

No. 25-607

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**IN THE SUPREME COURT OF THE UNITED  
STATES**

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MIAMI TOWNSHIP BOARD OF TRUSTEES,  
*Petitioner,*  
v.

ROGER DEAN GILLISPIE, ET AL.,  
*Respondents.*

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

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**BRIEF OF *AMICI CURIAE* OHIO CHAMBER  
OF COMMERCE & DAYTON  
DEVELOPMENT COALITION IN SUPPORT  
OF PETITIONER**

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## **INTEREST OF AMICI CURIAE<sup>1</sup>**

The Ohio Chamber of Commerce (the “Ohio Chamber”), founded in 1893, is Ohio’s largest and most diverse statewide business advocacy organization. It represents businesses ranging from sole proprietorships to Fortune 500 companies. The Ohio Chamber works to promote and protect the interests of its more than 8,000 business members, while fostering economic opportunities and business development in Ohio.

The Dayton Development Coalition is the leading development organization in the Dayton, Ohio region. It works with public and private regional partners to promote its mission of retaining, expanding, and creating jobs in the Dayton, Ohio area.

Those organizations (together, “Amici”) work to enhance Ohio’s economy and business climate. As a result, Amici share a common goal of cultivating local development, creating jobs, and fostering public-private investments in local government.

Amici have a collective interest in this case because the Sixth Circuit’s holding creates

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<sup>1</sup> In accordance with Supreme Court Rule 37.6, the Ohio Chamber of Commerce and the Dayton Development Coalition (together, “Amici”) state that: (1) no counsel to a party authored this brief, in whole or in part; and (2) no person or entity, other than Amici, their members, and their counsel, has made a monetary contribution to the preparation or submission of this brief. All parties received at least ten days’ notice of Amici’s intent to file this brief in accordance with Supreme Court Rule 37.2.

significant financial risks for local governments. Allowing municipalities to be liable for § 1983 claims unrelated to a municipal custom or policy would hinder economic growth and development in Ohio and across the country. The decision below disincentivizes investments in local government and communities. It also risks diverting municipal funds away from development initiatives and public services crucial to economic growth. This would not only have a disproportionately harmful effect on small, rural communities, but also carry negative downstream effects across large regions.

### **SUMMARY OF ARGUMENT**

Before this case, Petitioner Miami Township Board of Trustees (“Miami Township”) was, like other municipalities, immune from suits brought under 42 U.S.C. § 1983 unrelated to its customs and policies. *See Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 691 (1978). And Miami Township’s taxpayers were protected from the local budget being diverted from providing essential services to satisfying debts arising from judgments. *See id.*

Below, the district court held that Miami Township was entitled to summary judgment as a matter of law based on municipal immunity. *Gillispie v. Miami Twp.*, No. 3:13-cv-416, 2020 WL 5629677, at \*23–38 (S.D. Ohio Sept. 21, 2020). That should have put to rest any concerns that Miami Township would face liability for the alleged wrongful conviction.

It did not. Miami Township now faces a \$45 million judgment under Ohio's state employee indemnification statute, Ohio Revised Code § 2744.07. *See Gillispie v. Miami Twp.*, Nos. 23-3999/4000/4001, 2025 WL 1276900 (6th Cir. May 2, 2025) (affirming judgment of district court). Despite first prevailing on immunity grounds, Miami Township still faces vicarious liability for its employee's conduct even though the resulting constitutional injury did not result from Miami Township's custom or policy. This outcome flips municipal immunity on its head.

Significant economic concerns flow from the Sixth Circuit's holding. The Sixth Circuit found that state indemnity statutes can bypass municipal immunity and *Monell*'s requirements for holding municipalities liable. Requiring Miami Township to pay a \$45 million judgment will jeopardize Miami Township's finances and economic prospects for a generation. Investments in Miami Township will be discouraged; revenue for bonds and pension funds would dry up, while insurers may reevaluate coverage. In short, Miami Township's yearly operating budget is \$2 million. Requiring Miami Township to pay off a \$45 million judgment, contrary to *Monell*, will divert resources away from operations vital to economic stability and growth.

But this case does not just concern Miami Township. Financial distress is likely to occur in jurisdictions with employee indemnification statutes similar to Ohio's. Under the decision below, state indemnity statutes across the country can now be read as being at odds with municipal immunity. This will lead to catastrophic consequences.



Judgments like the one affirmed below cause local governments financial distress and may push them to municipal bankruptcy. And the holding below imposes liability on Miami Township under the same respondeat superior principles this Court has long rejected for § 1983 suits. Inviting municipal bankruptcies and reviving respondeat superior liability for municipalities would trigger significant economic harm.

Finally, the realities of paying off a \$45 million judgment show the unfair burden imposed by allowing massive, unpredictable awards under indemnity statutes like Ohio Revised Code § 2744.07(B). No investor, entrepreneur, taxpayer, or employee could anticipate that a jury award based on conduct that occurred thirty years ago would jeopardize Miami Township's financial stability. Unlike financial distress from local mismanagement or economic turbulence from poor market conditions or investments, the financial harm here has no relation to Miami Township's recent activity or governance. The liability stems from the decades-old conduct of a state employee, lacking ties to a local policy or custom. This has no connection to Miami Township's current 30,000 residents, many of whom are taxpayers, nor with how local officials have recently run that municipality.

For these reasons, the decision below harms local economies, local businesses, and investors who partner with municipalities, along with citizens who benefit from predictable, steady financial conditions for municipalities. The ripple effects of

states bypassing municipal immunity by statute warrant review of this important issue.

## ARGUMENT

### **I. Permitting State Employee Indemnity Statutes to Ignore Municipal Immunity Imperils Municipal Economies.**

This brief outlines the potentially devastating economic effects of interpreting Ohio Revised Code § 2744.07(B) as permitting an end-run on municipal immunity. Although the consequences for Miami Township, with its 30,000 residents and local businesses, alone justify review, the question presented to this Court carries implications that span across the country.

#### *A. Municipal Immunity bars respondeat superior liability.*

For over sixty years, this Court's precedent has shielded municipalities like Miami Township from liability for conduct outside their control (i.e., conduct unrelated to a local custom or policy). Starting with *Monroe v. Pape*, 365 U.S. 167, 191 (1961), this Court held that municipalities are immune from § 1983 suits. Then *Monell v. Department of Social Services*, 436 U.S. 658 (1978), clarified that municipal liability for money damages under § 1983 only exists if a municipal policy or custom caused the constitutional violation. So "a municipality cannot be held liable under § 1983 on a respondeat superior theory." *Id.* at 691. Under that line of cases, a municipality is never liable "solely because it employs a tortfeasor." *Los Angeles*

*Cnty. v. Humphries*, 562 U.S. 29, 36 (2010). Never has this Court permitted a § 1983 suit for money damages against a municipality just because a municipal employee committed a constitutional violation.

The Sixth Circuit’s application of Ohio Revised Code § 2744.07(B), which would require that Miami Township indemnify an individual officer for a § 1983 jury award, upends that longstanding precedent. Like removing a critical Jenga piece, stripping municipal immunity causes a municipality’s stable economic landscape to topple. As Justice Powell observed, “many local governments lack the resources to withstand substantial unanticipated liability under § 1983. Even enthusiastic proponents of municipal liability have conceded that ruinous judgments under the statute could imperil local governments.” *Owen v. City of Independence*, 445 U.S. 622, 670 (1980) (Powell, J., dissenting). The Sixth Circuit’s holding ignores Justice Powell’s warning about the perils of making municipalities broadly liable under § 1983.

*B. Awards under § 1983 can disproportionately divert municipal resources.*

Municipalities often have modest or inflexible operating budgets. And they rely on private-sector partnerships or state grants to ensure continued services and development. Yet monetary awards for § 1983 actions can be massive, far more than municipalities budget to spend over many years. This case exemplifies that dynamic.

For 2025, Miami Township estimated an ending balance of \$6,043,144 for its general fund . MIAMI TOWNSHIP 2025 BUDGET OVERVIEW, p. 14 (December 17, 2024), <https://www.miamitwpoh.gov/PDF/Trustees/2025/2025Budget.pdf>. It expected \$3,583,571 in revenue for 2025. *Id.* That money goes to parks, emergency services, public works, and other key government functions. *See id.*, p. 2–12. As highlighted by its 2025 Budget Review, Miami Township leverages tax increment financing (“TIF”) districts<sup>2</sup> to partner with developers for commercial projects and infrastructure to support those partnerships. *See id.*, p. 7. For example, Miami Township relied on TIF funds for public improvements on State Road 28, which has an Aldi as an anchor store. *Id.* All of this “enhance[es] the economic vitality of the township.” *Id.*

Those services, partnerships, and developments outlined in the 2025 Budget Review will be disrupted if Miami Township must pay a \$45 million judgment. Miami Township may struggle to

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<sup>2</sup> “Tax increment financing (TIF) is the most widely used local government program for financing economic development in the United States.” Richard Briffault, *The Most Popular Tool: Tax Increment Financing and the Political Economy of Local Government*, 77 U. CHI. L. REV. 65, 66 (2010). “Although state laws differ, TIF-generated funds generally can be used for a host of purposes, including the installation, repair, or upgrade of physical infrastructure, such as streets and street lighting, curbs and sidewalk improvements, bridges and roads, water mains and supply, sewage removal, wastewater treatment, storm drainage, parks, parking, environmental remediation of polluted sites, land acquisition and clearance, planning and feasibility studies, and the transaction costs of bond financing.” *Id.* at 68.

meet its current investment commitments with revenue diverted to paying off debt, and will likely struggle to convince future partners of its ability to fund and repay its obligations. There is no way to square the liability stemming from the decision below with Miami Township’s “focus on fiscal responsibility” and commitment to ensuring a “high level of services” under its current budget. *Id.*, p. 2. The development, services, and infrastructure outlined in the Miami Townships’ 2025 Budget Review face imminent turmoil if the Sixth Circuit’s holding remains in place.

Under the Sixth Circuit’s reasoning, state indemnification statutes are now swords against taxpayers and local government funds despite being enacted as shields. Such statutes are common. *See* Aaron. L. Nielson & Christopher J. Walker, *Qualified Immunity and Federalism*, 109 GEO. L.J. 229, 269 (2020) (“Every state has codified some form of duty-to-defend or indemnification protection for state or local government employees, but the approaches vary.”). At least twenty-eight states *require* indemnification of local employees. *Id.* at 270. The longstanding municipal immunity for constitutional injuries caused by state employees has no teeth if states can impose the same respondeat superior liability rejected by federal courts.

Businesses and entities that invest in, or partner with, municipalities require financial stability. So too with TIF districts. This Sixth Circuit’s holding therefore causes an important problem: municipalities that unexpectedly have their budgets consumed by a multi-million § 1983

judgment make bad partners for investments. No investor or business could be blamed for shying away from partnering with a local government that could incur an eight-figure liability without warning. Bondholders, pension funds, taxpayers, and insurance providers will also feel the effect of municipalities suddenly having their resources diverted to paying off a large § 1983 award. So if the decision below is not reversed, then municipal governments across the United States will be at risk of financial ruin in ways never contemplated by them or the states. The impact could fall particularly hard on the poorest and least populated areas of our country.

Take, for example, municipal bonds. Municipal bonds play a critical role in developing local infrastructure.<sup>3</sup> From 1991 to 2007, a period for which there is complete data, about three-quarters of the \$1.7 trillion of “tax-exempt debt issued to finance new infrastructure projects ... were used for capital spending on infrastructure by states and localities.” National Association of Bond Lawyers, *Tax Exempt Bonds: Their Importance to the National Economy and to State and Local Governments* (Sept. 2012). That infrastructure serves a vital purpose. If municipalities cannot pay

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<sup>3</sup> “The municipal bond market has been a key, low-cost source of infrastructure financing in the United States since the mid-1800s .... Municipal bonds are used to finance a broad spectrum of public infrastructure, such as roads, bridges, airports, utility systems, schools, hospitals, courthouses, jails, administrative offices, and other public facilities.” National Association of Bond Lawyers, *Tax Exempt Bonds: Their Importance to the National Economy and to State and Local Governments* (Sept. 2012).

back existing bondholders, then local economic development may halt. So too with state infrastructure bank loans issued by the state of Ohio, or loans from other private creditors. Municipalities that divert their budgets to satisfy significant, unexpected debts may be unable to repay the investors who make local economic growth possible.

Municipal economies play a vital role in regional and national business ecosystems. Airports, roads, quality school systems, and other services provided and maintained by local development are necessary for a healthy economy at any scale. So too with construction jobs relating to local development.<sup>4</sup> Deterring banks or bondholders to hold municipal bonds “could slow or even stop major infrastructure projects in their tracks.” Jesse Hamilton & Cheyenne Hopkins, *Regulator Fight Over Munis Threatens New School for Your Kid*, BLOOMBERG BUSINESS (Mar. 18, 2015).

Similar concerns arise from municipalities being unable to pay creditors, support pension funds, keep tax levels steady, or convince insurers to provide reasonable coverage. And voters are likely to balk at levies or tax increases that go towards paying debt rather than providing services.

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<sup>4</sup> In 2022, construction contributed \$5.2 trillion to GDP, which “supported 20.7% of all U.S. economic activity that year.” Brian Lewandowski, et al., *Economic Impacts of Commercial Real Estate*, NAIOP RESEARCH FOUNDATION, p. 10 (2023), 2023-economic-impacts-of-cre-web.pdf. Construction industry spending also “directly and indirectly supported 28.4 million jobs in the economy.” *Id.*

On top of that, reductions for municipal credit ratings would diminish local governments' ability to fund projects and economic development. It would be a complex crisis for any municipality to satisfy a judgment magnitudes larger than its yearly operating budget or operating fund. Especially while trying to remain an attractive partner for development or to keep government services and taxes at a reasonable level.

In short, municipal immunity safeguards many important government functions, as well as the taxpayers who pay for (and need) those functions. As Judge Posner remarked, "*Monell* is probably best understood as simply having crafted a compromise rule that protected the budgets of local governments from automatic liability for their employees' wrongs, driven by a concern about public budgets and the potential extent of taxpayer liability." *Shields v. Ill. Dep't of Corrs.*, 746 F.3d 782, 792 (7th Cir. 2014). The Sixth Circuit's decision strays from that longstanding precedent designed to protect local infrastructure and investment. Risking municipal ledgers plunging into the red, despite decades of courts recognizing municipal immunity, carries grave consequences for local economic conditions.

## **II. The Sixth Circuit's Decision Invites Harmful Municipal Bankruptcies.**

If a municipality experiences a sudden, untenable debt burden, then municipal bankruptcy may be on the horizon. As explained above, judgments under § 1983 can dwarf municipalities'



budgets and general funds. Faced with an immense debt obligation, municipalities may turn to bankruptcy as the only viable option.

In general, bankruptcy sacrifices long-term growth for short-term debt relief. Such tradeoffs should be avoided for local governments when possible. Municipalities play a critical role for American economic development. *See* Vincent S.J. Buccola, *The Logic and Limits of Municipal Bankruptcy Law*, 86 U. CHI. L. REV. 817, 838 (2019) (“In the United States, local government has always been intimately tied up in local development.”). They promote “investments in infrastructure” and provide “public and quasi-public goods” that attract businesses and employees. *Id.* And bankruptcy threatens the continued performance of those functions.

When faced with overwhelming debt, municipalities have few good choices. Increasing revenues proves difficult—“the act of raising tax rates or imposing new fees will generate offsetting delinquency and flight.” *Id.* at 841. But so does tightening the belt on services or investment. If a municipality’s resources “are insufficient to pay for the scale of services it has been known to provide,” that reflects “a municipality whose business is cooked.” *Id.* All told, significant debts, like the judgment affirmed below, leave municipalities with no good options.

So where is a municipality to turn when facing such a debt? Chapter 9 of the Bankruptcy Code, 11 U.S.C. §§ 901–946, allows for financially distressed municipalities to reorganize their debts.

A government entity can file for Chapter 9 bankruptcy if it: (1) is a municipality, (2) is authorized by state law<sup>5</sup>, (3) is insolvent, (4) desires to effect a plan to adjust such debts, and (5) has obtained the agreement of creditors holding at least a majority in amount of the claims of each class, negotiated in good faith with creditors and failed to obtain the agreement of creditors, cannot negotiate with creditors, or reasonably believes that a creditor may try to obtain a transfer that is avoidable. 11 U.S.C. § 109(c). If a local government meets those criteria, it can discharge the debt threatening its ability to attract investors and provide government services.

Municipal bankruptcies are rare, and they should remain so. Their consequences often devastate local communities and businesses. Roughly 700 bankruptcy actions have been filed under Chapter 9, with the “overwhelming majority” involving “special purpose districts such as water and sewer districts rather than general-purpose municipalities such as cities, counties, and towns.” Juliet M. Moringiello, *Goals and Governance in*

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<sup>5</sup> States also address local financial emergencies by statute. For example, Section 118 of the Ohio Revised Code lays out the requirements for declaring a local fiscal emergency. That statute, among other things, defines fiscal emergency conditions, requires submission of a financial plan, authorizes debt obligations, articulates the rights and remedies of holders of debt obligations, and permits actions to dissolve municipal corporations and townships. The Ohio Revised Code thus recognizes the risk that fiscal emergencies pose to all of Ohio. Given that risk, it is unlikely that the Ohio legislature intended that Ohio Revised Code § 2744.07(B) could require municipalities to be liable for significant § 1983 claims.

*Municipal Bankruptcy*, 71 WASH. & LEE. L. REV. 403, 406 (2014). Between 2001 and 2018, general-purpose local governments filed for bankruptcy “just 31 times.” Mary Murphy, *Local Governments Rarely File for Bankruptcy*, PEW CHARITABLE TRUSTS (February 6, 2017). Although uncommon, Chapter 9 bankruptcies for general purpose entities like Miami Township can be seismic, damaging events for local residents and businesses.

Even if a municipality can discharge a large debt through bankruptcy, such as a significant § 1983 judgment, the consequences are still severe. “Bankruptcy, with its uncertainties and stigma, decreases real estate prices and stifles economic activity and investments in the city.” Omer Kimhi, *Chapter 9 of the Bankruptcy Code: A Solution in Search of a Problem*, 27 YALE J. ON REG. 351, 382–83 (2010). “Instead of creating growth, bankruptcy may shrink the local tax base and hold the city's development back even further.” *Id.* Although a debt can be extinguished through municipal bankruptcy, lasting harm often follows in a municipal bankruptcy's wake.

What's more, looming municipal bankruptcies create poor incentives for investment. Municipalities, like other borrowers, “need to be able to make credible, legally-enforceable promises to repay” or else “no one would be willing to lend to them.” Michael W. McConnell & Randal C. Picker, *When Cities Go Broke: A Conceptual Introduction to Municipal Bankruptcy*, 60 U. CHI. L. REV. 425, 426

(1993).<sup>6</sup> If municipalities can no longer honor, or are unlikely to honor, their obligations to investors and bondholders, then the landscape promoting local investment begins to erode.<sup>7</sup>

All told, a municipality may come out of Chapter 9 bankruptcy “with less debt” and have “fewer prospects for the future” in return. *Id.* And municipal bankruptcies “commonly result in increased taxes, higher fees for services, reduced benefits for workers, payments to receivers and emergency managers, lawyers’ fees, and elevated future borrowing costs.” Jeff Chapman, Adrienne Lu & Logan Timmerhoff, *By the Numbers: A Look at Municipal Bankruptcies Over the Past 20 Years*, PEW CHARITABLE TRUSTS (July 6, 2020). So a municipality that undergoes a Chapter 9 bankruptcy becomes a less attractive place to live, invest, open a business, or work as an employee. Massive judgments for awards under § 1983, as the Sixth Circuit permitted below, could prompt

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<sup>6</sup> Both “general obligation bonds” and “special revenue bonds” help municipalities fund “their daily operations as well as revenue-generating projects.” MaryJane Richardson, *The Disguise of Municipal Bonds: How a Safe Bet in Investing Can Become an Unexpected Uncertainty During Municipal Bankruptcy*, 37 CAMPBELL L. REV. 187, 206 (2015). Those bonds are sensitive to “risk that a financially distressed municipality will file for Chapter 9 bankruptcy.” *Id.* As that risk rises, municipalities will be less likely to rely on the necessary investment in municipal bonds.

<sup>7</sup> The rarity of municipal bankruptcy invites uncertainty for investors and businesses who partner with municipalities. “Uncertainty surrounds Chapter 9 because its rare use has produced few published judicial opinions interpreting and applying its provisions.” Moringiello, 71 WASH. & LEE L. REV. 403, 480.

municipalities to sacrifice long-term financial health for a short-term escape from onerous judgments.

That is no guess; previous municipal bankruptcies reflect the negative externalities of a Chapter 9 proceeding. Consider the fallout from the Orange County, California bankruptcy. “By rushing to bankruptcy, Orange County ruined its credit, worsened relations with other local governments, and virtually painted itself into the corner of costly litigation in order to repay those governments.” *When Government Fails: The Orange County Bankruptcy*, PUBLIC POLICY INSTITUTE OF CALIFORNIA (Mar. 18, 1998). There, the “county’s bankruptcy shocked Wall Street because of threats that municipal bondholders, traditionally secure in their investments, might not be repaid by one of the nation’s wealthiest counties.” E. Scott Reckard, *O.C. Bankruptcy Case Settled by First Boston*, L.A. TIMES (Jan. 30, 1998). As reflected by that case study, municipal bankruptcies stymie investment contrary to local government’s role of promoting economic development.<sup>8</sup>

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<sup>8</sup> Like Orange County, many municipalities have seen harmful results from Chapter 9 bankruptcies. “In Jefferson County, sewer system customers will pay some of the highest rates in the nation over the next 40 years as part of the debt restructuring. In Central Falls, residents’ property tax bills are increasing 4 percent in each of the next five years. Retired city workers of Central Falls and Detroit will receive lower pension or cost-of-living benefits than they were promised.” Susan K. Urahn & Tom Conroy, *After Municipal Bankruptcy: Lessons from Detroit and other local governments*, PEW CHARITABLE TRUSTS (Aug. 2025). Recurring harms include “service reductions, employee layoffs, cuts to public pensions, bond investment losses, property tax increase, millions of

### **III. Massive, Unexpected Judgments Against Municipalities Unfairly Harm Local Taxpayers, Businesses, and Investments.**

The Sixth Circuit's ruling that state indemnification statutes can bypass municipal immunity raises fairness concerns. Should the Sixth Circuit's holding remain in place, Miami Township must pay off the \$45 million judgment with its yearly operating budget around \$2 million. Local residents and businesses will shoulder that burden.

Unlike typical *Monell* defendants, Miami Township is not facing liability for its own custom or policy. And unlike the cause of most municipal financial emergencies, Miami Township's debt arose from events beyond its control. This was no investment gone bad or failure to carefully budget that led to Miami Township's liability at issue.

The outcome here, which could recur for municipalities across the country, is severe. The Sixth Circuit's holding exposes municipalities to nearly unlimited damages under § 1983. No time bar or damages cap limits § 1983 claims. Just like this case, multimillion dollar lawsuits may arise from circumstances that no person affiliated with a local government could have expected. And just as with Miami Township, municipalities could have their budgets and development plans disrupted without warning.

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dollars in legal fees, infrastructure decay, and loss of population." *Id.*

No investor, developer, business owner, employee, or bondholder could have foreseen Miami Township's current predicament. A constitutional injury from the 1990s would be unidentifiable from any data, figures, books, or records relevant to relying on, investing in, or partnering with, Miami Township. Any business or employee who depends on Miami Township's stable financial footing, along with the citizens who depend on its continued emergency services, will likely face adverse consequences as Miami Township makes difficult financial decisions necessary to pay off the judgment entered below. The Sixth Circuit's holding undermines the reliance interests of businesses, investors, and citizens who depend on predictable functionality from municipalities.

In sum, permitting state indemnification statutes, like Ohio's, to bypass municipal immunity carries adverse consequences and conflicts with this Court's holding in *Monell*. This Court should protect municipalities' residents and businesses, like those in Miami Township, from shouldering the strain of paying off a § 1983 judgment for an injury solely inflicted by a municipal employee.

## CONCLUSION

For the reasons above, this Court should grant Miami Township's petition for writ of certiorari.

Respectfully submitted,

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