

No. _____

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

GARY BETTS AND EARL BETTS,
Petitioners,

v.

BOONE COUNTY, ILLINOIS, ET AL.,
Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

JAMES M. KELLY
JAMES KELLY
LAW FIRM, PC
7817 N. Knoxville Ave.
Peoria, IL 61614

JAY L. COHEN
JAMES KELLY
LAW FIRM, PC
68 South Service Road
Suite 100
Melville, NY 11747

ROMAN MARTINEZ
Counsel of Record
GREGORY G. GARRE
BLAKE E. STAFFORD
SAKINA J. HAJI
LATHAM & WATKINS LLP
555 Eleventh Street, NW
Suite 1000
Washington, DC 20004
(202) 637-3377
roman.martinez@lw.com

Counsel for Petitioners

QUESTION PRESENTED

In *Monell v. Department of Social Services of the City of New York*, this Court held that a municipality may be held liable under 42 U.S.C. § 1983 when the municipality itself—through officials’ execution of a municipal “policy or custom”—causes a deprivation of rights protected by the Constitution. 436 U.S. 658, 694 (1978). This Court subsequently made clear that unconstitutional actions taken by a municipality’s “final decisionmaker” constitute acts of municipal policy giving rise to municipal liability. *Pembaur v. City of Cincinnati*, 475 U.S. 469, 485 (1986).

In the decision below, a divided Seventh Circuit panel held that a municipal official’s unconstitutional actions cannot establish official municipal policy if those actions also violated state or local law. Under this rule, such a violation operates as a categorical shield to *Monell* liability, insulating municipalities from responsibility for even the most blatant constitutional violations. As Judge Hamilton noted in dissent, that rule cements an acknowledged circuit split and warrants review by this Court.

The question presented is whether municipal liability under Section 1983 is categorically unavailable for unconstitutional actions that also violate state or local law.

PARTIES TO THE PROCEEDING

Petitioners (plaintiffs-appellants below) are Gary Betts and Earl Betts.

Respondents (defendants-appellees below) are Boone County, Illinois, and Rebecca Wigget, in her official capacity as Boone County Coroner.

RELATED PROCEEDINGS

United States Court of Appeals (7th Cir.):

Betts v. Boone County, No. 25-1685 (June 15, 2026)

United States District Court (N.D. Ill.):

Betts v. Boone County, No. 23-cv-50418 (Mar. 26, 2025)

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Gary Betts and Earl Betts respectfully petition this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case.

OPINIONS BELOW

The court of appeals' opinion (App. 1a-38a) is reported at 178 F.4th 1051. The district court's dismissal order (App. 39a-45a) is available at 2025 WL 919618.

JURISDICTION

The court of appeals entered judgment on June 15, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Relevant statutory provisions are reproduced at App. 46a-52a.

INTRODUCTION

Section 1983 is an essential vehicle for protecting Americans against government incursions on their constitutional rights. Its original function was to enforce the guarantees of the Fourteenth Amendment in the Reconstruction Era, giving newly freed citizens a federal remedy against local governments that violated their rights with impunity. In recent years, it has been used to hold local governments accountable for violating the Constitution's protection of free speech, religious liberty, the right to bear arms, property rights, and the freedom from abusive police misconduct.

This case presents a foundational question about when Section 1983 can be used to hold municipalities liable for constitutional violations. Under *Monell v. Department of Social Services of the City of New York*, 436 U.S. 658 (1978), and its progeny, municipalities are liable under Section 1983 for violations caused by municipal policies and customs, including the acts of municipal officials vested with final policymaking authority. The question here is whether municipalities may be liable—and held accountable—under *Monell* whenever their unconstitutional acts also violate state or local law.

According to the divided Seventh Circuit decision below, the answer is categorically *no*, because an official's actions “cannot be viewed as municipal ‘policy’ in cases where they contradict state law.” App. 15a. That rule transforms the violation of state law into an impenetrable defense for the municipality itself, insulating it from accountability under Section 1983 even when its “top official[s]” blatantly violate the Constitution. *Id.* at 12a.

The Seventh Circuit’s decision entrenches a deep circuit split, as Judge Hamilton explained below. *Id.* at 30a-34a. At least six circuits have recognized that a municipality may be liable for unconstitutional acts that also violate state or local law. The Seventh Circuit is on the wrong side of that split, as its rule “perverse[ly]” construes Section 1983 to make municipalities *less* accountable when their officials’ conduct is *more* illegal. *Id.* at 37a. As then-Judge Gorsuch observed for the Tenth Circuit when rejecting that rule, nothing in Section 1983’s text or history—or in this Court’s precedents—supports such an “irrational result[.]” *Simmons v. Uintah Health Care Special Dist.*, 506 F.3d 1281, 1285 (10th Cir. 2007).

The ramifications of the Seventh Circuit’s rule are extraordinary. “To pose the issue starkly,” under the decision below, “*Monell* liability would *not* apply” to a city whose “mayor orders police to shut down a political march by his opponents” or “discriminates on the basis of religion or race”; nor would it apply to “a county whose elected sheriff rape[s] a prisoner while on the job” or “orders the local police simply to stop issuing handgun licenses.” App. 22a, 30a (Hamilton, J., dissenting). All of those unconstitutional acts also violate state law, so none can constitute municipal “policy” for purposes of *Monell* liability. Given this “astonishing and unprecedented restriction on *Monell*” and the lower-court confusion, Judge Hamilton expressly urged “[this] Court [to] step in to clarify that an unconstitutional action by a truly final local policymaker can establish local policy even if the action also violates state or local law.” *Id.* at 25a, 29a.

The shocking facts of this case underscore the need for this Court’s review. In 1977, high school student

Louise Betts was kidnapped, raped, and murdered in Boone County, Illinois. Her body was examined by the Boone County Coroner, Wesley Hyland. As County Coroner, Hyland was an elected county official at the helm of the County Coroner's office for two decades, with sole and final authority over the handling and release of decedents' remains. Exercising that authority, Hyland examined Louise's body before releasing it to her grieving family for burial.

But Hyland secretly kept Louise's skull, along with multiple skulls from other bodies he examined during his tenure as Boone County Coroner—a macabre practice concealed from every family whose loved one Hyland had mutilated. The County did not reveal the truth about Hyland's practice until 2022, several years after his death. As a result, Louise's brothers, petitioners Gary and Earl Betts, were forced to exhume Louise's casket and reinter her remains, thereby desecrating her burial more than four decades after she was laid to rest according to the tenets of her Christian faith.

Petitioners brought this suit to hold Boone County responsible for its County Coroner's actions, which violated their constitutional right to due process by depriving them of their sister's remains without any process whatsoever. The courts below correctly assumed that petitioners adequately pleaded a constitutional due-process violation. But the panel majority held that the County is immune from *Monell* liability: Because Hyland's unconstitutional practice of retaining skulls also violated an Illinois statute, that practice cannot constitute a "policy" for which Boone County is accountable under Section 1983. Petitioners are thus left without recourse.

That decision warrants this Court’s review. The circuit split is clear and acknowledged, and the ramifications of the Seventh Circuit’s position are sweeping. If municipal liability under Section 1983 hinges on whether the unconstitutional conduct also violates state or local law, then this vital means of holding municipalities accountable will be foreclosed in numerous cases falling within Section 1983’s heartland. That result cannot be squared with the statute’s text, history, or purpose. This Court should grant certiorari to resolve the split and restore the proper scope of municipal accountability under Section 1983.

STATEMENT OF THE CASE

A. Legal Background

1. Section 1983 imposes liability on “[e]very person” who, “under color of” state law, “subjects, or causes to be subjected,” any citizen “to the deprivation of any rights ... secured by the Constitution and [federal] laws.” 42 U.S.C. § 1983. The statute provides a federal remedy against “state actors [that] deprive American citizens of federally protected rights.” *Health & Hosp. Corp. of Marion Cnty. v. Talevski*, 599 U.S. 166, 176 (2023).

Enacted as part of the Civil Rights Act of 1871, Section 1983 reflects Congress’s response to “pervasive state-sanctioned lawlessness and violence against the freedmen and their White Republican allies” during Reconstruction. *Id.* Despite “state laws on the books” prohibiting such violence, state and local administrations in the South remained “inadequate or unwilling” to “enforce the laws with an equal hand.” *Monroe v. Pape*, 365 U.S. 167, 174-76 (1961). “[W]hippings and lynchings and banishment”

continued, while “State[s] made no successful effort to bring the guilty to punishment or afford protection or redress to the outraged and innocent.” *Id.* at 175. Thus, despite the Fourteenth Amendment’s promise of equal protection of the laws, such protection remained elusive as a matter of practice. Congress passed Section 1983 “to afford a federal right in federal courts” where state actors failed to safeguard the “rights, privileges, and immunities guaranteed by the Fourteenth Amendment.” *Id.* at 180.

2. The Court’s decisions in *Monroe* and *Monell* establish the groundwork for Section 1983 litigation. In *Monroe*, this Court held that state officials can act “under color of” state law within the meaning of Section 1983 even when their conduct violates state law. *Id.* at 183-84. The Court explained that state officials act “under color of” state law when they engage in “[m]isuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.” *Id.* at 184. Accordingly, compliance with state law is irrelevant: “The federal remedy is supplementary to [any] state remedy,” so “the fact that [the state] by its constitution and laws outlaws [the conduct] is no barrier” to liability under Section 1983. *Id.* at 183.

In *Monell*, this Court held that Section 1983’s reference to “person” includes not only individual state officials but also “municipalities and other local government units.” 436 U.S. at 690. Based on the original meaning of the term “person” as understood in 1871, as well as congressional debates on Section 1983, the Court explained that “local government bodies were to be included within the ambit of the persons who could be sued” under Section 1983. *Id.* at 683-90. But the Court noted that a municipality

can be held liable only when the municipality itself “causes” the constitutional tort. *Id.* at 691-92. Thus, “a municipality cannot be held liable” under a *respondeat superior* theory—i.e., “solely because it employs a tortfeasor.” *Id.* Instead, municipal liability arises “when execution of [the municipality’s] policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury.” *Id.* at 694.

Monell “d[id] not address ... the full contours of municipal liability” under Section 1983. *Id.* at 695. In subsequent cases, this Court has elaborated on *Monell*’s “policy” requirement, explaining that “[o]fficial municipal policy includes the decisions of a government’s lawmakers, the acts of its policymaking officials, and practices so persistent and widespread as to practically have the force of law.” *Connick v. Thompson*, 563 U.S. 51, 61 (2011). With respect to that second category of *Monell* claims, the Court has made clear that even a single decision can constitute municipal policy if it is made by a municipal official who, by virtue of state and local law, serves as an “authorized decisionmaker[]” for the municipality. *Pembaur v. City of Cincinnati*, 475 U.S. 469, 479-81 (1986). As long as the action “is directed by those who establish governmental policy, the municipality is equally responsible whether that action is to be taken only once or to be taken repeatedly.” *Id.* at 481.

3. Just two years after deciding *Monell*, this Court recognized that municipal liability under Section 1983 plays a “vital” role in “vindicating cherished constitutional guarantees.” *Owen v. City of Independence*, 445 U.S. 622, 651 (1980). That is no less true today. Indeed, many of this Court’s recent constitutional decisions have arisen in Section 1983

suits challenging municipal policies that infringed a wide array of constitutional guarantees, including:

- Religious liberty, *see, e.g., Mahmoud v. Taylor*, 606 U.S. 522 (2025); *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507 (2022); *Fulton v. City of Philadelphia*, 593 U.S. 522 (2021);
- Freedom of speech, *see, e.g., Olivier v. City of Brandon*, 607 U.S. 552 (2026); *Lozman v. City of Riviera Beach*, 585 U.S. 87 (2018); *Reed v. Town of Gilbert*, 576 U.S. 155 (2015);
- The right to bear arms, *see, e.g., New York State Rifle & Pistol Ass’n v. City of New York*, 590 U.S. 336 (2020) (per curiam); *McDonald v. City of Chicago*, 561 U.S. 742 (2010);
- The right to be free from unlawful seizures, *see, e.g., Manuel v. City of Joliet*, 580 U.S. 357 (2017); and
- The right to just compensation for the taking of property, *see, e.g., Knick v. Township of Scott*, 588 U.S. 180 (2019).

These municipal liability cases underscore that Section 1983 remains an essential mechanism for vindicating constitutional rights.

B. Factual Background

1. This case involves a *Monell* claim asserted against Boone County, Illinois, for the unconstitutional actions of Wesley Hyland in his capacity as Boone County Coroner.

Under Illinois law, the County Coroner is an independently elected county official who has virtually complete control over the operations of the Coroner’s Office and the investigations of deaths. 55 ILCS 5/3-3002, 3003, 3013. Upon election, the County

Coroner serves a four-year term. 10 ILCS 5/2A-18. Like other municipal leaders, the County Coroner takes an oath to support the U.S. and Illinois Constitutions. 55 ILCS 5/3-3005; *see* 65 ILCS 5/3.1-10-25; Ill. Const., art. XIII, § 3. The County Coroner is considered a conservator of the peace of the County and, in that capacity, given all the same powers as the Sheriff of the County. 55 ILCS 5/3-3007. No dead body found in the County may be moved or handled without the County Coroner's permission. 55 ILCS 5/3-3019. And no dead body may be released to the decedent's next of kin until the County Coroner deems the performance of his duties complete, at which point the Coroner "shall release the body of the decedent to the decedent's next of kin" or other representative "for burial." 55 ILCS 5/3-3021.

From 1968 to 1988, Wesley Hyland was elected to five terms as the County Coroner for Boone County. Resp. CA7 Br. 3 n.1. During his tenure, Coroner Hyland repeatedly and surreptitiously retained skulls of bodies he examined on behalf of the County. App. 1a-2a. The victims of this heinous and sacrilegious practice—the families of the decedents whose skulls he retained—were obviously unaware of it. Hyland died in 2016, and Boone County did not disclose his skull-retaining practice until 2022. Resp. CA7 Br. 3 n.1; App. 2a.

2. This case involves one of the families victimized by Boone County through Coroner Hyland's actions.

In September 1977, high school student Louise Betts was brutally kidnapped, raped, and murdered. App. 2a. The murderer left her body in a field in Boone County, where it was discovered six months later. *Id.*; *see Historical Gallery: The Louise Betts*

Case, Rockford Register Star (July 17, 2013), <https://tinyurl.com/BettsGallery>. As Boone County Coroner, Hyland possessed Louise’s remains during the course of the police investigation and prosecution of the murderer. App. 2a; CA7 App. 57. At the conclusion of the investigation, Hyland released Louise’s remains to her family. App. 2a. And as with the other victims of Hyland’s practice, he secretly kept her skull. *Id.* The Betts family buried Louise in a Christian funeral service in April 1978, comforted by the fact that—having suffered a brutal death—she would rest in peace. CA7 App. 57.

In November 2022—over 44 years after Louise’s burial, and 6 years after Coroner Hyland’s death—the Boone County Coroner’s Office informed Louise’s brothers, petitioners Gary and Earl Betts, that it possessed Louise’s skull. App. 2a. At that point, petitioners were forced to undertake one of the most painful experiences imaginable. They were forced to exhume their own sister’s casket and reinter her remains—reopening wounds of the deepest and most personal nature. CA7 App. 57-58. It is no surprise that virtually every religious and cultural tradition in the world condemns the desecration of human remains. *See National Archives & Recs. Admin. v. Favish*, 541 U.S. 157, 167 (2004).

C. Proceedings Below

1. Petitioners sued Boone County and Rebecca Wigget, in her official capacity as Boone County Coroner, under Section 1983 for depriving them of their right to possess and properly bury their sister’s remains without any notice or an opportunity to be heard, in violation of the Fourteenth Amendment’s due process guarantee. App. 40a; CA7 App. 60-61.

Petitioners argued that given Coroner Hyland’s complete authority over the examination and release of dead bodies, his decades-long practice of retaining skulls without due process was an unconstitutional municipal policy for which the County was liable under *Monell*. App. 2a-3a; CA7 App. 60-61.

The merits of petitioners’ substantive constitutional claim are straightforward and not at issue here. See App. 3a-4a. The Fourteenth Amendment’s Due Process Clause “extends various procedural safeguards” to property interests recognized under state law. *Leis v. Flynt*, 439 U.S. 438, 441 (1979). And under Illinois law, “family members have a property right to a next of kin’s remains.” App. 4a (collecting cases); see, e.g., *Cochran v. Securitas Sec. Servs. USA, Inc.*, 93 N.E.3d 493, 497 (Ill. 2017) (“[W]hile in the ordinary sense, there is no property right in a dead body, a right of possession of a decedent’s remains devolves upon the next of kin in order to make appropriate disposition thereof, whether by burial or otherwise.”).

Accordingly, both courts below held—and the County did not dispute on appeal—that petitioners had a constitutionally cognizable property interest in possessing and burying their sister’s remains. App. 4a; CA7 App. 48-49. Both courts also expressly assumed that Coroner Hyland’s action—surreptitiously retaining Louise’s skull alongside the skulls of his other victims—violated the Constitution by depriving petitioners of their property interest without due process. App. 4a; CA7 App. 48-51. The merits of petitioners’ Fourteenth Amendment claim thus are not at issue in this Court; the only question is “whether *Monell* has been satisfied.” App. 4a.

2. The district court dismissed petitioners' Section 1983 claim, concluding that the County could not be liable under *Monell* for Coroner Hyland's unconstitutional conduct. *Id.* at 39a-45a. The court "assume[d] that Hyland had final policymaking authority" and thus could establish County policy for which the County could be held liable. *Id.* at 43a. But the court concluded that, under circuit precedent, a final policymaker's action does not constitute municipal policy unless it implements "a law or a custom with the force of law." *Id.* Here, the court concluded, Hyland "didn't implement a policy but rather frustrated the underlying one." *Id.* at 44a. In the district court's view, Illinois law required Hyland to "respectfully administer the Coroner's office," and his failure to do so—in violation of state law—meant that he categorically could not have established County policy. *Id.*

3. The Seventh Circuit affirmed in a divided decision. *Id.* at 1a-38a. The panel majority agreed that, under *Monell*, municipalities may be liable under Section 1983 for the acts of municipal officials with final policymaking authority. *Id.* at 5a-7a. And the majority recognized that as the County Coroner, Hyland served as the "top official in the coroner's office, elected by the people of the county" and vested with "general authority over [his] particular domain." *Id.* at 12a, 14a. But the majority concluded that Hyland's policy of retaining skulls of bodies he examined as Boone County Coroner did not establish Boone County policy because—and only because—his actions also violated state law. *Id.* at 12a, 21a.

To reach that conclusion, the majority applied a categorical rule purportedly derived from circuit precedent: "An official's actions ... cannot be viewed

as municipal ‘policy’ in cases where they contradict state law.” *Id.* at 15a (citing *Killinger v. Johnson*, 389 F.3d 765, 772 (7th Cir. 2004); *Auriemma v. Rice*, 957 F.2d 397, 400 (7th Cir. 1992)). In other words, “a government official is not a final policymaker if state or local law restricts his power.” *Id.* The majority acknowledged that this rule and its underlying precedent conflict with decisions from the Fifth and Tenth Circuits permitting *Monell* claims despite violations of state or local law. *Id.* at 18a-20a (citing *Bennett v. Pippin*, 74 F.3d 578 (5th Cir.), *cert. denied*, 519 U.S. 817 (1996); *Simmons*, 506 F.3d 1281 (10th Cir. 2007)). But the majority believed its hands were tied by “binding circuit precedent.” *Id.* at 14a-15a.

Applying that rule in this case, the majority pointed to an Illinois statute providing that “the coroner shall release the body of the decedent to the decedent’s next of kin” “as soon as may be consistent with the performance of his duties.” *Id.* at 8a (quoting 55 ILCS 5/3-3021). This state statute, the majority reasoned, “restrained Hyland’s authority” as policymaker insofar as it makes clear that “he does not get to keep a body part.” *Id.* at 10a-11a. Because Hyland “acted contrary to [that] state law,” he “‘violated rather than implemented’ Boone County policy,” relieving the municipality of liability under *Monell*. *Id.* at 12a; *see also id.* at 20a (“When a state unequivocally restricts a final policymaker’s power over a subject, he does not establish policy when violating that prohibition.”).

4. Judge Hamilton dissented. *Id.* at 22a-38a. As he explained, the majority’s rule—which treats an “official’s violation of state law” as a defense to *Monell* liability—is unmoored from *Monell*’s “policy” requirement, which “has nothing to do with whether

a policy violates state law.” *Id.* at 37a. Rather, that requirement is designed to determine whether the municipality’s policymakers’ “edicts or acts” “inflict[ed] the injury,” such that the injury was “caus[ed]” by the municipality itself. *Id.* at 36a.

In this analysis, Judge Hamilton explained, state law is relevant to determine how “final policymaking authority” is allocated “between various officials” to determine “which officials act as the municipality in which ‘areas’ of activity.” *Id.* at 37a. But here, “identifying the responsible official is easy” because “Illinois law grants the county coroner, an independently elected official accountable only to the voters, sole authority to release a dead body.” *Id.* at 38a. “The fact that he was required to comply with [Illinois law] while exercising this authority does not take releasing bodies outside of his area of responsibility.” *Id.*

Judge Hamilton noted that by failing to follow that straightforward analysis, the majority’s decision conflicts with decisions from other circuits holding that “*Monell* liability can apply even where an official with final municipal policymaking authority violated both state law and the United States Constitution.” *Id.* at 30a-34a. And the majority’s approach “is fundamentally at odds with the purpose and history of Section 1983,” which was passed during Reconstruction because “local officials were not enforcing [state] laws and were actively encouraging their violation in the campaigns of terror to (re)establish white supremacy.” *Id.* at 34a, 37a.

Finally, Judge Hamilton illustrated the “stark[]” ramifications of the majority’s rule through a series of examples that will escape *Monell* liability. *Id.* at 22a-23a, 27a-30a. By treating a state-law violation as a

shield from *Monell* liability, the majority's rule would immunize municipalities where elected officials (1) shut down a political protest in violation of state free-speech laws; (2) discriminate based on race or religion in violation of state antidiscrimination laws; (3) abuse prisoners in violation of state criminal laws; or (4) refuse to issue handgun licenses in violation of state right-to-carry laws. *Id.*

Given these stark consequences and the circuit confusion, Judge Hamilton expressly urged this Court to "step in to clarify that an unconstitutional action by a truly final local policymaker can establish local policy even if the action also violates state or local law." *Id.* at 25a.

REASONS FOR GRANTING THE PETITION

This petition readily satisfies the Court's criteria for certiorari. The decision below solidifies an acknowledged circuit split on whether a *Monell* claim is categorically barred if the unconstitutional action at issue also violated state or local law. That question is exceptionally important. And the Seventh Circuit's rule foreclosing *Monell* liability in cases where municipal officials also violate state law is exceptionally wrong. That rule has no basis in this Court's precedents, defies Section 1983's text and history, and perversely renders municipalities less accountable when their officials' conduct is more illegal. Certiorari is warranted.

I. THE DECISION BELOW SOLIDIFIES A DEEP CIRCUIT SPLIT

The Seventh Circuit's decision confirms a longstanding circuit split on whether municipalities can categorically escape *Monell* liability when the unconstitutional action at issue also violated state or

local law. The Second and Seventh Circuits say yes; the Third, Fourth, Fifth, Sixth, Tenth, and Eleventh Circuits say no. The circuit split is clear. It was recognized by both the majority and the dissent below, *see* App. 18a-20a; *id.* at 30a-34a (Hamilton, J., dissenting); and it has been recognized by other courts and judges too, *see Roe v. City of Waterbury*, 542 F.3d 31, 40-41 (2d Cir. 2008), *cert. denied*, 558 U.S. 933 (2009); *Whitson v. Board of Cnty. Comm’rs of Cnty. of Sedgwick*, 106 F.4th 1063, 1075 (10th Cir. 2024) (Phillips, J., dissenting). As Judge Hamilton observed, this split is unlikely to resolve without this Court’s intervention. App. 25a.

A. Two Circuits Categorically Bar *Monell* Claims If The Unconstitutional Action Violated State Or Local Law

The minority view—adopted by the Seventh and Second Circuits—is that a Section 1983 claim against a municipality is categorically barred if the unconstitutional action at issue also violated state or local law.

1. As the decision below exemplifies, the Seventh Circuit follows this categorical rule: “An official’s actions ... cannot be viewed as municipal ‘policy’ in cases where they contradict state law.” App. 15a. Accordingly, in the Seventh Circuit, the presence of a municipal policy, and thus the possibility of municipal liability, turns on whether the official’s unconstitutional conduct violated state law. Following this rule here, the panel majority dismissed the breadth of Hyland’s responsibilities as elected Boone County Coroner in deciding whether he possessed final policymaking authority for the County. *Id.* at 12a. Rather, its starting point was

observing that “a state statute unequivocally prohibited Hyland’s actions,” and then concluding that “Hyland ‘frustrated,’ rather than ‘implemented,’ the government’s policy.” *Id.* at 8a.

The panel derived its categorical rule from a prior Seventh Circuit case that likewise focused on whether the municipal official’s unconstitutional actions violated state law. *Id.*; see *Killinger v. Johnson*, 389 F.3d 765, 767-68 (7th Cir. 2004). In *Killinger*, the court insulated a village from *Monell* liability when its mayor summarily ordered a bar closed for the evening, in violation of due process. 389 F.3d at 767-68. In the court’s view, the village was not liable because the mayor’s action *also* violated state law, such that the mayor “was acting contrary to—not setting—the policy of the State.” *Id.* at 772; see also *Auriemma v. Rice*, 957 F.2d 397, 398-401 (7th Cir. 1992) (rejecting *Monell* claim against city whose superintendent of police engaged in racially motivated employment decisions in violation of city ordinances).

2. The Second Circuit has embraced the same approach. In *Roe*, the court declined to impose *Monell* liability on a city whose mayor sexually abused minors “at the mayor’s office, in his home, and in his city-issued police cruiser.” 542 F.3d at 33. The court reasoned that because “the state of Connecticut has made the policy (and the laws) prohibiting such conduct,” the mayor “had no authority to make policy authorizing, condoning, or promoting the sexual abuse of children.” *Id.* at 40.

The Seventh Circuit’s decision in this case expressly endorsed the Second Circuit’s rule. App. 17a-18a, 20a. In doing so, the panel majority acknowledged a disturbing consequence of these

courts' categorical rule. In response to a hypothetical posed by Judge Hamilton's dissent, the majority conceded that under this rule, a municipality would never be liable under Section 1983 if its "sheriff rape[d] a prisoner," regardless of the extent of the sheriff's authority. *Id.* at 20a. The panel reasoned that—"as the Second Circuit has explained"—such conduct "cannot be a municipality's official policy" because it would violate state law. *Id.*

B. At Least Six Circuits Allow *Monell* Claims Even If The Unconstitutional Action Violated State Or Local Law

As Judge Hamilton observed, "[o]ther circuits have disagreed" with the Seventh Circuit's approach. App. 30a. On the other side of the split, the Tenth and Fifth Circuits allow *Monell* claims to proceed "even where an official with final municipal policymaking authority violated both state law and the United States Constitution." *Id.* at 30a-34a. And the Third, Fourth, Sixth, and Eleventh Circuits have likewise indicated that *Monell* claims are valid in such circumstances.

1. The Tenth Circuit has squarely held that a municipal official's conduct can establish municipal policy even if it violated state or local law. In *Whitson*, for example, the court held that a county could be liable for the unlawful conduct of its highest-ranking sheriff. 106 F.4th at 1064-65. The sheriff was in charge of the county jail and sexually assaulted an intellectually disabled prisoner. *Id.* at 1065. The sexual assault was, of course, contrary to state criminal law, and the sheriff was criminally charged for his misconduct. *Id.* at 1065-66. The victim's guardian ad litem also sued the county under Section

1983. The county moved to dismiss on the same basis as Boone County here—that the sheriff’s actions were not pursuant to official policies but in contravention of them. *Id.* at 1064-65.

The Tenth Circuit rejected that argument, holding that “a final policymaker’s assault of a county prisoner in the course of carrying out official duties for which he was charged with setting policy subjects the municipal defendants to liability.” *Id.* at 1066. The court explained that “when an official takes action over which he or she has final policymaking authority, the policymaker *is* the municipality, so it is fair to impose liability on that entity for that action,” regardless of whether it violated state law. *Id.* at 1067.

The Tenth Circuit’s decision in *Whitson* built on then-Judge Gorsuch’s opinion in *Simmons v. Uintah Health Care Special District*, 506 F.3d 1281 (10th Cir. 2007). In that case, the board of a county nursing home had terminated an employee in violation of the board’s own written policies and constitutional due process. *Id.* at 1284. The district court had dismissed the case against the municipality because the board’s action had violated its own policies, but the Tenth Circuit reversed. *Id.* at 1283-84.

The court explained that “[a]n act by a municipality’s final policymaking authority” is “an act of the institution,” even for “actions by final policymakers taken in defiance of a policy or custom that they themselves adopted.” *Id.* at 1285. Put differently, “[m]unicipalities are equally answerable for actions undertaken by their final policymakers, whether or not those actions conform to their own preexisting rules.” *Id.* at 1283. To hold otherwise would “invite irrational results”: Policymakers would

be able to adopt policies on paper “and then proceed deliberately to ignore them.” *Id.* at 1285. “Such a rule of law would thus serve to undermine rather than enhance Section 1983’s purposes.” *Id.*

2. The Fifth Circuit has likewise repeatedly held that municipalities can be liable for constitutional violations by their final policymakers under Section 1983, even if those actions also violated state or local law.

In *Bennett v. Pippin*, for instance, the Fifth Circuit held that a county could be liable for a rape committed by its sheriff in the course of a homicide investigation. 74 F.3d 578, 581 (5th Cir.), *cert. denied*, 519 U.S. 817 (1996). There, the county argued that “the Sheriff’s actions could not be [c]ounty policy because they violated well-established [c]ounty policy.” *Id.* at 586. The Fifth Circuit rejected that contention, reasoning that “[w]hen a final policy maker makes the relevant decision, and when that decision is within the sphere of the policy maker’s final authority, ‘the existence of a well-established, officially-adopted policy will not insulate the municipality from liability.’” *Id.* (quoting *Gonzalez v. Ysleta Indep. Sch. Dist.*, 996 F.2d 745, 754 (5th Cir. 1993)). The court explained that the elected sheriff was “the county’s final policymaker in the area of law enforcement,” and he undertook his unconstitutional conduct in the course of an investigation; the county thus could not escape *Monell* liability simply because the conduct also violated state law. *Id.* (quoting *Turner v. Upton County*, 915 F.2d 133, 138 (5th Cir. 1990), *cert. denied*, 498 U.S. 1069 (1991)).

The Fifth Circuit’s decision in *Bennett* aligned with its prior decisions in *Turner* and *Gonzalez*. *Turner* involved a sheriff who planted evidence and

forced the plaintiff to stand trial on a trumped-up charge, all in violation of “the powers inherent in [the sheriff’s] role as chief policymaker for how the peace would be kept in Upton County.” 915 F.2d at 134-35, 137 n.2. The county argued that it could not be liable “because it did not authorize the sheriff to violate the law.” *Id.* at 137 n.3. The court unequivocally rejected that argument as “without merit,” stating that “[w]here a *final* policymaker abuses the powers vested in his position ... that abuse can be the basis for suit being brought under section 1983.” *Id.*

Similarly, in *Gonzalez*, the Fifth Circuit did not permit a municipality to escape liability for a school district’s board of trustees’ decision to transfer a school teacher accused of molesting students rather than remove him, even though the board’s written policies and past practices dictated removal. 996 F.2d at 754. The court reasoned that “the existence of a well-established, officially-adopted policy will not insulate the municipality from liability,” even if “the policymaker [it]self depart[ed] from these formal rules.” *Id.* Thus, the court held that the decision of the board—“the entity charged with making and executing policy within the school district”—“plainly constitute[d] a ‘policy’ attributable to the school district.” *Id.*

The split is clear: The Second Circuit expressly “decline[d] to follow the Fifth Circuit’s reasoning [in *Bennett*].” *Roe*, 542 F.3d at 40-41. The Seventh Circuit majority here likewise acknowledged its direct split with *Bennett*. App. 18a. Although the majority claimed that the Fifth Circuit has “functionally overruled” *Bennett*, *id.*, that’s wrong—as Judge Hamilton explained, *id.* at 34a n.3. In fact, the Fifth Circuit continues to cite *Bennett* approvingly—

including in the two cases that the panel viewed as suggesting its overruling. See *Bolton v. City of Dallas*, 541 F.3d 545, 549-50 (5th Cir. 2008), *cert. denied*, 556 U.S. 1152 (2009); *Doe v. Burleson County*, 86 F.4th 172, 176-77 (5th Cir. 2023). District courts in the Fifth Circuit also continue to rely on *Bennett*, as recently as this past summer. See, e.g., *Flash v. Jeff Davis County*, 2026 WL 1982486, at *6-7 (W.D. Tex. June 17, 2026); *Bevill v. City of Quitman*, 2025 WL 2306849, at *23 (E.D. Tex. Aug. 11, 2025). And the Tenth Circuit expressly adopted *Bennett*’s reasoning in *Whitson* only two years ago, notwithstanding *Bolton* and *Burleson County*. *Whitson*, 106 F.4th at 1068.

3. Other courts of appeals have not discussed this issue at the same length, but—like the Tenth and Fifth Circuits—they have held municipalities liable for their officials’ actions, even when those actions concededly violated state or local law.

In *Hill v. Borough of Kutztown*, for example, the Third Circuit confronted a mayor’s illegal constructive discharge of an employee. 455 F.3d 225, 245-46 (3d Cir. 2006). Although, “as a matter of state law, *no* government employee” was “*permitted to* constructively discharge an employee,” the court held that “the municipality [was] bound by [the mayor’s] conduct” because he acted as “a final policy-maker for the purpose of constructively discharging Hill.” *Id.* at 246.

Similarly, in *Hunter v. Town of Mocksville*, the Fourth Circuit considered a town manager’s termination of three police officers that a jury had found to violate the state’s wrongful discharge policy. 897 F.3d 538, 544-45 (4th Cir. 2018). Despite the express finding of a state law violation, the Fourth

Circuit held that the town manager’s “actions may fairly be imputed to the Town, as she acted with final policymaking authority when she fired Plaintiffs.” *Id.* at 553.

The Sixth and Eleventh Circuits are in accord as well. In *Lipman v. Budish*, the Sixth Circuit declined to dismiss a Section 1983 against a county whose caseworkers had repeatedly interviewed a child in front of her abusers, even though “the formal policy of [the county] and state regulations required caseworkers to avoid” doing so. 974 F.3d 726, 747-48 (6th Cir. 2020). And in *Wetzel v. Hoffman*, the Eleventh Circuit similarly declined to dismiss a *Monell* claim regarding a mayor’s retaliatory actions, reasoning that “[e]ven assuming that the particular policy followed by [the mayor] was in violation of some ... municipal ordinance or other law,” that would not be a basis to dismiss the claim out of hand. 928 F.2d 376, 378 (11th Cir. 1991).

These holdings—like those of the Tenth and Fifth Circuits—squarely conflict with the Second and Seventh Circuits’ categorical rule limiting *Monell* liability. The split is undeniable and requires this Court’s review.

II. THE QUESTION PRESENTED IS EXCEPTIONALLY IMPORTANT

This Court has previously recognized that certiorari is warranted to resolve “important” questions about *Monell* liability that are “likely to recur in [Section] 1983 litigation against municipalities.” *City of St. Louis v. Praprotnik*, 485 U.S. 112, 120-21 (1988) (plurality opinion) (quoting *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 257 (1981)). The proper application of *Monell* in cases

involving violations of state or local law fits that bill, as it is an exceptionally “important issue[]” with sweeping ramifications for both individuals and municipalities. App. 23a (Hamilton, J., dissenting).

1. While much attention is paid to lawmaking at the federal level, municipalities have an outsized impact on Americans’ lives. Municipal liability under Section 1983 thus provides a “vital” avenue “for vindicating cherished constitutional guarantees.” *Owen v. City of Independence*, 445 U.S. 622, 651 (1980). In an era of local government officials who are too often eager to cast the Constitution aside—from suppressing religious freedoms and disfavored political views to infringing on bodily autonomy, property interests, and parental rights—Section 1983 relief is as critical now as it has ever been. *Supra* at 7-8 (collecting cases). And “the importance of assuring [Section 1983’s] efficacy is only accentuated” in *Monell* cases against the “government itself”—“the institution that has been established to protect the very rights it has transgressed.” *Owen*, 445 U.S. at 651.

Indeed, municipal liability under *Monell* is often the *only* real-world mechanism for redressing constitutional violations. In some cases, the responsible individual officials may not be subject to suit, as is the case here because Coroner Hyland died years before Boone County disclosed his wrongdoing. *See* App. 1a. More commonly, though, the various “immunit[ies] enjoyed by most government officials” will preclude individual recovery, which absent a *Monell* claim will leave “victims of municipal malfeasance ... remediless.” *Owen*, 445 U.S. at 651; *see, e.g., Killinger*, 389 F.3d at 770-72. And even if an individual-officer claim is available, the officer may be

judgment-proof, such that a judgment will still leave “victims of clear constitutional abuses ... empty-handed.” Joanna C. Schwartz, *Municipal Immunity*, 109 Va. L. Rev. 1181, 1227-28 (2023).

The Seventh Circuit’s view of *Monell* decimates this remedy, and the blast radius is “astonishing.” App. 29a (Hamilton, J., dissenting). For example, under the Seventh Circuit’s rule, a *Monell* claim is not available against a city whose “mayor orders police to shut down a political march by his opponents or discriminates on the basis of religion or race.” *Id.* at 22a. After all, “[p]olitical speech, freedom of religion, and racial equality are protected by every state constitution,” and so “political suppression, and religious and racial discrimination” will always be “contrary to every county’s or city’s policy.” *Id.* Thus, the city will have “an ironclad defense to *Monell* liability: not only did we violate the federal [Constitution], we also violated our state constitution.” *Id.* at 29a. Under this regime, municipalities are off the hook for violating any number of constitutional rights—equal protection, speech, religion, property, due process, and more—so long as they can point to some state law that also prohibits the challenged conduct.

Such cases are far from hypothetical. State constitutions and laws often mirror their federal counterparts. Indeed, “virtually all of the foundational liberties that protect Americans [in the U.S. Constitution] originated in the state constitutions and to this day remain independently protected by them.” Jeffrey S. Sutton, *51 Imperfect Solutions: States and the Making of American Constitutional Law* 1 (2018). So under the Seventh Circuit’s rule immunizing municipalities for “state

law violations,” App. 12a-13a, municipalities will be liable for few—if any—constitutional violations.

Take this Court’s recent ruling in *Mahmoud v. Taylor*, 606 U.S. 522 (2025). There, the Court recognized that Montgomery County could be liable under Section 1983 and the First Amendment when its board of education refused to let parents opt their children out of curriculum contradicting their religious beliefs. *Id.* at 569. But under the Seventh Circuit’s rule, the county would have a straightforward defense: If the board’s conduct violated the First Amendment, then it also violated state free-exercise guarantees that parallel the First Amendment—which defeats Section 1983 municipal liability. See Md. Const., Decl. of Rts., art. 36; *McMillan v. State*, 265 A.2d 453, 455-56 (Md. 1970). Indeed, as the plaintiffs alleged and Judge Quattlebaum observed, “[t]he board’s policy” likely violated Maryland statutory law too. *Mahmoud v. McKnight*, 102 F.4th 191, 226 n.4 (4th Cir. 2024) (Quattlebaum, J., dissenting), *rev’d sub nom. Mahmoud v. Taylor*, 606 U.S. 522 (2025). On the Seventh Circuit’s view, if “[the board] acted contrary to state law,” it “did not establish an official policy.” App. 12a.

Other real-world examples abound. Under the Seventh Circuit’s reasoning, *Monell* liability would not be available against:

- A county whose sheriff adopted “racially discriminatory traffic-stop policies,” in violation of state equal-protection laws. Cf. *United States v. County of Maricopa*, 889 F.3d 648, 653 (9th Cir. 2018), *cert. denied*, 586 U.S. 1247 (2019); Ariz. Const., art. 2, § 13.

- A city whose police chief ordered officers to confiscate firearms, in violation of state right-to-bear-arms laws. *Cf.* Alex Berenson & John M. Broder, *Police Begin Seizing Guns of Civilians*, N.Y. Times (Sept. 9, 2005), <https://www.nytimes.com/2005/09/09/us/nationalspecial/police-begin-seizing-guns-of-civilians.html>; La. Const., art. I, § 11.
- A town whose “mayor criminalized the communal celebration of Easter,” in violation of state religious-liberty laws. *Cf. On Fire Christian Ctr., Inc. v. Fischer*, 453 F. Supp. 3d 901, 905 (W.D. Ky. 2020); Ky. Const., § 5.
- A city whose police chief arrested street preachers sharing religious views on a public sidewalk, in violation of state free-speech guarantees. *Cf. Olivier v. City of Brandon*, 607 U.S. 552, 555-56 (2026); Miss. Const., art. 3, § 13.

In short, the Seventh Circuit’s rule would inflict a sweeping “restriction of federal rights and remedies.” App. 29a-30a (Hamilton, J., dissenting). That restriction warrants this Court’s review.

2. The deep circuit split only furthers the need for certiorari. The ability to seek relief from municipalities whose officials violate the Constitution should not vary by geography. A citizen in Chicago whose rights are violated by a municipal official acting contrary to state law should have the same ability to seek redress under Section 1983 as a citizen in Denver or Dallas. Yet under the current state of the law, the former is categorically barred from municipal recovery while the latter two are not. That

difference based on geographical happenstance is intolerable.

The difference will often be outcome-determinative, as it was here. Had Boone County's outrageous misconduct occurred within the Fifth or Tenth Circuits, petitioners' Section 1983 claim would not have been categorically dismissed. Just like the sheriffs in *Bennett* and *Whitson*, Coroner Hyland exercised his County authority in a way that violated state law and the Constitution. That compounding illegality proved dispositive in the Seventh Circuit.

The circuit division will not resolve without this Court's intervention. The Fifth and Seventh Circuits have followed opposite approaches since at least the 1990s. The Second Circuit has expressly "decline[d] to follow" the Fifth Circuit's approach for almost two decades. *Roe*, 542 F.3d at 40-41. And around the same time that the decision below doubled down—and amplified—the Seventh Circuit's approach, the Tenth Circuit reaffirmed its agreement with the Fifth Circuit. *Whitson*, 106 F.4th at 1068. As Judge Hamilton noted, this enduring split is the product of "circuit courts ... struggl[ing] to follow [the] fragmented and sometimes conflicting guidance" in this Court's cases. App. 25a. This Court should "step in" to definitively resolve it. *Id.*

III. THE SEVENTH CIRCUIT'S RULE IS WRONG

Certiorari is also warranted because the Seventh Circuit's categorical rule—that an official's unconstitutional actions "cannot be viewed as municipal 'policy' in cases where they contradict state law" (App. 15a)—is profoundly wrong. That rule has no basis in statutory text or history, is divorced from this Court's precedents, and perversely transforms

additional state-law protections against unlawful government conduct into a defense against federal civil-rights liability.

1. Section 1983 provides a cause of action against “[e]very person” who, “under color of” state law, “subjects, or causes to be subjected,” any citizen to the deprivation of a federal constitutional or statutory right. 42 U.S.C. § 1983. This broad language underscores the “broad remedy for violations of federally protected rights” that Congress created. *Owen*, 445 U.S. at 636.

In *Monell*, this Court held that “[e]very person” includes “municipalities and other local government units.” 436 U.S. at 683, 689-90. And in *Monroe*, the Court held that such a person may take an action “under color of” state law even if the action also violates state law, as long as the person “is clothed with the authority of state law.” 365 U.S. at 183-84. Section 1983 thus reaches beyond “violations of constitutional rights that are *authorized* by state law” and extends to “abuses of state authority that are *forbidden* by the State’s statutes or Constitution or are torts under the State’s common law.” *Zinermon v. Burch*, 494 U.S. 113, 124 (1990) (emphasis added). As a textual matter, this rule applies the same way whether the Section 1983 defendant (i.e., “person”) is an individual or a municipality. So a municipality can be liable under Section 1983 even if its unconstitutional acts also violate state law.

That conclusion tracks Section 1983’s history. Section 1983 was enacted precisely because local governments were refusing to enforce—and often affirmatively violating—“the state laws on the books,” which fueled the Ku Klux Klan’s campaigns of racial terror during Reconstruction. *Monroe*, 365 U.S. at

174-80; *supra* at 5-6. Even when state law nominally obligated local governments to protect all citizens “without distinction as to color, race, or political sentiment,” government officials pervasively violated such guarantees by “discriminati[ng] against” Black citizens and their allies “in the actual enforcement of the laws,” enabling the Ku Klux Klan’s heinous acts to go unabated. *Monroe*, 365 U.S. at 178. Congress thus provided a federal remedy “intended to cover actions that violated *both* state and federal law.” Steven L. Winter, *The Meaning of “Under Color Of” Law*, 91 Mich. L. Rev. 323, 381 (1992).

The same concern about the failure to follow state law is reflected in “congressional attitudes toward the nature and scope of municipal liability” at the time of Section 1983’s enactment, which this Court has gleaned primarily from “Congress’[s] treatment of [an] amendment to the [Civil Rights Act of 1871] introduced by Senator Sherman.” *Fact Concerts*, 453 U.S. at 264 (citing *Monell*, 436 U.S. at 692 n.57); see *Pembaur*, 475 U.S. at 479 & n.7. That amendment would have imposed “civil liability on municipalities for damage done to the person or property of its inhabitants by private persons ‘riotously and tumultuously assembled.’” *Pembaur*, 475 U.S. at 479 n.7 (quoting Cong. Globe, 42d Cong., 1st Sess. 749 (1871)). Opponents defeated the amendment by arguing that it unconstitutionally required “local governments to keep the peace” and protect against privately-imposed harm when “state law did not.” *Id.* But all agreed that Congress *could* “impose civil liability on a local government already obligated to keep the peace by state law if that government failed to do so and thereby violated the Fourteenth Amendment.” *Id.*; see *Monell*, 436 U.S. at 679-80.

Thus, the statutory history confirms that Congress understood municipal liability to arise precisely when the municipality also violated state law.

2. Contrary to the Seventh Circuit’s view, this Court’s *Monell* cases do not depart from that understanding. *Monell* implements the statute’s causation requirement: A municipality “subject[s]” a person to a deprivation of rights or “cause[s]” a person “to be subjected” to such a deprivation “when execution of [the municipality’s] policy or custom ... inflicts the injury.” 436 U.S. at 691-92, 694.

In other words, the *Monell* question is whether the official’s unconstitutional act reflects municipal “policy” attributable to the municipality itself. *Pembaur*, 475 U.S. at 479-80. That attribution question may consider how the municipality is organized under state and local law, so as to identify which municipal officials possess final policymaking authority in the relevant area of the municipality’s government. *See, e.g., Praprotnik*, 485 U.S. at 124-26 (plurality opinion). But it “has nothing to do with whether” the unconstitutional act itself “violates state law.” App. 37a (Hamilton, J., dissenting).

Indeed, municipalities are quite capable of adopting unconstitutional policies that violate state or local law. An obvious example is a city council that adopts a practice that discriminates on the basis of race or religion. *Cf. Fulton v. City of Philadelphia*, 593 U.S. 522, 534-38 (2021).

But the same is true for policies established through on-the-ground acts and practices by “municipal policymakers”—i.e., officials with the “authority to establish municipal policy” for the relevant area of the municipal government. *Pembaur*,

475 U.S. at 480-81, 484. Such policies might include a county sheriff who targets Black suspects for arrests, or a city mayor who withholds permits from certain religious groups. In these circumstances, the “municipality’s *actual* policies [may be] different from the ones that had been announced” in state or local law. *Praprotnik*, 485 U.S. at 131 (plurality opinion) (emphasis added). That violation of state or local law does not make the municipality any less responsible. The Seventh Circuit’s rule—that “an official’s actions ... cannot be viewed as municipal ‘policy’ in cases where they contradict state law,” App. 15a—rests on the misguided premise that municipalities *never* violate state or local law, so any actions contrary to state law are never attributable to the municipality itself. That cannot be right.

The Seventh Circuit’s rule is also divorced from precedent. In *Owen*, for example, this Court sustained a *Monell* claim brought by a fired city police chief against a city after the city council discharged him without a hearing. 445 U.S. at 627-30. The police chief asserted that the city council’s decision violated both “the Constitution” and “the Missouri Administrative Procedure Act.” *Id.* at 627 n.4. The Court upheld the *Monell* claim, rejecting the city’s request for qualified immunity. *Id.* at 635-38. Nowhere did the Court suggest that the city would be off the hook if the city council’s decision also violated the state administrative law as the police chief claimed. But that is the upshot of the Seventh Circuit’s reasoning: The city council in *Owen* (like any other local government body) would have “ha[d] no authority to countermand state law,” App. 12a, so a decision by the council that “contradict[ed the] state

law” could not “be viewed as municipal ‘policy,’” *id.* at 15a.

Tellingly, the Seventh Circuit did not disagree that its rule flatly contradicts the result in *Owen*. Instead, it observed that *Owen* “did not resolve whether the city violated state law when it fired the police chief” and thus neglected to expressly consider “the implications of a state law violation for *Monell* liability.” *Id.* at 13a. But the Court highlighted the victim’s claim that the conduct violated state law, and the most straightforward explanation for why the Court failed to address the “implications” of that point is that there were none—the asserted violation of state law simply had no effect on the *Monell* claim. The Seventh Circuit’s contrary view—that the omission was a massive oversight that would have rendered the Court’s qualified immunity analysis irrelevant—seems highly unlikely. Either way, this tension with *Owen* reinforces the case for granting review here.*

3. Finally, the Seventh Circuit’s rule “invite[s]” the same “irrational results” that then-Judge Gorsuch flagged in *Simmons*. 506 F.3d at 1285. Under the Seventh Circuit’s rule, the more clearly a municipal

* The Seventh Circuit pointed to Justice White’s and Justice O’Connor’s concurrences in *Pembaur* to suggest that a municipal policy cannot be “illegal under federal, state, or local law.” App. 16a-17a. The Court has never endorsed that view, and in *Praprotnik*, decided two years after *Pembaur*, both Justices expressly repudiated the notion that a “stated polic[y]” on the books—such as in a “municipal charter[]”—would “insulate[] the municipality from any liability based on acts inconsistent with that policy.” *Praprotnik*, 485 U.S. at 130-31 (plurality opinion of O’Connor, J., joined by Rehnquist, C.J., and White and Scalia, JJ.).

official violates state law, the less likely the municipality is to face liability under Section 1983. If State A expressly prohibits a particular abuse of governmental authority while State B does not, an otherwise identical municipality in State A would have a stronger defense against Section 1983 liability solely because its decisionmakers also violated state law. That creates a perverse incentive structure under which “[p]olicymakers ... would have little reason to abide by their own mandates” or the mandates of state legislatures. *Id.* And it creates an upside-down world where a plaintiff suffering a constitutional harm is worse off merely because their state legislature *agrees* that the municipality’s conduct was unlawful. The extreme examples highlighted above serve as a powerful indictment of the Seventh Circuit’s reasoning. *Supra* at 25-27.

Indeed, the Seventh Circuit’s reasoning proves too much. Taken to its logical conclusion, the only municipal “policies” for purposes of Section 1983 would be policies that do not violate the Constitution. After all, as the Seventh Circuit recognized, municipal officers in Illinois are required by state law “to follow ... the United States Constitution.” App. 12a (citing 55 ILCS 5/3-3005); *see also* 65 ILCS 5/3.1-10-25 (requiring municipal officials to “take and subscribe the oath or affirmation required by the Illinois Constitution”); Ill. Const., art. XIII, § 3 (requiring officials to swear to “support the Constitution of the United States”). On the Seventh Circuit’s view, this state-law command presumably “withdraws [municipal officials] authority” to establish *any* “municipal ‘policy’” that violates the U.S. Constitution because doing so would necessarily “contradict state law.” App. 15a. Thus, *Monell*’s

guarantee of municipal liability for unconstitutional policies becomes a dead letter. This absurd but inevitable result only confirms that the Seventh Circuit's rule is unsound.

* * * * *

This Court's review is imperative. The Seventh Circuit's erroneous conception of *Monell* exacerbates a circuit split and insulates municipalities from Section 1983 liability for any number of constitutional violations perpetrated by municipal leaders. And this case is a perfect vehicle: The issues were fully presented below, and the Seventh Circuit's extreme rule provided the sole basis on which the courts below dismissed petitioners' claim against Boone County, insulating the County from any responsibility for the undeniably "abhorrent" and unconstitutional deprivation perpetrated by the County Coroner. App. 1a-4a. Certiorari is warranted to ensure that Section 1983 is available to all Americans when municipal misconduct violates their civil rights.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

JAMES M. KELLY
JAMES KELLY
LAW FIRM, PC
7817 N. Knoxville Ave.
Peoria, IL 61614

JAY L. COHEN
JAMES KELLY
LAW FIRM, PC
68 South Service Road
Suite 100
Melville, NY 11747

ROMAN MARTINEZ
Counsel of Record
GREGORY G. GARRE
BLAKE E. STAFFORD
SAKINA J. HAJI
LATHAM & WATKINS LLP
555 Eleventh Street, NW
Suite 1000
Washington, DC 20004
(202) 637-3377
roman.martinez@lw.com

Counsel for Petitioners

September 14, 2026

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[178 F.4th 1051]

**IN THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT**

**Gary BETTS and Earl Betts, Plaintiffs-
Appellants,**

v.

**BOONE COUNTY, ILLINOIS, and
Rebecca Wigget, Defendants-Appellees.**

No. 25-1685

Argued February 13, 2026

Decided June 15, 2026

Before Brennan, Chief Judge, and Hamilton and
Scudder, Circuit Judges.

Brennan, Chief Judge.

The Coroner of Boone County, Illinois, engaged in abhorrent and macabre behavior. Wesley Hyland kept several skulls as trophies from the deceased he examined. One was that of Louise Betts. Over four decades later, after the coroner’s death, the County returned her skull to the Betts family. The family sued the County under 42 U.S.C. § 1983 for violating the Due Process Clause of the Fourteenth Amendment.

The question in this appeal is whether Hyland’s actions established an “official policy” of unconstitutionally retaining human remains. We hold the answer is no. The County is not liable under *Monell v. Department of Social Services of City of New York*, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978), because state law requires that coroners

return bodily remains to families. Hyland frustrated an official policy rather than established one.

I

In September 1977 high school student Louise Betts was kidnapped, raped, and murdered. Her body was disposed of in a field in Boone County in northeast Illinois. As part of the investigation into her murder, Boone County Coroner Wesley Hyland examined Louise's body. After Hyland concluded, he returned the remains to the Betts family, who then buried her. A state statute instructs how coroners are to handle bodily remains: "That as soon as may be consistent with the performance of his duties under this [statute] the coroner shall release the body of the decedent to the decedent's next of kin." 55 ILCS 5/3-3021. But unknown to the family, Hyland kept Louise's skull.

In November 2022 the Boone County Coroner contacted Louise's brothers, Gary and Earl ("the Bettses"). The Coroner revealed that Hyland possessed at least three skulls, one of which was Louise's. To ensure she received a proper burial, the Bettses were forced to exhume Louise's casket to place her skull with her remains.

The ordeal was understandably painful for the Bettses. They sued Boone County under 42 U.S.C. § 1983, alleging the County violated the Fourteenth Amendment. They claimed that Hyland's actions—keeping Louise's skull without first notifying them—established a policy of unconstitutionally retaining property without due process. The district court allowed the Bettses to amend their complaint several times, and the County moved to dismiss under

Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim.

The district court agreed with the County. Because the Bettises sued a municipality, they had to meet the elements set forth in *Monell*. That required the Bettises show that Hyland’s actions established an official County policy, which they failed to do. The Bettises appeal.

II

We review de novo a grant of a motion to dismiss under Rule 12(b)(6). *Chi. Tchrs. Union, Loc. 1 v. Educators for Excellence, Inc.*, 159 F.4th 524, 528 (7th Cir. 2025). And “we construe the complaint in the light most favorable to the plaintiff, accepting as true all well-pleaded facts alleged, and drawing all possible inferences in the plaintiff’s favor.” *Id.* (citation omitted).

A. Property Right

The Bettises’ § 1983 suit alleges that the County violated the Fourteenth Amendment by depriving them of property without due process. The first question is whether they have a property interest in their sister’s remains. *Simpson v. Brown County*, 860 F.3d 1001, 1006 (7th Cir. 2017) (“Procedural due process . . . generally involves a familiar line of inquiry: (1) is there a property or liberty interest protected by due process[?]”). A plaintiff with no right to something cannot complain when it is taken.

The Constitution does not create property interests. *Leis v. Flynt*, 439 U.S. 438, 441, 99 S.Ct. 698, 58 L.Ed.2d 717 (1979) (per curiam). Rather, an “independent source such as state law” creates those rights, and the Constitution “extends various procedural safeguards.” *Id.* (quoting *Bd. of Regents v.*

Roth, 408 U.S. 564, 577, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972)). So, to identify property interests, courts often look to state law.

Illinois recognizes that family members have a property right to a next of kin's remains, as the district court concluded, and on appeal the County does not appear to disagree. As the Supreme Court of Illinois has held, "while in the ordinary sense, there is no property right in a dead body, a right of possession of a decedent's remains devolves upon the next of kin in order to make appropriate disposition thereof, whether by burial or otherwise." *Cochran v. Securitas Sec. Servs. USA, Inc.*, 419 Ill. Dec. 374, 93 N.E.3d 493, 497 (Ill. 2017) (quoting *Leno v. St. Joseph Hosp.*, 55 Ill.2d 114, 302 N.E.2d 58, 59–60 (Ill. 1973)).

The district court also cited *Mensing v. O'Hara*, 189 Ill. App. 48 (Ill. App. 1914). There, the plaintiff's wife died, and the defendants were entrusted to bury her body. *Id.* at 49. But before burying her, they cut the hair from her head, and plaintiff sued. *Id.* The state court reasoned, "while a dead body is not considered as property, in the ordinary, technical sense in which that word is usually employed, yet the law does recognize a right, somewhat akin, perhaps, to a property right, arising out of the duty of the nearest relatives of the deceased to bury their dead." *Id.* at 53. Other states have also recognized a property right in a deceased family member's remains. See *Martinez v. Wayne County*, 142 F.4th 828, 837–38 (6th Cir. 2025) (Ohio and Michigan).

We see no reason to disagree with the district court, so we move to the next question: whether *Monell* has been satisfied.

B. *Monell* Liability

Section 1983 imposes liability on “[e]very person who, under color” of state law, deprives another of a constitutional right. 42 U.S.C. § 1983. *Monell* holds that a local government can be sued for an “[official] policy or custom” that violates the Constitution. 436 U.S. at 694, 98 S.Ct. 2018. A local government “may therefore be sued directly if it is alleged to have caused a constitutional tort through a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body’s officers.” *City of St. Louis v. Praprotnik*, 485 U.S. 112, 121, 108 S.Ct. 915, 99 L.Ed.2d 107 (1988) (plurality opinion) (citation modified). That is true even though the custom “has not received formal approval through the body’s official decisionmaking channels.” *Id.* (citation omitted).

But there is an important limit: liability under *Monell* is not respondeat superior. “[A] local government may not be sued under § 1983 for an injury inflicted solely by its employees or agents.” *Monell*, 436 U.S. at 694, 98 S.Ct. 2018. Vicarious liability, the Court has explained, is “incompatible with the causation requirement set out on the face of § 1983.” *Praprotnik*, 485 U.S. at 122, 108 S.Ct. 915. The municipality, as the actor, must have an “official policy.” *Id.* at 121–22, 108 S.Ct. 915. That “distinguish[es] acts of the *municipality* from acts of *employees* of the municipality.” *Pembaur v. City of Cincinnati*, 475 U.S. 469, 479, 106 S.Ct. 1292, 89 L.Ed.2d 452 (1986).

So, a municipality is not liable under § 1983 unless the deprivation of a constitutional right is caused by a municipal policy or custom. The problem, however, is defining “policy,” as § 1983 does not use that term.

To fill the gap, caselaw has established that a plaintiff may demonstrate a policy or custom that causes a constitutional deprivation in one of three ways: (1) an express policy of the municipality; (2) a widespread practice constituting custom or usage; or (3) an act by a person with final policymaking authority. *Kujawski v. Bd. of Comm’rs of Bartholomew Cnty.*, 183 F.3d 734, 737 (7th Cir. 1999); *see also Dean v. Wexford Health Sources, Inc.*, 18 F.4th 214, 235 (7th Cir. 2021). This appeal concerns the third way.

A single unconstitutional act of a final policymaker can establish municipal policy, leading to *Monell* liability. *McGreal v. Ostrov*, 368 F.3d 657, 685 (7th Cir. 2004). Showing that, however, is hard: “That’s because it’s difficult to infer from a single event that a municipality is not just negligent, but deliberately indifferent to its employees’ unconstitutional conduct.” *Cambric v. City of Corpus Christi*, 170 F.4th 321, 327 (5th Cir. 2026) (Oldham, J., concurring).

To have final policymaking authority means the government agent possesses “final authority to establish municipal policy with respect to the action ordered.” *Pembaur*, 475 U.S. at 481, 106 S.Ct. 1292 (plurality). This means the agent’s “edicts or acts may *fairly* be said to represent official policy.” *Monell*, 436 U.S. at 694, 98 S.Ct. 2018 (emphasis added). To determine that, the Court tells us, we examine state law. *Pembaur*, 475 U.S. at 483, 106 S.Ct. 1292. Often, “[f]inal policymaking authority may be granted directly by statute or delegated or ratified by an official having policymaking authority.” *Kujawski*, 183 F.3d at 737. But answering who has final policymaking authority entails more than just asking who sits at the top; the city’s organizational chart

alone will not provide the answer. As we have explained: “Any city acts exclusively through agents; the city is just a name for a complex of persons. . . . That a particular agent is the apex of a bureaucracy makes the decision ‘final’ but does not forge a link between ‘finality’ and ‘policy.’” *Auriemma v. Rice*, 957 F.2d 397, 400 (7th Cir. 1992).

Our holding in *Auriemma* also teaches that local law is a lens through which to view the final policymaker question. *Id.* at 401. There, the Superintendent of Police in Chicago, Fred Rice, allegedly promoted certain officers based on their race and politics. *Id.* at 398. Aggrieved officers sued the City of Chicago under *Monell*. *Id.* at 398–99.

This court held that Chicago was not liable because city ordinances “applicable to the police department unequivocally ban racial and political discrimination.” *Id.* at 399. And, as police superintendent, Rice could not countermand those ordinances. *Id.* at 401. Rice’s decision to discriminate, then, was not an official government policy. “Liability for unauthorized acts is personal; to hold the municipality liable, *Monell* tells us, the agent’s action must implement rather than frustrate the government’s policy.” *Id.* at 400. So, “[i]f, in the course of selecting senior staff, Rice discriminated on account of race and politics, he violated rather than implemented the policy of Chicago. On Rice falls the responsibility for his deeds.” *Id.* at 401. As this court later described *Auriemma*’s rule, “[c]ertainly someone with executive authority whose actions fly in the face of state or local law is not a policymaker under *Monell* and its progeny.” *Cornfield ex rel. Lewis v. Consol. High Sch. Dist. No. 230*, 991 F.2d 1316, 1325 (7th Cir. 1993).

This court applied *Auriemma*'s rule in *Killinger v. Johnson*, 389 F.3d 765 (7th Cir. 2004). During a town celebration, the mayor suspected a bar was serving alcohol to the underage. *Id.* at 768. With the chief of police's approval, the mayor ordered the bar closed. *Id.* Killinger, the bar owner, sued the mayor and the municipality under § 1983. *Id.*

The thrust of his claim was "that the mayor violated his due process rights by failing to observe the procedures mandated by the Liquor Act" when closing his bar. *Id.* at 772. But the nature of Killinger's claim proved why he failed to establish a *Monell* violation: the mayor was not a final policymaker if state law withdrew his authority. "The Illinois General Assembly, not the mayor, established the procedures applicable to temporary closings, suspensions, and fines under the [Liquor] Act. If the mayor violated these procedures, he was acting contrary to—not setting—the policy of the State." *Id.*

Here, a state statute unequivocally prohibited Hyland's actions: "That as soon as may be consistent with the performance of his duties under this [statute] the coroner shall release the body of the decedent to the decedent's next of kin." 55 ILCS 5/3-3021. Hyland, after his investigation, kept Louise's skull; he did not "release the body of the decedent." Hyland acted contrary to this unequivocal statutory command, just like the police superintendent in *Auriemma* and the mayor in *Killinger*. Hyland "frustrated," rather than "implemented," the government's policy. *Auriemma*, 957 F.2d at 400. Responsibility thus falls on him, not Boone County.

Contrast *Vodak v. City of Chicago*, which applied *Auriemma*'s rule. 639 F.3d 738 (7th Cir. 2011). There, the police superintendent initially permitted a

protest, but then unilaterally revoked permission and arrested protestors. *Id.* at 740–41, 748. They sued the City of Chicago, and the City’s defense was that the police superintendent lacked authority to deal “with demonstrations and mass arrests.” *Id.* at 748. “But no ordinance constrained him,” in contrast to *Auriemma*, where the City Council “had by ordinance limited the police superintendent’s discretion with respect to employment decisions.” *Id.* at 748–49. Here, like *Auriemma* but not *Vodak*, state law did “constrain” and “limit” what Hyland could do with remains—the law required him to return them to the decedent’s family members.

The Bettises disagree. As they see it, the state statute does not constrain the coroner. Rather, it offers guidance to the coroner on how to return remains. The language is therefore distinguishable from the unequivocal command in *Auriemma*.

But consider how an ordinary English speaker would understand the state statute. It says the coroner “shall release the body of the decedent” to the family “as soon as may be consistent with the performance of his duties.” 55 ILCS 5/3-3021. “Shall” certainly imposes a requirement. *See, e.g.*, BLACK’S LAW DICTIONARY (12th ed. 2024) (defining “shall” as “Has a duty to; more broadly, is required to.”); AMERICAN HERITAGE DICTIONARY 1598 (4th ed. 2000) (defining “shall” as “[a]n order, promise, requirement, or obligation.”). And “the body” includes the principal parts of the corpse—a family indeed would be surprised to receive a body from the coroner without its arms, legs, or head. *See, e.g., Brotherton v. Cleveland*, 923 F.2d 477, 482 (6th Cir. 1991) (property right in a body includes corneas); *Adams v. King County*, 164 Wash.2d 640, 192 P.3d 891, 900–01

(2008) (tortious interference with a dead “body” claim can be maintained against “the unauthorized removal of a brain”).

Illinois caselaw aligns with how an ordinary English speaker would read the state statute. “Shall” in a statute is a mandatory command. *People v. Cooper*, 487 Ill. Dec. 411, 272 N.E.3d 465, 475 (Ill. 2025); *Berz v. City of Evanston*, 375 Ill. Dec. 422, 997 N.E.2d 733, 742 (Ill. App. Ct. 2013) (Gordon, J., concurring in part) (collecting cases). And the Supreme Court of Illinois has presumed the coroner must return the body and the remains under the state statute: “These remains were taken to the Will County coroner When the examination was completed . . . [t]he remains were then returned to the victim’s family in accordance with [the statute].” *People v. Jordan*, 103 Ill.2d 192, 82 Ill. Dec. 925, 469 N.E.2d 569, 571 (1984).¹

Hyland had concluded his investigation of Louise’s murder. State law thus required that “[he] shall release the body of the decedent.” 55 ILCS 5/3-3021. But he kept her skull, a part of the “body” he should have returned.² The state statute, then, unequivocally restrained Hyland’s authority. Because he acted ultra vires, flouting that restraint, he did not establish County policy.

¹ The Bettises’ complaint alleged that “[Hyland] had a duty by statute to provide Louise’s complete remains to her next of kin.” They walked back that contention in their reply brief, however.

² *Cf. Adams*, 192 P.3d at 901 (“[A]uthority to remove organs while conducting an autopsy . . . does not imply that the medical examiner has authority to retain the brain.”).

The Bettses point to other state laws to contend that Hyland had discretionary power over all decisions involving his position. For example, 55 ILCS 5/3-3003 empowers the coroner to “control the internal operations of his office,” and to “procure necessary equipment, materials, supplies, and services to perform the duties of the office.” Section 5/3-3013 confers certain investigatory powers on the coroner, and 5/3-3019 provides that only the coroner can give permission to another to move or handle a dead body. Because state law confers broad authority on Hyland to run his office as he pleases, the Bettses claim, he made unconstitutional policy by keeping Louise’s skull.

But the Bettses cannot point to a statute conferring authority over the action at issue—how bodily remains are returned. “The official must also be responsible for establishing final government policy respecting such activity before the municipality can be held liable.” *Pembaur*, 475 U.S. at 482–83, 106 S.Ct. 1292 (plurality). As this court recognized in *Vodak*, “one can be an official policymaker in one domain but not in another.” 639 F.3d at 748 (citing *McMillian v. Monroe County*, 520 U.S. 781, 785, 117 S.Ct. 1734, 138 L.Ed.2d 1 (1997)). So, Hyland had authority to decide how many scalpels to buy. 55 ILCS 5/3-3003 (coroner can “procure necessary equipment, materials, supplies and services”). But that does not mean he had final policymaking authority over returning remains. The coroner decides when it is necessary to exhume a body for an autopsy, 55 ILCS 5/3-3015(c), yet he does not get to keep a body part. Under state statute, Hyland was compelled to return all remains to the Bettses but did not. Like the police superintendent in *Auriemma*, the

coroner lacks unfettered power to make final decisions over remains.

Nor does it matter that Hyland was the top official in the coroner’s office, elected by the people of the county and answerable to them.³ *Auriemma* tells us “[a]uthority to make a final decision need not imply authority to establish rules.” *Id.* at 401. Consider *Killinger*, where the mayor—presumably an elected position—did not establish an official policy because he acted contrary to state law. 389 F.3d at 772. Here, the coroner has no authority to countermand state law. Hyland was required to follow 55 ILCS 5/3-3021, just as he was required to follow the Illinois Constitution and the United States Constitution. See 55 ILCS 5/3-3005 (Coroner’s Oath). Hyland’s choice to keep Louise’s skull “violated rather than implemented” Boone County policy. *Auriemma*, 957 F.2d at 401.

Last, the Bettises submit that *Bradley v. Village of University Park*, 929 F.3d 875 (7th Cir. 2019), implicitly overruled *Auriemma*. They point to a single statement in *Bradley*, which reads: “[A]n unconstitutional act of municipal decisionmakers can result in municipal liability even if their act also violated state law.” *Id.* at 885. So, to the Bettises, even if Hyland violated state law, the County can still be held liable.

³ The dissenting opinion attempts to distinguish *Auriemma* by noting that the coroner here was elected. But the “elected” status of the police superintendent was not important in *Auriemma*’s analysis. Indeed, the word “elected” does not appear in that opinion. And that the City’s elected mayor played a role in the discriminatory hiring decisions was “immaterial.” 957 F.2d at 400.

That statement cited *Owen v. City of Independence* for the proposition “that both a city and its manager could be held liable under § 1983 for firing the city police chief without due process, even if the defendants’ actions also violated state law.” *Id.* (citing 445 U.S. 622, 627 n.4, 633, 100 S.Ct. 1398, 63 L.Ed.2d 673 (1980)). In *Owen*, a City Manager fired the Chief of Police, who then sued under § 1983. 445 U.S. at 629–33, 100 S.Ct. 1398. A footnote describes a letter the chief wrote to the manager, which says in part: “My counsel . . . have advised me . . . your relief and discharge of me . . . would be in violation of the Missouri Administrative Procedure Act.” *Id.* at 627 n.4, 100 S.Ct. 1398. This is the state law violation that *Bradley* says occurred.

That is an insufficient foundation to support *Bradley*’s description that the Supreme Court “made clear that both a city and its manager could be held liable under § 1983 for firing the city police chief without due process, even if the defendants’ actions also violated state law.” *Bradley*, 929 F.3d at 885. *Owen* did not resolve whether the city violated state law when it fired the police chief, as the letter claims. It did not need to. So, *Owen* does not concern the implications of a state law violation for *Monell* liability. Rather, the Court “declined to afford qualified immunity to a municipality despite the good faith of its individual officers.” *Capra v. Cook Cnty. Bd. of Rev.*, 733 F.3d 705, 711 (7th Cir. 2013); *see also Pembaur*, 475 U.S. at 480, 106 S.Ct. 1292; *Barna v. Bd. of Sch. Dirs. of Panther Valley Sch. Dist.*, 877 F.3d 136, 145 (3d Cir. 2017).

Nor is *Bradley* about state law violations and *Monell*, as final decision-making authority in that case was conceded. 929 F.3d at 885 (“The mayor and

the board concede that they had sole discretion and authority to fire Bradley.”). The case largely concerns *Parratt v. Taylor*, 451 U.S. 527, 101 S.Ct. 1908, 68 L.Ed.2d 420 (1981), and the process that is due under the Fourteenth Amendment. *Id.* at 885–86. In *Bradley*, the majority rejected the defendant’s reading of *Parratt* as a defense to *Monell* liability, *id.* at 898, which is how the case has been subsequently understood. *Luster v. Village of Ashmore*, 76 F.4th 535, 537 (7th Cir. 2023) (“We addressed [*Parratt*] at some length in *Bradley*.”).

III

The dissenting opinion submits that as long as the relevant official is elected and has general authority over a particular domain, his actions make the municipality liable—even if a law constrains his authority or discretion. This is respondeat superior by another name. It is not supported in our caselaw or that of other circuits, and it extends *Monell* liability too far. We decline to break with the great weight of the caselaw until instructed differently.

Scores of plaintiffs are not left without redress for constitutional wrongs done to them by government, as the dissenting opinion suggests. The Bettises, or any hypothetical plaintiffs, are not without recourse. They can sue the sheriff in tort or under § 1983. The state could—and should—criminally prosecute government actors who commit crimes. But municipal liability does not arise simply because a rogue elected official acted unconstitutionally. Concluding otherwise stretches both Supreme Court and this court’s rulings too far.

Start with this court’s caselaw. The dissenting opinion’s position is contrary to binding circuit

precedent. *Auriemma* and *Killinger* hold that a government official is not a final policymaker if state or local law restricts his power. See *Auriemma*, 957 F.2d at 400 (“to hold the municipality liable, *Monell* tells us, the agent’s action must implement rather than frustrate the government’s policy.”); *Killinger*, 389 F.3d at 772 (“If the mayor violated these procedures, he was acting contrary to—not setting—the policy of the State.”). The dissenting opinion cannot point to a Seventh Circuit case supporting its view.⁴ This case is an application of *Auriemma*, *Killinger*, *Cornfield*, and *Vodak*—binding precedents. We make no new law.

Those cases, read together, stand for the same rule—that an official is not a final policymaker for a given issue when state or local law withdraws his or her authority over that area. An official’s actions, therefore, cannot be viewed as municipal “policy” in cases where they contradict state law. No such law existed in *Vodak*, but the existence of such laws dictated the holdings of both *Auriemma* and *Killinger*.

There is also a tension in the dissenting opinion’s position. Our colleague concludes that Hyland was a final policymaker because state law gives coroners the sole power to release a dead body after an autopsy. But if a state law’s *grant* of power to the coroner defines whether he is a final policymaker, why then

⁴ The dissenting opinion states that *Vodak* distinguishes *Auriemma*. But *Vodak* cited *Auriemma* with approval and applied its framework. 639 F.3d at 747. The court in *Vodak* held that no ordinance constrained the police superintendent, *id.* at 748–49, unlike the ordinance in *Auriemma*. Had that not been true, the city may not have been liable in *Vodak*.

does a state law's *restriction* of power play no role in answering the same question?

Recall that under the final policymaker rule, when the municipality confers its powers, the final policymaker's acts are those of the municipality. Municipalities in Illinois are bound by state law. *Newsome v. Thompson*, 202 Ill.App.3d 1074, 148 Ill.Dec. 377, 560 N.E.2d 974, 978 (1990). Under state law, Boone County coroners cannot do what they please with bodily remains. How, then, could Boone County bestow that power in unrestrained form?

The principles established in our caselaw are consistent with the Supreme Court's *Monell* precedent. Though the dissenting opinion relies on *Pembaur*, several aspects of that case support our view. For one, a majority of the Court reaffirmed the principle that "whether an official had final policymaking authority is a question of state law." *Pembaur*, 475 U.S. at 483, 106 S.Ct. 1292 (plurality); *id.* at 491, 106 S.Ct. 1292 (O'Connor, J., concurring in part and concurring in the judgment) (looking to state law to define the scope of the officials' authority).

For another, two justices whose votes were essential to the majority expressly considered the fact that the alleged unconstitutional action was not illegal under federal, state, or local law at the time of the violation for their conclusion that *Monell* liability could attach. As Justice White explained, "[l]ocal law enforcement officers are expected to obey the law and ordinarily swear to do so when they take office. Where the controlling law places limits on their authority, they cannot be said to have the authority to make contrary policy." *Id.* at 486, 106 S.Ct. 1292 (White, J., concurring). That point was critical to Justice O'Connor, too, "[g]iven that [the county's]

procedure was consistent with federal, state, and local law at the time the case arose,” it represented the county’s policy. *Id.* at 491, 106 S.Ct. 1292 (O’Connor, J., concurring in part). Taken together, these points help show that our caselaw’s focus on whether the official’s actions violate state law is relevant to the *Monell* inquiry.

Nor is this case’s holding contrary to *Monroe v. Pape*, 365 U.S. 167, 81 S.Ct. 473, 5 L.Ed.2d 492 (1961). The dissenting opinion posits that individual officers can be held liable under § 1983 even if their unconstitutional conduct also violates state law. *Id.* at 172, 81 S.Ct. 473. While true, *individual* liability is not *municipal* liability. *Monell* teaches that a municipality can be held liable only for its own actions, not solely “because it employs a tort-feasor.” 436 U.S. at 691, 98 S.Ct. 2018. Under the dissent’s reasoning, however, these forms of liability are the same: when a rogue elected official acts unconstitutionally, the municipality is liable. Thus, *Monell* liability is limitless, courting respondeat superior.

So, it is no surprise several circuits have raised similar concerns and disclaimed the same theory the dissenting opinion embraces. Consider *Roe v. City of Waterbury*, 542 F.3d 31 (2d Cir. 2008). Philip Giordano was elected city mayor, and as mayor, sexually abused two young girls. *Id.* at 34. After his arrest, the victims sued the City under § 1983 and *Monell*. As a final policymaker over law enforcement, safety, and social issues, they argued, the mayor’s actions established that the City’s official policy was to permit his abusive crimes. *Id.* at 37.

The Second Circuit disagreed. “Regardless of what broad powers he had as a mayor, the state of

Connecticut has made the policy (and the laws) prohibiting such conduct.” *Id.* at 40. And there was nothing in the mayor’s “behavior that could have advanced any conceivable job function or any conceivable policy goal or interest of the City.” *Id.* at 40. That reasoning is consistent with *Auriemma*’s principle and the conclusion we reach here. Yet, the dissenting opinion would hold the mayor liable in *City of Waterbury*. Indeed, the dissent’s cautionary hypothetical is remarkably similar to that case’s facts. But “a finding of municipal liability in this case,” the Second Circuit warned, “would amount to a finding of respondeat superior.” *Id.* at 41 (citation modified).

Granted, the dissenting opinion finds support in *Bennett v. Pippin*, 74 F.3d 578 (5th Cir. 1996), but that case has been functionally overruled. Recent cases from the Fifth Circuit cast serious doubt on *Bennett*’s holding. In *Bolton v. City of Dallas*, 541 F.3d 545 (5th Cir. 2008) (per curiam), the chief of police was fired by the Dallas city manager, so he sued the City under *Monell* for the city manager’s acts of violating his due process rights. *Id.* at 546–47. First, the Fifth Circuit observed that it had previously adopted the holding in *Auriemma*. *Id.* at 549. Second, it held that the city manager was not a final policymaker because neither state nor local law gave him the power to fire the chief of police. *Id.* Just as here, local law prohibited the city manager from firing the chief, “the relevant local law . . . prohibits the specific action.” *Id.* at 551. So, “absent some contrary custom not shown here, Benavides’s action clearly does not represent final policy with respect to the removal of city officials like Bolton. It is the Charter that announces the City’s policy in this regard.” *Id.* (citing *Auriemma*, 957 F.2d at 400). And in *Doe v.*

Burleson County, 86 F.4th 172, 177–78 (5th Cir. 2023), the court held that a judge’s sexual assault cannot lead to *Monell* liability because “the broad ability to make decisions . . . for the county’s business generally is distinguishable from [defendant’s] personal responsibility for his alleged sexual misconduct against an employee.” *Id.* at 178. To rule otherwise would “seem to sound instead in respondeat superior.” *Id.* (citation modified). Accordingly, *Bolton* and *Burleson County* cast serious doubt on the viability of *Bennett*.

Next, the dissenting opinion submits that *Simmons v. Uintah Health Care Special Dist.*, 506 F.3d 1281, 1285 (10th Cir. 2007), conflicts with our holding. *Simmons* held that when a final policymaker flouts a municipality’s policy, *Monell* liability can be established. *Id.* That holding may conflict with *Auriemma*.⁵ But *Simmons* is distinguishable from this case: there, the *municipality* set the policy; here, the *state* did. Our dissenting colleague acknowledges this, but we see a critical difference. *Simmons* makes the point in a footnote: “We have previously held that the fact an official is meaningfully bound by policies developed by others often signals that he or she is not a final policymaker. That test, however, does not bear

⁵ *Simmons* also may be distinguishable from *Auriemma*. In *Simmons*, the county formed a district, and the district constituted a board, which adopted policies for the management of a nursing home. *Id.* at 1283. When the board violated one of those policies, the court held the municipality was still liable: “Actions taken by a municipality’s final policymakers, even in contravention of their own written policies, are fairly attributable to the municipality.” *Id.* at 1287. But in *Auriemma*, the superintendent of police did not violate the policies he established but rather city ordinances.

on our current situation—where the Board in question has demonstrated that it is not meaningfully bound by its *own* policies.” *Id.* at 1285 n.4 (citation modified).

Footnote 4 in *Simmons* also included a reference to *Randle v. City of Aurora*, 69 F.3d 441 (10th Cir. 1995). There, the court identified considerations to determine who is a final policymaker. One is whether he “is meaningfully constrained by policies not of that official’s own making.” *Id.* at 448 (citation modified). Here, the policy that restrained Hyland was developed by others—the state legislature. That was also true in *Killinger*: the mayor did not establish policy by closing the bar during a town celebration because state law forbade such acts. 389 F.3d at 765. *Simmons*, thus, is consistent with *Killinger* and this case.

Finally, the dissenting opinion raises a separate and unrelated fact scenario in which a sheriff rapes a prisoner. To our dissenting colleague, under this case’s holding, such a circumstance would not present *Monell* liability. Yet as the Second Circuit has explained, for example, “authorizing, condoning, or promoting the sexual abuse of children” cannot be a municipality’s official policy because “the state of Connecticut has made the policy (and the laws) prohibiting such conduct.” *City of Waterbury*, 542 F.3d at 40; *see also Bolton*, 541 F.3d at 545 (“[T]he relevant local law . . . prohibits the specific action.”). This court’s caselaw follows the same line of reasoning. Our holding here is an application of that caselaw: When a state unequivocally restricts a final policymaker’s power over a subject, he does not establish policy when violating that prohibition. Illinois state law mandates that coroners may not

keep bodily remains. The coroner's rogue, purely personal actions to the contrary do not establish an official municipal policy.

IV

Hyland's behavior was heinous. But federal law does not right every wrong. *See Educators for Excellence*, 159 F.4th at 532. Because state law required coroners to return all remains to the next of kin, Hyland did not implement an "official policy" when he kept Louise's skull. Much the opposite—he violated the law. So, the Bettises cannot establish that Boone County was liable for Hyland's actions under *Monell*, and the district court properly dismissed their case.

AFFIRMED

Hamilton, Circuit Judge, dissenting.
I respectfully dissent.

We should reverse the dismissal of the Betts family's constitutional claim. An elementary point of Section 1983 law is that an individual defendant's violation of state law is not a defense to federal liability under Section 1983. *Monroe v. Pape*, 365 U.S. 167, 172, 183–87, 81 S.Ct. 473, 5 L.Ed.2d 492 (1961). We should hold here, similarly, that a local policymaking official's violation of state law also is not a defense to *Monell* liability for his or her local government.

The majority affirms dismissal of the Betts family's constitutional claim because Coroner Hyland violated a state law as he also violated the family's federal constitutional rights. That reasoning disregards the history and purposes of Section 1983. It also conflicts with the reasoning of *Monroe v. Pape* and the judicial glosses on municipal liability stemming from *Monell v. Department of Social Services*, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978).

To pose the issue starkly, by the majority's reasoning, *Monell* liability would *not* apply to a county whose elected sheriff raped a prisoner while on the job. Nor would *Monell* liability apply when a mayor orders police to shut down a political march by his opponents or discriminates on the basis of religion or race. After all, rape is a crime in every state. Political speech, freedom of religion, and racial equality are protected by every state constitution. On the majority's reasoning, rape, political suppression, and religious and racial discrimination must therefore be contrary to every county's or city's policy, no matter

what elected officials do under color of state law. Other circuits have had little difficulty in allowing *Monell* liability in, for example, cases of rape by elected sheriffs, *Whitson v. Board of County Comm'rs of County of Sedgwick*, 106 F.4th 1063 (10th Cir. 2024); *Bennett v. Pippin*, 74 F.3d 578 (5th Cir. 1996), or unconstitutional arrests of political opponents ordered by a mayor. *Hollins v. Powell*, 773 F.2d 191, 195–96 (8th Cir. 1985). We should follow that course here.

The unusual facts of this case might distract us from the broad and important issues the majority opinion puts at stake. In *Monell*, the Supreme Court held that municipal governments could be held liable under Section 1983 for constitutional violations. At the same time, the Court rejected common-law principles of respondeat superior liability for such governments. Instead, the Court held that a municipal government may be held liable only for a constitutional violation that reflects a municipal policy or custom. 436 U.S. at 690–91, 98 S.Ct. 2018. Justices, scholars, and lower courts have criticized the reasoning of *Monell*, see, e.g., *Vodak v. City of Chicago*, 639 F.3d 738, 747 (7th Cir. 2011) (collecting sources), but the policy or custom standard has endured.

Nearly fifty years of case law have recognized three paths to showing such a municipal policy or custom. As my colleagues explain, the first path is an express municipal policy, and the second is a widespread custom or practice with the practical effect of an express policy. Those two paths are not available here.

The focus here is the third path, an act by a person with final policymaking authority for the municipal

government, phrased in *Monell* as “those whose edicts or acts may fairly be said to represent official policy.” 436 U.S. at 694, 98 S.Ct. 2018. *Monell* did not develop that concept further, but the Court held in *Pembaur v. City of Cincinnati* that a single unconstitutional act of an executive branch official could amount to local government policy. 475 U.S. 469, 480–81, 484, 106 S.Ct. 1292, 89 L.Ed.2d 452 (1986) (elected county prosecutor was final policymaker on subject and single decision could support *Monell* liability).

In this case, Coroner Hyland was an independently elected county official. See 55 ILCS 5/3-3002. In his work, he was accountable to the voters rather than to another county governing body or official. See 55 ILCS 5/3-3003 (“The county coroner shall control the internal operations of his office.”). Under Illinois law, the elected coroner is the only person who may authorize the release of a body after an autopsy. 55 ILCS 5/3-3019. In his work as coroner in general and for the purpose of releasing bodies in particular, he was the county’s final policymaker.

My colleagues assume that Coroner Hyland, by having allegedly kept a murder victim’s skull for his bizarre collection, violated both Illinois state law and the constitutional rights of her family. My colleagues affirm dismissal of her family’s *Monell* claim on the theory that it was the Illinois legislature that established the relevant “policy” for the county. In their view, an Illinois statute has long provided that the “public policy” of state is for a county coroner to release the body of a decedent to her next of kin as soon as may be consistent with the coroner’s official duties. 55 ILCS 5/3-3021. Because Coroner Hyland also violated this state law, my colleagues reason, he was acting to “frustrate” what they deem to be county

policy rather than to “implement” it. See ante at 1057.

This reasoning is flawed. Taking the *Monell* standard and the majority’s view of the Illinois statute as given, the majority’s logic contradicts itself. It also undermines the powerful remedial purposes of Section 1983 as first adopted by the Reconstruction-era Congress in 1871. As explained below, circuit courts have struggled to follow fragmented and sometimes conflicting guidance from the Supreme Court in these final-policymaker cases. I hope the Supreme Court will step in to clarify that an unconstitutional action by a truly final local policymaker can establish local policy even if the action also violates state or local law.

Seventh Circuit Law: As my colleagues point out, case law offers some support for their approach, but our circuit’s cases pose an impossible tension that calls for resolution. To explain, language in *Auriemma v. Rice* supports the majority’s result here. 957 F.2d 397 (7th Cir. 1992). In *Auriemma*, senior white police officers in Chicago alleged that the Superintendent of Police had used race to make decisions to promote and demote his senior staff. The City of Chicago had adopted ordinances that flatly prohibited both racial and political discrimination in the police department, including in the most senior positions. The superintendent had no authority to violate those ordinances, and he was also not the senior-most executive officer in charge of implementing them—that would have been the mayor, at whose pleasure the superintendent served. *Id.* at 399–401.

Note the key difference between *Auriemma* and this case, however. The Chicago police

superintendent was not an independently elected official. Instead, he reported to such an elected official, the mayor. To be sure, the *Auriemma* panel said in dicta that those plaintiffs' allegations that the defendant superintendent had cleared his decisions with the mayor did not matter. The panel explained that was because the mayor was only another executive official, not a legislative official with the power to change city policy regarding discrimination in hiring decisions. *Id.* at 399–400. That dictum regarding the mayor was not necessary to the panel's reasoning and result, however. I believe the dictum conflicts with the reasoning and holding of *Pembaur*, which held that local policy could be established not only by legislative bodies but also by executive officials with final policymaking authority. 475 U.S. at 480, 106 S.Ct. 1292.

The majority finds its strongest support in this circuit in the odd case of *Killinger v. Johnson*, where the *Auriemma* dictum was applied as a holding. 389 F.3d 765 (7th Cir. 2004). In *Killinger*, a village mayor acted as a judicial officer in summarily ordering a bar be closed for an evening and later imposing a license suspension and fine. The plaintiff sued the village on the theory that the mayor was a final policymaker and had violated plaintiff's due process rights. *Id.* at 768. The panel affirmed summary judgment for the village on the *Monell* claim, reasoning that the relevant procedures were established by state statute: "If the mayor violated these procedures, he was acting contrary to—not setting—the policy of the State. Because the mayor does not hold final policymaking authority to establish procedural rules, [the village] is not liable for his actions." *Id.* at 772.

On the other side of this *Monell* issue we have *Vodak v. City of Chicago*, 639 F.3d 738 (7th Cir. 2011), where we reversed summary judgment for the city on a *Monell* claim. The city was sued for actions of the police superintendent in allegedly ordering arrests of demonstrators in the absence of arguable probable cause to believe they had knowingly violated a police order. *Id.* at 746, 748. The city made “the extravagant claim that the only officials whose tortious conduct can *ever* impose liability on it are the members of the City Council acting through their ordinances.” *Id.* at 747. We reasoned that the City Council had not restrained the police superintendent’s authority to make mass arrests at demonstrations, leaving the superintendent as the final policymaking authority for the relevant decision. *Vodak* distinguished *Auriemma*. Whereas in *Auriemma* the City Council had adopted ordinances prohibiting employment discrimination on the basis of race, no ordinance restrained the superintendent’s actions in ordering mass arrests in *Vodak*. 639 F.3d at 748–49.

With respect, however, that factual difference between *Vodak* and *Auriemma* does not offer a sound basis for producing opposite results under *Monell*. The point shows instead the internal contradiction in the reasoning of the *Auriemma* dictum, the *Killinger* holding, and the majority opinion here. It is this: Local policymaking officials are subject to federal, state, and local laws, including the United States Constitution and state constitutions. (The police superintendent’s actions in *Vodak* surely also violated the Illinois Constitution, for example. See Ill. Const. art. I, §§ 4 & 5.) Do all those laws amount to “local policies”? If a plaintiff can show that a local elected

executive official violated his rights under the federal Constitution, why should the local government's liability under *Monell* depend on whether the official's actions also violated some other law?¹

For example, all three states in this circuit have state constitutional analogs to the federal Equal Protection Clause, and state courts ordinarily interpret them as consistent with federal equal protection law. *Caulkins v. Pritzker*, 2023 IL 129453, ¶¶ 45–46, 471 Ill.Dec. 1, 228 N.E.3d 181, 191–92; *Mayo v. Wisconsin Injured Patients & Families Compensation Fund*, 2018 WI 78, ¶ 35, 383 Wis.2d 1, 914 N.W.2d 678, 690–91; *Collins v. Day*, 644 N.E.2d 72, 75 (Ind. 1994). By the logic of the majority opinion, those state constitutional provisions also establish “policy” for every local government in the circuit. The state constitutional provisions, after all,

¹ We noted in *Vodak* that the police superintendent's final policymaking authority was consistent with Illinois law. 639 F.3d at 748, citing *Fabiano v. City of Palos Hills*, 336 Ill. App. 3d 635, 657, 271 Ill.Dec. 40, 784 N.E.2d 258, 278 (2002). In *Fabiano*, the defendant city made a *Monell* argument quite similar to the majority's position here: the police chief could not be a final policymaker because municipal rules required him to enforce federal, state, and local laws (and presumably to comply with all of those laws). The Appellate Court of Illinois rejected that argument:

At most, the rules and regulations of the police department “constrained” [Police Chief] Hurley to enforce federal, state and local laws. We do not find this to be a meaningful constraint on Hurley's authority to direct and control the Palos Hills police department sufficient to strip him of his final policymaking authority with respect to law enforcement.

336 Ill. App. 3d at 657, 271 Ill.Dec. 40, 784 N.E.2d at 278 (reversing summary judgment on *Monell* claim). That reasoning seems sound to me.

bind every local government in each state. So by the majority's logic, local governments could successfully defend any equal protection claims under *Monell* on the theory that they *also* violated the state constitution's equal protection provision. That would be an astonishing and unprecedented restriction on *Monell* in this circuit.

Or consider free speech rights. All three states in this circuit have state constitutional analogs to the free speech rights in the federal First Amendment. Ill. Const. art. I, §§ 4 & 5; Ind. Const. art. I, § 9; Wis. Const. art. I, §§ 3 & 4. Political changes in local government often produce firings that arguably violate the federal First Amendment. If the firing decisions are made by, let's say, a mayor who looks like the final policymaker, *Monell* liability has long been recognized. See, e.g., *Wainscott v. Henry*, 315 F.3d 844, 848 (7th Cir. 2003) (affirming liability of mayor in official capacity, which means *Monell* liability for the city); *Matlock v. Barnes*, 932 F.2d 658, 666 n.4 (7th Cir. 1991) (city was liable for firing); *Soderbeck v. Burnett County*, 752 F.2d 285, 293–94 (7th Cir. 1985) (county would be liable for firings if members of county board committee were liable). Under the majority's reasoning, however, these local governments should have had an ironclad defense to *Monell* liability: not only did we violate the federal First Amendment, we also violated our state constitution. Our local "policy" was thus to comply with the state constitution—the superior source of law and policy. And that means any official's violation must have "frustrated" local policy rather than "implemented" it. Q.E.D. That would be

another astonishing restriction of federal rights and remedies.²

One more example: Second Amendment rights, with a variation on the facts from *Kellogg v. City of Gary*, 562 N.E.2d 685, 707–09 (Ind. 1990) (affirming damages against city under *Monell*). Suppose a city mayor today orders the local police simply to stop issuing handgun licenses, period. Assume that would be contrary to a state statute, a state constitutional provision (such as Ind. Const. art. I, § 32), and the federal Second Amendment as construed more recently to provide individual rights. Should a person who suffered damages be denied an award under *Monell* on the theory that the mayor was “frustrating local policy”?

Other Circuits: Other circuits have disagreed with the majority’s approach here. They have held that the final policymaker branch of *Monell* liability can apply even where an official with final municipal policymaking authority violated both state law and the United States Constitution.

The most extreme cases are those where elected sheriffs have acted under color of state law to commit rape. Under the majority’s reasoning here, *Monell* liability would be blocked by state criminal laws prohibiting rape and sexual assault. I respectfully submit we should not go down that road any further.

² Perhaps one might suggest there is a difference in the degree of specificity. The requirements of the Illinois coroner statute are more specific than those of the state constitutional provisions, for example. But the majority has not suggested this matters, and gauging *Monell* liability in terms of the degree of specificity of the higher law would turn the *Monell* issue into a hopeless quagmire, undermining the remedy.

We should instead reverse in this case and reject the idea that *Monell* liability can be defeated because the local official violated some other law as well as the Constitution.

A helpful guide to this area of Section 1983 law is *Whitson v. Board of County Comm'rs of County of Sedgwick*, 106 F.4th 1063 (10th Cir. 2024). In *Whitson*, a jury found that the elected county sheriff had sexually assaulted an intellectually disabled prisoner and had done so under color of state law. The sheriff assaulted the prisoner while transporting her to the county jail. The sheriff was held liable in his individual capacity under Section 1983, of course, but the district court had held that the county was not liable under *Monell*. *Id.* at 1065.

The Tenth Circuit reversed on grounds directly applicable here. The sheriff was the county's final policymaking authority regarding the custody and care of prisoners, making the county liable for his actions. "As we understand controlling precedent, when an official takes action over which he or she has final policymaking authority, the policymaker *is* the municipality, so it is fair to impose liability on that entity for that action." *Id.* at 1067.

The sheriff's sexual assault in *Whitson* was of course also a crime under state law, an even more egregious violation of state law than Coroner Hyland's violation here. That violation of state criminal law did not let the county off the hook of *Monell* liability for a constitutional violation by its final policymaker when it came to the treatment of prisoners. We should apply the same reasoning here.

Whitson found direct support in the Fifth Circuit's decision in *Bennett v. Pippin*, 74 F.3d 578 (5th Cir.

1996), where the county sheriff had raped a suspect after interrogating her in her home. Some confusing procedures in the district court led the Fifth Circuit to remand the *Monell* claim against the county for a trial before a jury. *Id.* at 581–83. Before remanding, however, the Fifth Circuit squarely rejected the same theory the majority adopts here. Consistent with the majority’s reasoning here, the county had argued that the sheriff could not have been acting pursuant to county policy because he also violated state law. The Fifth Circuit wrote: “When a final policy maker makes the relevant decision, and when that decision is within the sphere of the policy maker’s final authority, the existence of a well-established, officially-adopted policy will not insulate the municipality from liability.” *Id.* at 586, quoting *Gonzalez v. Ysleta Independent School District*, 996 F.2d 745, 754 (5th Cir. 1993). The sheriff in *Bennett* was exercising his power and authority as sheriff to rape the suspect. His action was de facto county policy by reason of his office.

The *Whitson* court also found strong support for its decision in an opinion written by Justice Gorsuch when he served on the Tenth Circuit, *Simmons v. Uintah Health Care Special District*, 506 F.3d 1281 (10th Cir. 2007). In *Simmons*, the board of a county nursing home had fired the administrator in violation of both the board’s own written policies and the constitutional guarantee of due process. The independent board had final policymaking authority in its oversight of the nursing home. *Id.* at 1283–84.

The district court had held that the municipal government was not liable under *Monell* because the board’s actions had violated the board’s own officially

adopted policy. The Tenth Circuit flatly rejected that reasoning:

Municipalities are equally answerable for actions undertaken by their final policymakers, whether or not those actions conform to their own preexisting rules. Were the law otherwise, a municipality's leaders would have the very strange incentive to flout their own policies. Or perhaps even enact policies with the deliberate purpose of disregarding them. While the law is often subtle and sometimes complex, it is rarely so unreasonable. We reverse.

Id. at 1283.

Simmons reasoned that the logic of *Pembaur* and *Monell* must extend to “actions by final policymakers taken in defiance of a policy or custom that they themselves adopted. Were the rule of law different, we would invite irrational results. Holding municipalities immune from liability whenever their final policymakers disregard their own written policies would serve to encourage city leaders to flout such rules. . . . Such a rule of law would thus serve to undermine rather than enhance Section 1983's purposes.” *Id.* at 1285.

To be sure, the situation in *Simmons* was one where the local government's final policymaker (the board) was violating its own policy, not a state statute. *Id.* at 1285 n.4 (distinguishing cases where defendant was “meaningfully bound by policies developed by others,” which “often signals that he or she is not a final policymaker”). But it's hard to see why a local official's violation of a *state* statute should work in the county's favor as a federal defense when a violation of a formal *county* ordinance or policy does

not, as *Simmons* held. See also *Hollins v. Powell*, 773 F.2d 191, 195 (8th Cir. 1985) (affirming *Monell* liability where mayor ordered unconstitutional arrests of local board members appointed by his predecessor).³

The Broader Stakes: The majority’s reasoning here is fundamentally at odds with the purpose and history of Section 1983 and with the core reasoning of *Monroe v. Pape* (with respect to individual defendants) and *Monell* (with respect to municipal defendants).

Monroe held that the phrase “under color of” state law as used in § 1983 embraces the “acts of an official or policeman who can show no authority under state law, state custom, or state usage to do what he did.” 365 U.S. at 172, 81 S.Ct. 473. In other words, a violation of state law is not a defense to individual

³ The majority tries to defang *Bennett* by suggesting it is has been implicitly overruled by the Fifth Circuit. Ante at 1062. The Fifth Circuit has not said so, and the majority offers no direct response to the Tenth Circuit’s decision in *Whitson*. The majority also claims support from *Roe v. City of Waterbury*, 542 F.3d 31 (2d Cir. 2008), which affirmed summary judgment for a city on *Monell* liability where the mayor had sexually abused children. Contrary to the majority’s hypothesis, I do not disagree with the result in *Roe*. The theory for affirmance was different there: the mayor had not been acting as a policymaker when he engaged in his purely personal crimes. *Id.* at 38–41 (mayor “had no authority to make policy authorizing, condoning, or promoting the sexual abuse of children”). By contrast, a county’s policy of inaction in response to sexual abuse of inmates in its jails can create *Monell* liability despite custodial sexual abuse being a felony under state law, a fact mentioned several times in this court’s en banc opinion in *J.K.J. v. Polk County*, 960 F.3d 367 (7th Cir. 2020). See *id.* at 372, 374, 376. In this case, there is no doubt that Coroner Hyland was exercising and abusing his official power in violating the Betts family’s rights.

liability under Section 1983. That should not be surprising, for in fact, abuses of official authority granted by a state were the principal targets of the Reconstruction-era Congress.

As suggested by Section 1983's colloquial title, the Ku Klux Act, the legislation responded to the "lawless conditions existing in the South in 1871," including racially and politically motivated murder, rape, and arson, which government officials routinely violated the law to ignore. *Id.* at 172–75, 81 S.Ct. 473. The Court noted the absence of overtly discriminatory laws (at that time) and called it "abundantly clear that one reason the legislation was passed was to afford a federal right in federal courts because, by reason of prejudice, passion, neglect, intolerance or otherwise, state laws"—such as colorblind criminal codes and provisions governing access to judicial process—"might not be enforced." *Id.* at 176–77, 180, 81 S.Ct. 473.

Accordingly, the Supreme Court rejected in *Monroe* the theory that the apparent availability of a common-law remedy (for battery, trespass, etc.) in the Illinois courts against police officers who entered a home and arrested its occupants defeated the federal constitutional claims. *Id.* at 172, 81 S.Ct. 473. Section 1983 created a federal remedy that did not depend on whether actions complied with *any* state law:

It is no answer that the State has a law which if enforced would give relief. The federal remedy is supplementary to the state remedy, and the latter need not be first sought and refused before the federal one is invoked. *Hence the fact that Illinois by its constitution and laws*

outlaws unreasonable searches and seizures is no barrier to the present suit in the federal court.

Id. at 183, 81 S.Ct. 473 (emphasis added).

Then in *Monell*, the Court recognized direct liability against municipalities and other units of local government, which it concluded are “persons” as that term is used in § 1983. 436 U.S. at 690, 98 S.Ct. 2018. The Court cautioned that a municipality is not liable through the theory of respondeat superior “solely because it employs a tortfeasor,” but rather when the municipality itself, “under color of some official policy, ‘causes’ an employee to violate another’s constitutional rights.” *Id.* at 691–92, 98 S.Ct. 2018.

Monell fundamentally concerns causation: did either the relevant “lawmakers” or, as here, “those whose edicts or acts may fairly be said to represent official policy,” “inflict[] the injury?” See *id.* at 694, 98 S.Ct. 2018. Indeed, the Court’s opinion in *Pembaur* construed *Monell* in terms of causation:

The “official policy” requirement was intended to distinguish acts of the *municipality* from acts of *employees* of the municipality, and thereby make clear that municipal liability is limited to action for which the municipality is actually responsible. *Monell* reasoned that recovery from a municipality is limited to acts that are, properly speaking, acts “of the municipality”—that is, acts which the municipality has officially sanctioned or ordered.

475 U.S. at 479–80, 106 S.Ct. 1292 (footnote omitted).

Viewed in its proper light as a question of causation, the “official policy” standard of *Monell* has nothing to do with whether a policy violates state law. The Congress that enacted the Ku Klux Act knew that the southern states nominally outlawed crimes like murder, arson, rape, kidnapping, and other methods of terrorizing black citizens. The problem was that local officials were not enforcing those laws and were actively encouraging their violation in the campaigns of terror to (re)establish white supremacy. *Monroe*, 365 U.S. at 172–80, 81 S.Ct. 473. It would be odd, if not actually perverse, to construe § 1983 so as not to reach such malfeasance by local officials and governments that was the principal target of the law. It would also be odd if violation of state law were a defense for one class of “persons” who may be liable under § 1983, municipal corporations, but not for the individual liability of natural persons. The Supreme Court has not suggested as much, and it’s hard to see why that would be a sensible interpretation of § 1983.

State law is significant insofar as it allocates final policymaking authority between various officials, not in whatever limits it imposes on how officials wield the authority given to them. As the plurality put it in *City of St. Louis v. Praprotnik*, the question is identifying which officials act as the municipality in which “areas” of activity:

We begin by reiterating that the *identification* of policymaking officials is a question of state law. . . . The States have extremely wide latitude in determining the form that local government takes, and local preferences have led to a profusion of distinct forms. Among the many kinds of municipal corporations, political subdivisions, and special districts of all sorts,

one may expect to find a rich variety of ways in which the power of government is distributed among a host of different officials and official bodies. Without attempting to canvass the numberless factual scenarios that may come to light in litigation, we can be confident that state law (which may include valid local ordinances and regulations) will always direct a court to some official or body that has the responsibility for making law or setting policy in any given *area* of a local government's business.

485 U.S. 112, 124–25, 108 S.Ct. 915, 99 L.Ed.2d 107 (1988) (plurality) (emphasis added and citations omitted); see also *Jett v. Dallas Independent School District*, 491 U.S. 701, 737–38, 109 S.Ct. 2702, 105 L.Ed.2d 598 (1989) (defining question controlled by state law in general as “the identification of those officials whose decisions represent the official policy of the local governmental unit” and, in the particular case, “whether Superintendent Wright possessed final policymaking authority in the area of employee transfers”).

Here, identifying the responsible official is easy. Illinois law grants the county coroner, an independently elected official accountable only to the voters, sole authority to release a dead body. The fact that he was required to comply with the Illinois Constitution, state statutes, and the common law while exercising this authority does not take releasing bodies outside of his area of responsibility. If the Betts family can prove the coroner acted as they allege, they should be able to recover damages from the county for the actions of the elected coroner, regardless of whether he also violated state law.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
ILLINOIS
WESTERN DIVISION**

Gary Betts and Earl
Betts,

Plaintiffs,

v.

Rebecca Wigget, in her
official capacity as
Boone County Coroner,
and Boone County,
Illinois

Defendants.

Case No.: 3:23-cv-50418

Judge Iain D. Johnston

MEMORANDUM OPINION AND ORDER

Plaintiffs bring this Third Amended Complaint, alleging Section 1983 violations and state law claims. The Defendants moved to dismiss under F.R.C.P. Rule 12(b)(6). For the reasons below, the Court grants Defendants' Motion.

Background & Procedural History

The Betts family endured a torturous ordeal, losing their daughter and sister, Louise Betts, in a heinous, depraved murder. Their wounds were ripped open when, decades later, they discovered that the then-Coroner ("Hyland," deceased) secretly kept Louise's skull, obstructing a proper burial. Hyland's alleged actions forced Gary and Earl Betts to disinter their sister to finally provide her with a proper burial.

Understandably, Gary and Earl Betts,¹ Louise’s remaining family members, sued. Betts filed an initial complaint in November, 2023, dkt. 1, an amended one in May 2024, dkt. 36, and a second amended complaint in July 2024, dkt. 53. The Defendants moved to dismiss the second amended complaint under 12(b)(1) and 12(b)(6). Dkt. 56. This Court found that Betts had standing to bring a Section 1983 deprivation of property claim and that the claim wasn’t time-barred. Dkt. 76. However, the Court dismissed the complaint because Betts didn’t sufficiently allege a *Monell* claim. *Id.* It gave Betts leave to file this third (and final) Complaint. Dkt. 79.

***Monell* Allegations**

The Court recounts only those allegations relating to Bett’s *Monell* claim. For more background, see dkt. 76. It accepts the allegations as true to decide this Motion.

In addition to Louise Betts’ skull, then-Coroner Wesley Hyland retained “multiple bodily remains from multiple deceased [individuals].” Dkt. 79 ¶ 25. Citing Illinois statutory provisions, Betts alleges a coroner holds these powers and responsibilities:

- The Boone County Coroner controls the operation of the Boone County Coroner’s Office. 55 ILCS 5/3-3003
- The Boone County Coroner is a conservator of the peace of the County and can perform all of the duties of the Sheriff of the County. 55 ILCS 5/3007 and 5/3010.

¹ The Court refers to the Betts brothers collectively and in the singular.

- The Boone County Coroner has complete discretion concerning investigation of deaths, inter alia, caused potentially by homicide, deaths not attended by a physician, deaths of a ward of the state, deaths caused by accident, and apparent suicides. 55 ILCS 5/3013.
- It is within the complete discretion of the Boone County Coroner to summon a jury to conduct an inquest concerning the categories of deaths indicated above.
- No dead body subject to an investigation or inquest by the Coroner and the personal property of such deceased may be handled, moved, disturbed, embalmed or removed from the place of death except with permission of the Coroner. 55 ILCS 5/3019.
- The Coroner has the discretion consistent with the Coroner's duties to turn over the body of the deceased to the deceased's next of kin, friends, personal representatives or person designated in writing or to a funeral director designated by the above for proper disposition of the remains or if there is none of the above, in the Coroner's discretion to be buried, cremated or donated to science. 55 ILCS 5/3-3021 and 5/3-3034.

Dkt. 79 ¶¶ 28–33. Betts concludes that Hyland was a final decisionmaker and had policy making authority.

Analysis

Federal Rule of Civil Procedure 8 requires only a “short and plain statement” establishing the basis for the claim and the Court’s jurisdiction. Fed R. Civ. P 8(a). A plaintiff will survive a Rule 12(b)(6) motion if

the plaintiff alleges facts sufficient to “state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007). The Court accepts all well-pleaded facts as true and draws all reasonable inferences in favor of the plaintiff. *United States ex rel. Berkowitz v. Automation Aids, Inc.*, 896 F.3d 834, 839 (7th Cir. 2018). Importantly, the Court “need not accept as true legal conclusions, or threadbare recitals of the elements of a cause of action, supported by mere conclusory statements.” *Brooks v. Ross*, 578 F.3d 574, 578 (7th Cir. 2009). The moving party bears the burden of establishing the insufficiency of the plaintiff’s allegations. *Marcure v. Lynn*, 992 F.3d 625, 631 (7th Cir. 2021).

Monell

Betts concedes that his claims “[are] essentially against Boone County.” Dkt. 94 at 3. It’s a legally peculiar situation, because Hyland was both the coroner and held the Office of the Coroner. In any event, under *Monell*, a plaintiff may raise a Section 1983 claim against a local government entity. 436 U.S. 658. However, those entities “are answerable only for their own decisions and policies; they are not vicariously liable for the constitutional torts of their agents.” *Auriemma v. Rice*, 957 F.2d 397, 399 (7th Cir. 1992). A municipality only faces *Monell* liability when it violates a constitutional right “via an official policy or custom.” *Wragg v. Village of Thronton*, 604 F.3d 464, 467 (7th Cir. 2010).

To establish an official policy or custom, a plaintiff must allege that his injury was caused by (1) the entity’s express policy that, when enforced, cause[d] a constitutional deprivation; (2) the entity’s widespread practice that, although not authorized by written law

or express municipal policy, [was] so permanent and well settled as to constitute a custom or usage within the force of law; or (3) a person with final policymaking authority. *McCormick v. City of Chicago*, 230 F.3d 319,324 (7th Cir. 2000). Betts admits that only the third avenue—an official policy via a person with final policymaking authority—is relevant in this case. Dkt. 94 at 1.

For this Motion’s purposes, the Court will assume that Hyland had final policymaking authority: He held the official position, apparently supervised others, and had discretion in investigatory matters. It’s unnecessary to decide whether Hyland technically answered to the legislature or some other entity in Illinois’ patchwork municipal hierarchy.

But the Court agrees with Defendants that there’s another question. *Monell*’s policymaker prong requires “both a person with policymaking authority *and* an official action that implements or creates official policy.” *Palka v. City of Chicago*, No. 07-C-5211, 2008 U.S. Dist. LEXIS, at *21 (N.D. Ill. Aug. 20, 2008), *aff’d*, 662 F.3d 428 (7th Cir. 2011); *see also McGreal v. Ostrov*, No. 98-C-3958, 2002 U.S. Dist. LEXIS 14251, at *10 (N.D. Ill. Aug. 1, 2002) (“The ‘policymaker’ prong of *Monell* requires more than the act of a policy maker. It is necessary for the policymaker’s act to have been in conformance with, or in the creation of, governmental rules that have the effect of law . . .”).

Betts can’t sufficiently allege Hyland “implemented or created official policy.” A policymaker doesn’t carry out policy, “[u]nless today’s decision ought to govern tomorrow’s case under a law or custom with the force of law.” *Auriemma*, 957 F.2d at 400. “When an official’s discretionary decisions are

constrained by policies not of that official's making, those policies, rather than the subordinate's departure from them, are the act of the municipality." *City of St. Louis v. Praprotnik*, 485 U.S. 112, 127 (1988). To hold a municipality liable, "*Monell* tells us [] the agent's action must implement rather than frustrate the government's policy." *Id.*; see also *McGreal*, 2002 U.S. Dist. LEXIS 14251, at *10 at *10 ("A policymaker who acts outside of the rules does not thereby set [a] new policy."); *Palka*, 2008 U.S. Dist. LEXIS, at *21 (same).

As Coroner, Hyland owed Boone County residents a duty to tend to their deceased in a proper and dignified manner. Illinois statutes vested Hyland with powers and responsibilities, expecting him to respectfully administer the Coroner's office. If the allegations are true, Hyland, at least a few times, defiled the position, acting callously and indecently. Nevertheless—indeed because—he behaved in that manner, he didn't implement a policy but rather frustrated the underlying one. If anyone had known about Hyland's secret misdeeds—keeping victims' body parts in his house—they would have immediately ensured his removal; in no way would the "policy" continue the next day. So, Betts doesn't sufficiently allege a *Monell* claim, and his Section 1983 claim must be dismissed with prejudice. Because the Court dismisses the federal claim, it won't exercise supplemental jurisdiction over the state law claims.

The Court understands that this decision leaves the Betts family with no federal recourse, unable to proceed against the deceased coroner or Boone County in this Court. Unfortunately, federal law

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can't right every wrong. And this Court's jurisdiction is limited to what Congress authorizes. The Betts family deserves solace and peace, may they find it. The process to those goals begins with a heartfelt apology by Boone County, if it hasn't done so already.

Entered: March 26, 2025 By: s/Iain D. Johnston
Iain D. Johnston
U.S. District Judge

42 U.S.C. § 1983**§ 1983. Civil action for deprivation of rights**

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

55 ILCS 5/3-3002

(55 ILCS 5/3-3002) (from Ch. 34, par. 3-3002)

Sec. 3-3002. Commencement of duties. The coroner shall enter upon the duties of his office on the first day of the month of December following his election on which the coroner's office is required, by statute or by action of the county board, to be open.

55 ILCS 5/3-3003

(55 ILCS 5/3-3003) (from Ch. 34, par. 3-3003)

Sec. 3-3003. Duties of coroner. The county coroner shall control the internal operations of his office. Subject to the applicable county appropriation ordinance, the coroner shall procure necessary equipment, materials, supplies and services to perform the duties of the office. Compensation of deputies and employees shall be fixed by the coroner, subject to budgetary limitations established by the county board. Purchases of equipment shall be made in accordance with any ordinance requirements for centralized purchasing through another county office or through the State which are applicable to all county offices.

55 ILCS 5/3-3005

(55 ILCS 5/3-3005) (from Ch. 34, par. 3-3005)

Sec. 3-3005. Oath. He shall also, before entering upon the duties of his office, take and subscribe the oath or affirmation prescribed by Section 3, Article XIII of the Constitution which shall be filed in the office of the county clerk of his county.

55 ILCS 5/3-3015

(55 ILCS 5/3-3015) (from Ch. 34, par. 3-3015)

Sec. 3-3015. Circumstances under which autopsy to be performed.

(a) Where a death has occurred and the circumstances concerning the death are suspicious, obscure, mysterious, or otherwise unexplained and in the opinion of the examining physician or the coroner the cause of death cannot be established definitely except by autopsy, and where a death has occurred while being pursued, apprehended, or taken into custody by or while in the custody of any law enforcement agency, it is declared that the public interest requires that an autopsy be performed, and it shall be the duty and responsibility of the coroner to cause an autopsy to be performed, including the taking of x-rays and the performance of other medical tests as the coroner deems appropriate.

(b) The coroner shall instruct involved parties that embalming of the body is not to be conducted until the toxicology samples are drawn. If a child dies from suspicious or unexplained circumstances, the coroner shall secure the services of a pathologist. The Department of Public Health shall provide coroners and pathologists with a child death autopsy protocol.

(c) If the coroner determines it advisable to exhume a body for the purpose of investigation or autopsy or both, and the coroner would have been authorized under this Section to perform an investigation or autopsy on the body before it was interred, the coroner may exhume the body after consulting on the matter with the state's attorney and upon the order of the circuit court directing the exhumation upon the petition of the state's attorney.

55 ILCS 5/3-3019

(55 ILCS 5/3-3019) (from Ch. 34, par. 3-3019)

Sec. 3-3019. Removal of bodies; violation. No dead body which may be subject to the terms of this Division, or the personal property of such a deceased person, shall be handled, moved, disturbed, embalmed or removed from the place of death by any person, except with the permission of the coroner, unless the same shall be necessary to protect such body or property from damage or destruction, or unless necessary to protect life, safety, or health. Any person knowingly violating the provisions of this Section is guilty of a Class A misdemeanor.

55 ILCS 5/3-3021

(55 ILCS 5/3-3021) (from Ch. 34, par. 3-3021)

Sec. 3-3021. Public policy; release of body to next of kin. As a guide to the interpretation and application of this Division it is declared that the public policy of the State is as follows:

That as soon as may be consistent with the performance of his duties under this Division the coroner shall release the body of the decedent to the decedent's next of kin, personal representative, friends, or to the person designated in writing by the decedent or to the funeral director selected by such persons, as the case may be, for burial, and none of the duties or powers of coroners enumerated in this Division shall be construed to interfere with or control the right of such persons to the custody and burial of the decedent upon completion of the coroner's investigation.

Nothing herein shall be construed to preclude the coroner from consulting with the decedent's next of kin, personal representative, friends or the person designated in writing by the decedent where the decedent was under treatment by prayer or spiritual means alone in accordance with the tenets and practice of a well recognized church or religious denomination in making his preliminary investigation under subsection (E) of Section 3-3013, nor shall anything herein contained be construed to require an autopsy by reason of the sole fact that the decedent was under treatment by prayer or spiritual means alone.