuit determined that the district court had misunderstood the Rule 5.1 requirement in finding the Township had not satisfied it, but nonetheless held the Township's constitutional challenge untimely because "the Township proceeded to wait ten months after the verdict to first make its constitutional argument." App. 38a-42a.[2] The Sixth Circuit denied rehearing en banc. App. 215a-216a.

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notice of constitutional question stating the question and identifying the paper that raises it, if . . . a state statute is questioned and the parties do not include the state, one of its agencies, or one of its officers or employees in an official capacity; and (2) serve the notice and paper on . . . the state attorney general if a state statute is questioned." Fed. R. Civ. P. 5.1.

[2] The Township had tried to brief its declaratory-judgment action earlier following the verdict, but the court directed the Township to hold off. Dist. Ct. Notation Order (Mar. 16, 2023).

## REASONS FOR GRANTING THE PETITION

This case presents an important question regarding when 42 U.S.C. § 1983, as interpreted in *Monell*, preempts state indemnification laws requiring political subdivisions to indemnify Section 1983 judgments against their employees. This issue, which is squarely presented by this case, touches on fundamental questions regarding the Supremacy Clause and is of vital importance to local governments across the country.

### I. SECTION 2744.07(B) OF OHIO'S INDEMNIFICATION STATUTE VIOLATES THE SUPREMACY CLAUSE

Ohio Revised Code § 2744.07(B), as applied and interpreted here, reimposes the exact *respondeat superior* liability this Court rejected in *Monell*.

#### A. As The Supreme Court Long Has Recognized, Congress Declined To Subject Municipalities To *Respondeat Superior* Liability Under Section 1983

It is black-letter law that municipalities are not subject to *respondeat superior* liability under 42 U.S.C. § 1983. *See Monell v. Department of Soc. Servs.*, 436 U.S. 658 (1978). The *Monell* Court held that "a municipality cannot be held liable *solely* because it employs a tortfeasor—or, in other words, a municipality cannot be held liable under § 1983 on a *respondeat superior* theory." *Id.* at 691. The Court reasoned directly from the text of Section 1983, which imposes liability upon any "person who . . . subjects, or causes to be subjected," any person to a deprivation of rights secured by the Constitution. 42 U.S.C. § 1983. *Monell* reasoned that "the fact that Congress did specifically provide that A's tort became B's liability if B 'caused' A to subject another to a tort suggests that Congress did not intend § 1983 liability to attach where

such causation was absent." 436 U.S. at 692. The Court thus rejected the "creation of a federal law of *respondeat superior*" under Section 1983. *Id.* at 693.

At the same time as it ruled out *respondeat superior* liability for municipalities under Section 1983, *Monell* also articulated the "policy or custom" standard for municipal liability that continues to govern today. The Court held that municipalities "can be sued directly under § 1983 for monetary, declaratory, or injunctive relief where, as here, the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers." *Id.* at 690. By the same token, municipalities "may be sued for constitutional deprivations visited pursuant to governmental 'custom' even though such a custom has not received formal approval through the body's official decisionmaking channels." *Id.* at 690-91. Because the dispute in *Monell* "unquestionably involve[d] official policy as the moving force of the constitutional violation found by the District Court," the Court reversed the grant of summary judgment to New York City and allowed the plaintiffs' claims to proceed. *Id.* at 694-95.

Over the past half-century since *Monell*, the federal framework for municipal civil-rights liability has remained clear. Municipalities may be held liable under Section 1983 only for civil-rights violations caused by a municipal "policy" or "custom." Municipalities are not subject to Section 1983 liability on a *respondeat superior* theory based purely on the actions of their employees.

### B. Ohio's Indemnification Statute Imposes The Same *Respondeat Superior* Liability On Municipalities That Congress Rejected When It Enacted Section 1983

Ohio's indemnification framework for Section 1983 judgments effectively overrides the considered choice of Congress (and the rulings of this Court) with respect to municipal liability for Section 1983 judgments. The proceedings below illustrate how Ohio has changed the rules of Section 1983 litigation and deviated from the federal regime. Plaintiff initially included a Section 1983 claim against Miami Township in his original complaint. But the district court granted summary judgment to the Township on that claim because plaintiff failed to establish the existence of a municipal policy or custom under *Monell*. Plaintiff then proceeded to trial with the municipal employee as the sole defendant and won a $45 million judgment on his two Section 1983 claims against that employee.

Yet *the Township* is now on the hook for that entire $45 million judgment, notwithstanding the dismissal of plaintiff's claim against the Township under *Monell*. The Township's liability resulted from the mechanical operation of Ohio's state-law indemnification framework. That state-law regime renders the Township liable for the entire judgment based purely on the officer's status as a Township employee, thus altering the scope of Section 1983 liability from what Congress chose to impose.

*Felder v. Casey*, 487 U.S. 131 (1988), illustrates the kind of preemption considerations at issue here. In that case, a Wisconsin arrestee brought a civil-rights lawsuit under Section 1983 for violation of his federal civil rights arising out of his arrest. The Wisconsin

Supreme Court held that the plaintiff's complaint had to be dismissed because of his failure to comply with Wisconsin's notice-of-claim statute. This Court reversed, holding that Wisconsin's notice-of-claim statute was preempted with respect to Section 1983 lawsuits. The Court reasoned that the state-law requirement "burdens the exercise of the federal right" because it forces in-state litigants "to comply with a requirement that is entirely absent from civil rights litigation in federal courts." *Id.* at 141. In other words, Wisconsin's statute interfered with "a choice that Congress, not the Wisconsin Legislature, made, and . . . a decision that the State has no authority to override." *Id.* at 143.

The reasoning from *Felder* applies here in full force. In *Felder*, Wisconsin sought to impose additional requirements on Section 1983 plaintiffs that would have overridden Congress's choice to authorize those plaintiffs to seek relief without satisfying those requirements. In this case, Ohio seeks to impose an automatic indemnification requirement on in-state municipalities that would override Congress's considered choice, reflected in the text of Section 1983 and long recognized by the Supreme Court, not to subject municipalities to *respondeat superior* liability under that statute. To permit Ohio to effectuate this scheme allows it to rewrite the statute and overrule *Monell* within its own borders.

### C. Multiple Features Of Ohio's Indemnification Statute Make Clear That It Functions To Recreate *Respondeat Superior* Liability For Municipalities For Judgments Under Section 1983

State-law indemnification statutes differ widely in their specific features. *See generally* Aaron Nielsen,

*Qualified Immunity and Federalism*, 109 Geo. L.J. 229 (Dec. 2020). But multiple features of Ohio's indemnification statute make clear that it violates the Supremacy Clause as applied to municipalities in the context of Section 1983 judgments.

*First*, the Sixth Circuit held below that "a plain reading of Ohio Rev. Code § 2744.07(B) indicates that Miami Township must indemnify Detective Moore for the full amount of damages." App. 37a-38a. The Sixth Circuit therefore rejected the Township's proposed interpretation that would allow it to reimburse Moore for any amounts actually paid in satisfaction of the judgment. As such, operation of Ohio's indemnification statute is indistinguishable from the *respondeat superior* liability that Congress rejected: the municipality is automatically responsible for the entirety of the judgment awarded against an offending individual officer simply because the misdeeds were committed within the scope of the officer's employment for the municipality.

*Second*, Ohio's Political Subdivision Tort Liability Act contains multiple critical fiscal protections for political subdivisions that the Sixth Circuit determined do not apply to indemnification. For example, under § 2744.05(C), a municipality's damages are generally limited to "the actual loss of the person who is awarded the damages," with damages that do not represent "actual loss" (such as intangible losses like pain and suffering) capped at $250,000. Similarly, § 2744.06 protects a municipality's property from execution and establishes procedures by which the subdivision may satisfy certain judgments against it.

Under the Sixth Circuit's decision, none of these limitations applies under the "plain text" of § 2744.07(B), and the Township "must indemnify Detective Moore

for the full amount of damages." App. 37a-38a; *see also* Ohio Rev. Code § 2744.09(E) (exempting "[c]ivil claims based upon alleged violations of the constitution or statutes of the United States" from all provisions of the Act except the indemnification requirement at § 2744.07). In other words, Ohio's indemnification statute here was construed such that Ohio municipalities must indemnify any federal civil-rights judgments against municipal employees, with none of the limitations on liability that otherwise apply to actions against political subdivisions.

States cannot reimpose under another name a form of liability that Congress has rejected in substance. *See Moor v. County of Alameda*, 411 U.S. 693, 700 (1973) (rejecting attempt to circumvent federal interpretation of Section 1983 by "adopt[ing] into federal [Section 1983] law the California law of vicarious liability for municipalities"). Yet Ohio's indemnification statute, as construed by the Sixth Circuit, does exactly that in the context of municipal liability under Section 1983. Having failed to establish custom and practice violations, plaintiff may nevertheless rely on § 2744.07 to recover against the Township via the offending officer's indemnification demand. This second bite at the apple contradicts not only the purpose of § 2744.07 – to "preserv[e] . . . the fiscal integrity of political subdivisions," *Summerville v. City of Forest Park*, 943 N.E.2d 522, 531 (Ohio 2010) – but also this Court's decision in *Monell*. The statute therefore violates the Supremacy Clause of the U.S. Constitution and is preempted.

## II. THE PREEMPTION QUESTION PRESENTED IN THIS CASE IS IMPORTANT

The Court should grant review because this preemption question is exceedingly important – both in the

abstract and as a matter of practical consequences for municipalities.

### A. States May Not Create Remedial Schemes Under State Law That Undermine Congress's Legislative Choices And This Court's Authoritative Interpretations Of Law

The Supremacy Clause of the Constitution makes federal law "the supreme Law of the Land" – "any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. art. VI, cl. 2. Ohio's state-law indemnification regime violates the supremacy of federal law in two respects, both of grave importance.

*First*, Ohio's indemnification statute threatens the supremacy of federal law by encroaching on the will of Congress. Congress rejected *respondeat superior* liability for municipalities under Section 1983, and Ohio has attempted to override that feature of the federal-law regime by operation of state law. Ohio law therefore threatens to "interfere with the careful balance struck by Congress with respect to" the enforcement of federal civil-rights law. *Arizona v. United States*, 567 U.S. 387, 406 (2012).

*Second*, Ohio's indemnification scheme effectively nullifies the judgments of this Court in *Moor* and *Monell* by recreating the *respondeat superior* liability for municipalities that those cases foreclosed. But "[i]f the legislatures of the several states may, at will, annul the judgments of the courts of the United States, and destroy the rights acquired under those judgments, the constitution itself becomes a solemn mockery." *United States v. Peters*, 9 U.S. (5 Cranch) 115, 136 (1809).

This Court should not allow these threats to the supremacy of federal law to impose crushing liability

on a municipality. Absent intervention, Ohio (and other States that may follow its lead) will have assumed the power to effectively alter the will of Congress and override the holdings of this Court.

### B. Application Of § 2744.07(B) Threatens To Impose Crippling Liability On Municipalities Like Miami Township, As It Has In This Case

The preemption question presented here also has immense practical importance for municipalities around the country, as illustrated by the devastating effects on Miami Township of the judgment in this case – the largest civil-rights verdict in Ohio history.

The $45 million damages amount is greater than the Township's discretionary budget by an order of magnitude. Miami Township has 31,000 residents and very limited uncommitted general funds each year. State law strictly limits how the Township may raise funds, and the Ohio constitution forbids the State from paying for any of the Township's debts. *See* Pet. for Reh'g En Banc at 3-7, *Gillispie v. Miami Twp.*, Nos. 23-3999 et al., Dkt. 77 (May 16, 2025) (listing laws). Miami Township is thus left in a catch-22: it must pay the judgment but has no ability to raise or obtain the necessary funds to do so.

As a result, the judgment debt severely threatens funding for local schools, infrastructure, utilities, public safety, and other essential services for generations to come. *See id.* at 1-3. The Township's residents – almost all of whom did not live in the Township when Detective Moore committed his misconduct 30 years ago – are the ones who will suffer. Similar consequences can be expected for municipalities subjected to analogous indemnification statutes now or in the future.

## III. THE TOWNSHIP PRESERVED ITS ARGUMENT REGARDING § 2744.07(B)'S CONFLICT WITH FEDERAL LAW

The Township's preemption challenge was briefed by both parties in the district court and the Sixth Circuit, and notice of the constitutional challenge was timely provided, as required under Federal Rule of Civil Procedure 5.1, to the Ohio Attorney General, who declined to intervene.

The Township intervened pretrial for the narrow purpose of litigating two statutory exceptions – bad faith and scope of employment – to § 2744.07(B) that raised factual questions overlapping with those at trial. A request for a declaratory judgment on the constitutionality of § 2744.07(B) at that juncture, before entry of a verdict against Detective Moore, would have been a request for "an advisory opinion—which a federal court should never issue at all, and *especially* should not issue with regard to a constitutional question, as to which [courts] seek to avoid even *non*advisory opinions." *City of Chicago v. Morales*, 527 U.S. 41, 77 (1999) (Scalia, J., dissenting) (citation omitted). The Township raised its constitutional challenges and provided Rule 5.1 notice as soon as possible after entry of the judgment against Moore. *See* Dist. Ct. Notation Order (Mar. 16, 2023) (directing Township to wait to file summary-judgment motion on declaratory-judgment action).

The district court relied on an incorrect interpretation of Rule 5.1 to find the Township's constitutional challenge untimely. App. 75a-76a; *see* App. 39a-40a (Sixth Circuit noting district court's error). The Sixth Circuit nonetheless affirmed after making its own error: concluding the Township could and should have raised its challenge earlier. App. 40a-42a.

The Township does not ask for review of those procedural errors, well aware this Court is not a court of error correction. The Township nonetheless urges that this case remains an appropriate vehicle despite the lack of a reasoned opinion below.[3] This case squarely presents the issue whether a state law that imposes on local subdivisions an absolute obligation to indemnify individual Section 1983 judgments circumvents this Court's ruling in *Monell* – an issue of importance to local governments across the country, as is clear from the dire consequences now facing Miami Township as a result of the indemnification order.

Section 1983 indemnification issues often are resolved through settlement or negotiation, or based on state-specific statutory nuances. There is thus no guarantee another case will present this same issue as cleanly any time soon. This case is a good vehicle because both lower courts explicitly found the Township to have no direct liability under *Monell*. That ruling casts in high relief § 2744.07(B)'s effect of circumventing *Monell*, in violation of the Supremacy Clause. That preemption issue was fully briefed and preserved below, and it is ripe for this Court's consideration.

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[3] The district court implicitly ruled on the substance of the constitutional challenge by not just deciding the narrow requests for declaratory judgment before it, but also issuing an indemnification order against the Township, preventing the Township from re-raising its constitutional challenge in a separate declaratory-judgment action. *See* Restatement (Second) of Judgments § 33 cmt. e, illus. 2 (1982) (unlike with claims for coercive relief, a plaintiff that secures a declaratory judgment "would not be precluded as a matter of law from maintaining a second action for a [related] declaration").

## CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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