No. 26-365

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether § 1983 final policymaker *Monell* liability is unavailable when a municipal official's unconstitutional act violates municipal policy established by state law on the subject matter of the action taken.

CORPORATE DISCLOSURE STATEMENT

Corporate disclosure is not necessary. Respondent Boone County, Illinois, is a municipality and Respondent Rebecca Wigget, in her official capacity as Boone County Coroner, is an individual.

RELATED PROCEEDINGS

Pursuant to Rule 15.2, Respondents identify the following directly related pending case not identified in the Petition under Rule 14(B)(iii):

Circuit Court for the Seventeenth Judicial Circuit, Boone County, Illinois:

Betts v. Rebecca Wigget, et al., No. 25 LA 21 (Boone Cnty. Cir. Ct. 2025)

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INTRODUCTION

Petitioners read the decision below too broadly in an attempt to demonstrate a circuit split that does not exist. The Seventh Circuit did not categorically hold that a final policymaker's unconstitutional acts can never establish official municipal policy if those actions also violate state law. The Seventh Circuit held that where state law unequivocally establishes municipal policy in a particular area of government business, a final policymaker's unconstitutional action contrary to that policy is not the municipality's policy for which it may be liable under *Monell v. Department of Social Services of the City of New York*, 436 U.S. 658 (1978). Consequently, the decision below is not at odds with other circuits' decisions permitting § 1983 *Monell* claims to proceed when a final policymaker's unconstitutional act also violates a state law of general applicability which does not establish municipal policy.

The Seventh Circuit explained 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." Pet. App. 15a. (emphasis added). The Seventh Circuit held that "[w]hen a state unequivocally restricts a final policymaker's power over a subject, he does not establish policy when violating that prohibition." *Id.* at 20a.

That holding is the application of this Court's well-established precedent that "[m]unicipal liability attaches only where the decisionmaker possesses final authority to establish municipal policy with

respect to the action ordered" and that "a municipality cannot be made liable" under § 1983 for acts of its employees "by application of the doctrine of *respondeat superior*." *Pembaur v. City of Cincinnati*, 475 U.S. 469, 478, 481 (1986). There is no deep circuit split on this issue. Petitioners do not identify another circuit's decision that is contrary to the true holding of the decision below. Therefore, this case does not present a disputed foundational question concerning municipal § 1983 liability and certiorari is unwarranted.

STATEMENT OF THE CASE

A. Legal Background

1. Section 1983 imposes liability upon any person who, acting under color of state law, deprives another of rights or privileges secured by the Constitution or laws of the United States. 42 U.S.C. § 1983. Although municipalities are considered "persons" within the meaning of § 1983, the constitutional deprivation must have its origin in what can fairly be said to be a policy of a municipality. *Monell*, 436 U.S. at 694. This is because municipal liability for civil rights violations under § 1983 is based on causation and municipalities cannot be held liable for an employee's unconstitutional act on a respondeat superior theory. *Id.* at 691.

2. In *Pembaur*, this Court made clear that a municipal officer's single act can subject the municipality to § 1983 liability when taken pursuant to a policy adopted by the official responsible under state law for making policy in that area. 475 U.S. at 480–83, & n.12. However, a municipality is not liable merely because the official who inflicted that constitutional injury had the final authority to act on its behalf:

> [W]e hasten to emphasize that not every decision by municipal officers automatically subjects the municipality to section 1983 liability. Municipal liability attaches only where the decision maker possesses final authority to establish municipal policy with respect to the action ordered. The fact that a particular official—even a policymaking official—has discretion in the exercise of

> particular functions does not, without more, give rise to municipal liability based on an exercise of that discretion. The official must also be responsible for establishing final government policy respecting such activity before the municipality can be held liable.

Id. at 481–82 (citation omitted).

3. In *City of St. Louis v. Praprotnik*, this Court explained further that "a federal court would not be justified in assuming that municipal policymaking authority lies somewhere other than where the applicable law purports to put it." 485 U.S. 112, 126 (1988). Accordingly, "[w]hen an official's discretionary decisions are constrained by policies not of that official's making, those policies, rather than the subordinate's departures from them, are the act of the municipality." *Id.* at 127. Were it otherwise, vicarious liability would be impermissibly imposed on the municipality for the policymaker's departure from municipal policy and a *respondeat superior* theory of liability is "incompatible with the causation requirement set out on the face of § 1983." *Id.* at 122.

B. Factual Allegations

1. Petitioners allege that during the police investigation and prosecution of her murder, Louise Betts's remains were in the possession and control of then Boone County Coroner, Wesley Hyland. Supp. App. 1sa. After concluding the investigation, Hyland released Louise's remains to her family for burial. *Id.* ¶ 10. Unbeknownst to Louise's family, Hyland retained Louise's skull. *Id.* ¶ 11. On April 3, 1978, Louise's remains were buried by her family. *Id.* ¶ 12.

It was not discovered that Hyland retained the skull until November 2022. *Id.* at 1sa. On November 17, 2022, the current Boone County Coroner, Rebecca Wigget, informed Petitioners, Louise's next of kin, that she was in possession of the skull. *Id.* ¶¶ 13-14. On June 28, 2023, Louise's casket was exhumed, and her skull was placed with her body in a new casket and reburied. *Id.* 3sa, ¶¶ 21-22.

2. Hyland was a policy making official within the office of Coroner and controlled the operation of the Coroner's Office. *Id.* ¶¶ 27-28. Petitioners expressly allege that Hyland had a duty by statute to provide Louise's complete remains to her next of kin. *Id.* ¶ 18. The Coroner's Act declares and establishes the policy for all Illinois Coroner's offices on the disposition of a decedent's body after the coroner's duties are completed:

> § 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 . . . .

Pet. App. 52a. Petitioners allege that, "[p]ursuant to Illinois State law the Boone County Coroner was the final decision maker in Boone County concerning the policy with respect to release of Louise Betts' remains. Supp. App. 4sa., ¶ 37. According to Petitioners, "[t]he release of Louise Betts' remains to her next of kin

without Louise Betts' skull was therefore the official policy of Boone County." *Id.* ¶ 38.

C. Proceedings Below

1. Petitioners brought a § 1983 claim against both Respondents for deprivation of property without due process in violation of the Fourteenth Amendment. *Id.* Petitioners allege that the failure to provide notice and an opportunity to be heard prior to depriving Louise Betts's next of kin of their property right to dispose of her remains was a denial of due process. Supp. App. 5sa., ¶ 47. Petitioners also brought a state law claim for tortious interference with the right to dispose of remains against Coroner Wigget in her official capacity, *id.* at 7, and a state law claim for indemnification against Boone County. Supp. App. 4sa.-5sa.

2. The district court granted Respondents' Motion to Dismiss Petitioners' § 1983 Fourteenth Amendment deprivation-of-property claim with prejudice. Pet. App. 20a. The district court assumed without deciding that former Coroner Hyland had final policymaking authority for *Monell* purposes but found that Petitioners failed to state a claim because the allegations did not include facts showing that his acts or omissions created or implemented official Coroner's Office policy necessary to state a *Monell* claim. *Id.* at 43a. The district court quoted *Praprotnik*, 485 U.S. at 127, for the proposition that "[w]hen an official's discretionary decisions are constrained by policies not of that official's making, those policies, rather than the subordinate's departures from them are the act of the municipality." *Id.* at 43a.-44a. The district court also quoted *Auriemma v. Rice*, 957 F.2d 397, 399 (7th Cir. 1992),

for the proposition that, to hold a municipality liable, "the agent's action must implement rather than frustrate the government's policy." *Id.* at 44a. The district court found that Petitioners could not allege that Hyland implemented or created policy. *Id.* The court concluded that Petitioners did not sufficiently allege a *Monell* claim, dismissed it with prejudice, and relinquished supplemental jurisdiction over their state law claims. Petitioners filed a notice of appeal and refiled their state law claims in state court. Resp. CA7 Br. 8.

3. The Seventh Circuit affirmed the district court, concluding that Hyland's actions did not establish an "official policy" of unconstitutionally retaining human remains and therefore the County is not liable under *Monell*. Pet. App. 1a.[1] The court reasoned that state law requires that coroners return bodily remains to families and Hyland frustrated an official policy rather than established one. *Id.* at 1a.-2a. The court

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[1] The decision below begins with "[t]he Coroner of Boone County, Illinois, engaged in abhorrent and macabre behavior" without reminding the reader that Petitioners have only pleaded and not proven that deceased former Coroner Hyland kept their sister's skull as a trophy. Petitioners have no way of knowing why Hyland retained the skull. Louise Betts was buried on April 3, 1978. Supp. App. 2sa. Her murderer's trial was in September 1978. *People v. Brownell*, 96 Ill. 2d 167, 168 (1983). His sentence was not final until 1984. During that period, there were plausible evidentiary reasons to retain a murder victim's skull while her murderer was tried, convicted, sentenced, and resentenced following his appeals—including positive identification through comparison with antemortem dental records. It may never be known whether Hyland's retention of the skull following the prosecution was merely negligent. Boone County officials did not discover that Hyland retained the skull until November 2022. Supp. App. 1sa.

explained that "[t]o have final policymaking authority means the government agent possesses 'final authority to establish municipal policy with respect to the action ordered.'" *Id.* at 6a., quoting *Pembaur*, 475 U.S. at 481 (plurality). The court explained further that a state statute withdrew Hyland's authority to make policy concerning the disposition of a body after his coroner's investigation was complete because the statute unequivocally prohibited his actions and he acted contrary to its command to release the body of the decedent to the next of kin. *Id.* at 8a. The court concluded that "[t]he state statute, then, unequivocally restrained Hyland's authority. Because he acted ultra vires, flouting that restraint, he did not establish County policy." *Id.* at 10a. The Seventh Circuit expressly held that: "When a state unequivocally restricts a final policymaker's power over a subject, he does not establish policy when violating that prohibition." *Id.* at 10a.

4. The dissenting judge read the majority's holding as adopting a categorical rule that a final policymaker's unconstitutional acts can never establish official municipal policy if those actions also violate state law. *Id.* at 22a. The dissent would reverse the dismissal of Petitioners' constitutional claim citing the elementary point set forth in *Monroe v. Pape*, 365 U.S. 167, 172, 183-87 (1961), that an individual defendant's violation of state law is not a defense to his or her liability under § 1983. Pet. App. 20a. The dissent would similarly hold that a policymaking official's violation of state law is also not a defense for his or her local government. *Id.* In response, the majority explained that "*individual* liability is not *municipal* liability[,]" and rejected the dissent's reasoning:

> *Monell* teaches that a municipality can be held liable only for its own actions, not solely "because it employs a tort-feasor." 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.

Id. at 17a. (citation omitted). The majority maintained its non-categorical holding that "[w]hen a state unequivocally restricts a final policymaker's power over a subject, he does not establish policy when violating that prohibition." *Id.* at 20a. The majority concluded that "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." *Id.*

REASONS FOR DENYING THE WRIT

The decision below does not categorically hold that a municipal official's unconstitutional actions can never establish official municipal policy if those actions also violate state law. Instead, the Seventh Circuit held that "[w]hen a state unequivocally restricts a final policymaker's power over a subject, he does not establish policy when violating that prohibition." Pet. App. 20a. That necessarily means that when a state does not restrict a final policymaker's power over a subject, he may be establishing municipal policy while also violating state law. The decision below merely applies this Court's well-established precedent that "[m]unicipal liability attaches only where the decisionmaker

possesses final authority to establish municipal policy with respect to the action ordered" and that "a municipality cannot be made liable" under § 1983 for acts of its employees "by application of the doctrine of *respondeat superior*." *Pembaur*, 475 U.S. at 478, 481. There is no circuit split as to this straight-forward concept. Petitioners do not identify a circuit decision that is contrary to the true holding of the decision below.

It is Judge Hamilton's hope that this 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." Pet. App. 25a. There is no need for this Court to step in because the decision below does not hold otherwise.

I. THERE IS NO CIRCUIT SPLIT AS TO THE TRUE HOLDING OF THE DECISION BELOW

The Seventh and Second Circuits have not categorically held that a municipal official's unconstitutional acts can never establish official municipal policy when those actions also violate state law. In the decision below, the Seventh Circuit held that "[w]hen a state unequivocally restricts a final policymaker's power over a subject, he does not establish policy when violating that prohibition." Pet. App. 20a. That holding is not at odds with decisions of other circuits which have permitted *Monell* claims to proceed when based on a final policymaker's unconstitutional act which also violates a state law of general applicability that does not, and is not intended to, establish municipal policy.

A. The Seventh and Second Circuits Do Not Categorically Bar *Monell* Claims If a Final Policymaker's Unconstitutional Act Also Violates State Law

1. Petitioners misconstrue the decision below as a categorical bar of final policymaker *Monell* liability where the official's unconstitutional action also violated state law. Pet. 16. According to Petitioners, the decision below exemplifies the categorical rule that "[a]n official's actions . . . cannot be viewed as municipal 'policy' in cases where they contradict state law." *Id.*, citing App. 15a. However, Petitioners quote a sentence in isolation that alone does not express the holding of the decision below. The quote in context is 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." App. 15a. (emphasis added). The sentence Petitioners quote must be read with the preceding sentence's qualification: "when state or local law withdraws his or her authority over that area." Thus, the actual holding of the decision below is that when a state law establishes the municipality's policy, the municipal official has no authority to make contrary municipal policy and, if he does, he is not making the municipality's policy.

The amici curiae maintain that the Seventh Circuit acknowledged that its precedent—barring *Monell* liability where the final policymaker's unconstitutional act violates state law—"may conflict with" the approach of other circuits. Amici Curiae Br., 7-8, citing Pet. App. 19a. Not so. The Seventh Circuit

has neither adopted nor acknowledged a categorical approach. Instead, on the pages amici cite, the court stated that the Tenth Circuit's holding in *Simmons v. Uintah Health Care Special District*, 506 F.3d 1281 (10th Cir. 2007), that the final policymakers' act flouting its own municipal policy can establish municipal liability, may conflict with the holding in *Auriemma* that to hold the municipality liable the final policymaker's act must implement rather than frustrate municipal policy. Pet. App. 19a. However, the Seventh Circuit explained that *Simmons* is distinguishable because the board in *Simmons* set the policy that it violated while the state set the policy that the coroner violated. *Id.* The court stated further that *Simmons* may also be distinguishable from *Auriemma* because the board violated one of its own policies while the superintendent of police in *Auriemma* did not violate a policy that he established. *Id.* at 19a. n.5.

Petitioners' contention that the Seventh Circuit adopted a categorical rule barring final policymaker *Monell* claims where state law is also violated is belied by the Court's express holding which Petitioners ignore: "When a state unequivocally restricts a final policymaker's power over a subject, he does not establish policy when violating that prohibition." Pet. App. 20a. That necessarily means that when a state does not restrict a final policymaker's power over a subject, he may be establishing municipal policy when also violating state law. Therefore, contrary to Petitioners' contention, the presence of municipal policy, and thus the possibility of municipal liability, does not turn on whether the official's unconstitutional conduct violated state law, Pet. 16, except where state law

establishes the local policy. A state law of general applicability, like a criminal statute, does not establish municipal policy.

2. In assessing *Monell* final-policymaker liability, it is important to recognize the fundamental distinction between final decisionmaking authority and final policymaking authority. Only the latter can lead to municipal liability. *See Pembaur*, 475 U.S. at 481. A final policymaker is an official who under state or local law has "the responsibility for . . . setting policy in any given area of a local government's business." *Praprotnik*, 485 U.S. at 125. In contrast, a final decisionmaker is an official who has discretion to exercise a particular function but does not have final policymaking authority as to that function. *Pembaur*, 475 U.S. at 481 ("Municipal liability attaches only where the decisionmaker possesses final authority to establish municipal policy with respect to the action ordered."). If a municipal official commits an unconstitutional act in an area of government business for which state or local law gives him final policymaking authority, his act is that of a *final policymaker*, it is the municipality's act, and there is municipal liability for any resulting constitutional injury. On the other hand, if a municipal official commits an unconstitutional act in an area of government business for which state or local law has already established the municipality's policy, his act is that of a *final decisionmaker*, the act is his own, and there is only individual, and not municipal, § 1983 liability for any resulting constitutional injury.

Where state law establishes the municipality's local policy, and the final decisionmaker's

unconstitutional act violates that policy, the municipality is not liable because the decisionmaker acted contrary to municipal policy—he did not make municipal policy that caused the constitutional injury. However, where a final policymaker's unconstitutional act violates a state law that does not establish municipal policy the municipality can be liable because the final policymaker made the municipal policy that caused the constitutional injury. Thus, municipal liability does not turn on whether the official's unconstitutional act violates state law but, rather, whether the official's act is municipal policy.

3. Coroner Hyland had decisionmaking authority with respect to the disposition of a decedent's remains after his coroner's duties were complete. However, he did not possess final policymaking authority in that area of coroner's office business. The Illinois Coroner's Act established that policy for the Office of the Boone County Coroner and for the 101 other county coroners' offices in Illinois. Pet. App. 52a. ("That as soon as may be consistent with the performance of his duties under this Act the coroner shall release the body of the decedent to the decedent's next of kin."). Therefore, state law withdrew Coroner Hyland's authority to establish municipal policy with respect to the subject matter of the action taken: the disposition of the decedent's remains once the coroner's duties are complete. As a result, Hyland's alleged unconstitutional act contravened his office's municipal policy which was unequivocally established by state law. Consequently, although Hyland—as a final decisionmaker—would undeniably bear individual § 1983 liability for his alleged unconstitutional act, his act cannot be attributed to

Boone County for purposes of *Monell* final policymaker § 1983 liability. *See Auriemma*, 957 F.2d at 400 (to hold municipality liable, agent's action must "implement rather than frustrate the government's policy."). However, the Seventh Circuit did not categorically bar final-policymaker *Monell* liability where a final policymaker's unconstitutional act also violates a state law of general applicability that does not establish municipal policy.

Consider the circumstance where Coroner Hyland did not retain the decedent's skull but rather stole the decedent's jewelry while performing his coroner's duties, depriving Petitioners' family of property without Fourteenth Amendment due process of law. That unconstitutional act would also violate Illinois law prohibiting theft. *See* 735 ILCS 5/16-1. However, in that circumstance, the decision below would not categorically bar final-policymaker *Monell* liability if all other requirements were satisfied because the theft statute does not establish municipal policy on the performance of coroner duties. Instead, the Illinois theft statute is a criminal statute that applies to all Illinois citizens, does not and is not intended to establish municipal policy, and Hyland's authority to establish municipal policy with respect to the performance of his coroner's duties is not restricted by the Illinois theft statute.

4. Petitioners contend that the decision below derived its purported categorical rule from *Killinger v. Johnson*, 389 F.3d 765 (7th Cir. 2004), but there is no categorical rule set forth in *Killinger* either. Instead, *Killinger* involves a circumstance like the decision below where state law established the municipal policy such that the municipal

policymaker's unconstitutional act in contravention of that policy cannot constitute the municipality's policy for purposes of final-policymaker *Monell* liability.

Mr. Killinger sued the mayor and the village under § 1983 after the mayor temporarily closed Killinger's bar without issuing a written order stating his reason, in violation of the Illinois Liquor Control Act and Fourteenth Amendment due process. *Id.* at 768. The mayor, as the local liquor control commissioner, was charged with the administration of the Liquor Control Act. *Id.* The Act permits temporarily closing a bar without prior hearing if the local liquor control commissioner issues a written order stating the reason why continued operation will immediately threaten the welfare of the community. *Id.* at 768-69. The Seventh Circuit concluded that Killinger failed to establish that the mayor had final policymaking authority with respect to the challenged action. *Id.* at 771. The court explained that Killinger's claim is that the mayor violated his due process rights by failing to observe the procedures mandated by the Liquor Control Act. *Id.* at 772. The court explained further that the Illinois General Assembly, not the mayor, established the procedures applicable to temporary closings under the Act. *Id.* The court concluded that "[i]f 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.*

Like the Illinois Coroner's Act at issue in the decision below which established coroner's office policy on the disposition of decedents' remains, the Illinois Liquor Control Act in *Killinger* established

the village policy on temporarily closing bars without a hearing. Consequently, neither final policymaker had the authority to establish municipal policy in either area of government business. Instead, the coroner's and mayor's unconstitutional acts were contrary to municipal policies established by state law and could not constitute municipal policies subjecting either municipality to final-policymaker *Monell* liability. However, absent from both decisions is a categorical rule that a municipal official's unconstitutional actions can *never* establish municipal policy when those actions also violate generally appliable state law which does not establish municipal policy. Had the mayor battered Killinger during an altercation that ensued when the mayor advised Killinger that his bar was being temporarily closed, neither the decision below nor *Killinger* would categorically bar final-policymaker *Monell* liability. That is because the generally applicable state law prohibiting battery does not establish municipal policy.

5. Petitioners argue that the decision below expressly endorsed the Second Circuit's categorical rule set forth in *Roe v. City of Waterbury*, 542 F.3d 31 (2d Cir. 2008). Pet. 17. However, the Second Circuit in *Roe* did not adopt a categorical rule barring final-policymaker *Monell* claims where state law is also violated. In *Roe*, the city's mayor sexually abused minor females "on numerous occasions at the mayor's office, in his home, and in his city-issued police cruiser." *Id.* at 33. In pursuing a § 1983 claim against the city, the minors contended that the mayor was the final policymaker "in the areas of law enforcement, safety, and social issues; and as a result he had final

policymaking authority over the area of conduct that included his abusive acts." *Id.* at 37.

The Second Circuit reiterated the *Pembaur* rule that "the challenged action must have been taken pursuant to a policy adopted by the official or officials responsible under state law for making policy in that area of the city's business." *Id.* at 37. The court explained that "the critical inquiry is not whether an official generally has final policymaking authority; rather, the court must specifically determine whether the government official is a final policymaker with respect to the particular conduct challenged in the lawsuit." *Id.* The court held that the mayor "was not an official policymaker with respect to the area of policy that encompassed his tortious acts." *Id.* at 38. The court reasoned that "[d]ecisions to sexually abuse young children are not 'made for practical or legal reasons' and are not in any way related to the City's interests." *Id.* at 38. This meant that "[t]he City cannot be said to be the 'moving force' behind the abuse." *Id*. The Second Circuit determined that the mayor's actions were "in an area in which he was not a policymaker," so he "had no authority to make policy authorizing, condoning, or promoting the sexual abuse of children." *Id.* at 40. The court also noted that "[r]egardless of what broad powers he had as a mayor, the state of Connecticut has made the policy (and the laws) prohibiting such conduct." *Id.*

The Second Circuit's recognition that state law prohibited sexual abuse of children is not a categorical holding that final policymaker *Monell* claims are always barred where state law is also violated. Instead, the state law prohibiting sexual abuse of children was part of the court's rationale for

concluding that the mayor was not responsible under state law for making city policy on child sexual abuse and that nothing about the mayor's behavior "could have advanced any conceivable job function or any conceivable policy goal or interest of the City." *Roe*, 542 F.3d at 40. But the court did not hold that a final policymaker's acts can never be municipal policy where the acts also violate state law. The Second Circuit's primary rationale was that the mayor's actions were "in an area in which he was not a policymaker," so he "had no authority to make policy authorizing, condoning, or promoting the sexual abuse of children." *Id.* at 40. As observed by the dissent in the decision below, "[t]he theory for affirmance was different [in *Roe*]: the mayor had not been acting as a policymaker when he engaged in his purely personal crimes." Pet. App. 34a. *Roe* was an application of the *Pembaur* standard concluding that the mayor's sexual assaults were not taken pursuant to a policy adopted by the mayor because he was not responsible under state law for making policy in that area of the city's business. Moreover, unlike the instant case where state law established coroner's office policy and removed the coroner's authority to make policy concerning the return of a decedent's remains, the generally applicable Connecticut criminal law prohibiting sexual assault did not establish any city policy.

6. According to Petitioners, in response to a hypothetical posed by the dissent, the Seventh Circuit majority conceded that under the categorical rule, a municipality would never be liable under § 1983 if its "sheriff rape[d] a prisoner," regardless of the extent of the sheriff's authority. Pet. 17-18. The majority deemed this hypothetical to be "a separate and

unrelated fact scenario." App. 20a. Then, without expressly stating its agreement, the majority cited *Roe* in response to the dissent's assertion that under the majority's holding the hypothetical would not present *Monell* liability. *Id.* In any event, whether the majority conceded the hypothetical or not, its debate with the dissent could be deleted without impairing the analytical foundations for its holding that, when a final policymaker violates a local policy that is unequivocally established by state law, there can be no final policymaker *Monell* liability. There is no allegation that the coroner violated any criminal statute when he retained a part of the decedent's skull in violation of his office's municipal policy that was unequivocally established by the Illinois Coroner's Act. Thus, if the majority made the concession that Petitioners maintain it did, the concession was peripheral to its holding and may not have received full and careful consideration. Consequently, the purported concession is dictum that does not create the categorical rule Petitioners suggest. *See Payne v. Taslimi*, 998 F.3d 648, 654–55 (4th Cir. 2021) ("Dictum is a statement in a judicial opinion that could have been deleted without seriously impairing the analytical foundations of the holding—that, being peripheral, may not have received the full and careful consideration of the court that uttered it." (quotation marks omitted)).

The Seventh and Second Circuits do not categorically bar *Monell* claims if a final policymaker's unconstitutional act also violates a generally applicable state law that does not establish municipal policy. The actual holding of the decision below is that when a state law establishes the municipality's policy, the municipal official has no

authority to make contrary municipal policy and, if he does, he is not making the municipality's policy. That necessarily means that when a state does not restrict a final policymaker's power over a subject, he may be establishing policy while also violating state law.

B. The Decision Below Is Not Contrary to Other Circuits' Decisions Permitting *Monell* Claims to Proceed When Based on Final Policymakers' Unconstitutional Acts That Also Violate State Laws That Do Not Establish Municipal Policy.

The cited decisions of the Tenth and Fifth Circuits are not contrary to the Seventh Circuit's limited holding that "[w]hen a state unequivocally restricts a final policymaker's power over a subject, he does not establish policy when violating that prohibition." Pet. App. 20a. In these decisions, the final policymaker possessed the authority to establish municipal policy with respect to the subject matter of the action taken. The state statute that was also violated did not dispossess the policymaker from establishing municipal policy with respect to that subject matter. That is because a state law of general applicability not intended to establish municipal policy on a given subject does not unequivocally restrict a final policymaker's power over that subject.

1. The Tenth Circuit's decision in *Whitson v. Board of County Commissioners of County of Sedgwick*, 106 F.4th 1063 (10th Cir. 2024), does not conflict with the decision below. In *Whitson*, the County Sheriff sexually assaulted a prisoner in his custody while transporting her to another jail. 106 F.4th at 1065. The Tenth Circuit explained that one must be mindful that "municipal liability attaches

only where the decisionmaker possesses final authority to establish municipal policy with respect to the action ordered. Only then can we say that the final policymaker's actions are fairly attributable to the municipality." *Id.* at 1067 (citations and quotation marks omitted). The court explained that the Sheriff was, by state statute, the final policymaker for the municipal defendants with respect to the care and transportation of county prisoners. *Id.* at 1067. The court found that the Sheriff's actions with respect to his prisoner "were undoubtedly within the scope of activities for which he was to set policy." *Id.* at 1068. In concluding that the municipal defendants were subject to *Monell* liability, the Court reasoned that:

> the victim was in the custody of the official and the official was statutorily charged with supervising the victim's care . . . we see no escape from the conclusion that [the Sheriff] possessed final authority to establish municipal policy *with respect to the action ordered*. Indeed, he had not only the authority, but the responsibility, to set policy with respect to the treatment of prisoners in his custody.

Id. at 1071-72 (citations and quotation marks omitted, emphasis in original).

In *Whitson*, state law did not unequivocally restrict the final policymaker Sheriff's power over the care and transportation of prisoners. On the contrary, state law expressly required the Sheriff to establish policy on the care and transportation of prisoners, but state law did not establish that policy. The state law

criminalizing sexual assault was not part of the *Whitson* court's analysis in determining whether there was final policymaker *Monell* liability. Nor should it have been, because a state criminal statute of general applicability is not intended to establish the Sheriff's policy on the care and transportation of prisoners.

In the decision below, the Illinois Coroner's Act, applicable to all Illinois Coroners, established—and was intended to establish—the municipal policy on the disposition of a decedent's remains. The Act therefore unequivocally restricted Coroner Hyland from making a contrary policy with respect to the disposition of remains. In contrast, the generally applicable Colorado law prohibiting sexual assault was not intended to establish the municipal policy of the sheriff's office in *Whitson*, and therefore did not unequivocally restrict the Sheriff's authority to make policy on the care and transportation of prisoners. As a result, the Sheriff in *Whitson* could, by his unconstitutional act, establish final policy in that area of government business which subjected the county to § 1983 liability. Therefore, the Tenth Circuit's decision in *Whitson* is not at odds with the decision below.

2. Petitioners point out that the Tenth Circuit's decision *Whitson* is built on then-Judge Gorsuch's opinion in *Simmons*. However, *Simmons* is not contrary to the decision below either and, in fact, recognizes its holding as sound. In *Simmons*, the administrator of a county nursing home brought a § 1983 action alleging unlawful termination by the board of the county's health-care special-services district that operated the nursing home. 506 F.3d at

1283. The district court held that the health-care district could not be held liable because the board's alleged constitutional violation in terminating the administrator violated its own reduction-in-force policy. *Id.* at 1284. In reversing the district court, the Tenth Circuit explained that a municipality is responsible for actions taken by final policymakers which "must include even actions by final policymakers taken in defiance of a policy or custom that they themselves adopted." *Id.* at 1285. The holding in *Simmons* is that "[a]ctions taken by a municipality's final policymakers, even in contravention of their own written policies, are fairly attributable to the municipality and can give rise to liability." *Id.* at 1287.

Simmons also recognizes law consistent with the actual holding of the decision below: "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 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). The decision below recognized that *Simmons* "may conflict with *Auriemma*. But *Simmons* is distinguishable from this case: there, the municipality set the policy; here, the state did. Pet. App. 19a. Thus, *Simmons* is distinguishable from the decision below and recognizes as sound its true holding: that final policymakers do not make municipal policy where their unconstitutional act contradicts a municipal policy previously *established by another*, such as a state legislature.

3. Petitioners maintain that the Fifth Circuit has also repeatedly held that municipalities can be liable for constitutional violations by their final policymakers under § 1983 even if those actions violated state law. Pet. 20. Yet Petitioners do not cite a Fifth Circuit case where the final policymaker violated a state law establishing municipal policy on the subject at issue as opposed to a violation of a state law of general applicability that did not establish the municipal policy.

In *Bennett v. Pippin*, a county sheriff raped a woman who was under investigation for attempted murder. 74 F.3d 578, 583 (5th Cir. 1996). The woman asserted a § 1983 claim against the county, alleging that the sheriff was the final policymaker for the county for matters of law enforcement and that his acts were the official policy of the county. *Id.* at 581. The Fifth Circuit explained that a single decision may create municipal liability under *Monell* if that decision is made by a final policymaker responsible for that activity and "when that decision is within the sphere of the policy maker's final authority[.]" *Id.* at 586. The court explained that "[s]tate law determines whether a particular individual is a county or municipality final decision maker with respect to a certain sphere of activity." *Id.* The court stated that, in Texas, it had been long recognized that the county sheriff is the county's final policymaker in the area of law enforcement by virtue of the office. *Id.* The Court concluded that:

> the Sheriff's actions were those of the County because his relationship with [the woman] grew out of the attempted murder investigation and because . . . he

> used his authority over the investigation to coerce sex with her. The fact that rape is not a legitimate law enforcement goal does not prevent the Sheriff's act from falling within his law enforcement function.

Id. In *Bennett*, state law did not unequivocally restrict the Sheriff's authority to make final law enforcement policy. The opposite was true. Texas law recognized that the sheriff is the county's final policymaker in the area of law enforcement. The generally applicable Texas law prohibiting rape was not intended to establish the municipal law enforcement policy of the sheriff's office and therefore did not address or unequivocally restrict the Sheriff's power to make final policy regarding interrogation of a crime suspect. As a result, the Sheriff could, by his unconstitutional act, establish final policy on the subject of interrogation of a crime suspect which subjected the County to final-policymaker *Monell* liability. Therefore, the Fifth Circuit's decision in *Bennett* is not at odds with the decision below holding that "[w]hen a state unequivocally restricts a final policymaker's power over a subject, he does not establish policy when violating that prohibition." Pet. App. 20a.

4. According to Petitioners, other circuits have not discussed this issue at the same length but, like the Fifth and Tenth Circuits, have held municipalities liable for final policymakers' acts even when those acts violated state law. Pet. 22-23. However, the cited decisions involve circumstances where other circuits have permitted *Monell* claims to proceed when based on a final policymaker's unconstitutional act which

also violated a state law of general applicability that does not—and was not intended to—establish municipal policy.

In *Hill v. Borough of Kutztown*, the mayor allegedly harassed the borough's long-time professional engineer resulting in his constructive discharge. 455 F.3d 225, 232 (3d Cir. 2006). The engineer brought a six-count complaint alleging § 1983 civil rights violations; violation of the Age Discrimination in Employment Act, 29 U.S.C. § 621, *et seq.*; and violation of the Pennsylvania Human Relations Act, 43 Pa. Stat. § 951, *et seq.,* based on the alleged constructive discharge. *Id.* at 233. The Third Circuit held that the engineer stated § 1983 claims against the borough because he alleged that the mayor was a final policymaker capable of binding the borough through his conduct that allegedly resulted in constructive discharge. *Id.* at 245. Those § 1983 claims were for deprivation of the liberty interest in reputation and the ability to earn a living in violation of the Fourteenth Amendment as a result of the mayor's defamatory statements, *id.* at 235-36, and retaliation in violation of the First Amendment for reporting the mayor's mistreatment and supporting ideas, principles, and projects that the mayor disfavored. *Id*. at 239-41. The court noted that, "as a matter of state law, no government employee or body is permitted to constructively discharge an employee by making his working environment intolerable," and the engineer alleged that the mayor had the power to constructively discharge him, even though he lacked the power to fire him outright. *Id.* at 246. The Third Circuit did not cite the state law prohibiting government bodies and employees from constructively discharging an employee. However, the

state law is ostensibly one of general applicability and not intended to establish borough policy because it applies to all government bodies and all government employees, not just boroughs and borough employees. Moreover, Pennsylvania law prohibits all employers from committing all forms of discrimination in the workplace including constructive discharge based on age or other protected class characteristics. *See* 43 Pa. Stat. § 953. Thus, the state law that the mayor also violated when he violated the engineer's civil rights was one of general applicability that was not meant to establish borough employment policy on defamation and retaliation and therefore did not unequivocally constrain the mayor as a final policymaker for the borough in those areas of government business.

Petitioners maintain that, despite an express jury finding in *Hunter v. Town of Mocksville*, 897 F.3d 538, 544-45 (4th Cir. 2018) that the town manager violated the state's wrongful discharge policy, the Fourth Circuit held that the town manager's actions were fairly imputed to the town as she acted with final policymaking authority when she fired the plaintiffs. Pet. 22-23. The Third Circuit in *Hunter* reiterated the guiding principle that "'[w]hen an official's discretionary decisions are constrained by policies not of that official's making, those policies, rather than the subordinate's departures from them, are the act of the municipality.'" 897 F.3d at 555, quoting *Praprotnik*, 485 U.S. at 127. The court then held that the town manager made final town policy when she fired the plaintiffs because the town board delegated its statutory authority to the town manager to establish personnel policy for the town and she "wielded such authority—free of any constraints on

her discretion—when she terminated Plaintiffs in violation of the First Amendment." *Id.* at 556-57. The court did not discuss or consider whether any state law constrained the town manager's policymaking authority and a state-law tort of general applicability like wrongful discharge does not establish the town's municipal policy.

Petitioners also incorrectly contend that the Sixth and Eleventh Circuits have decided cases contrary to the decision below. *Lipman v. Budish*, 974 F.3d 726, 747 (6th Cir. 2020), and *Wetzel v. Hoffman,* 928 F.2d 376, 378 (11th Cir. 1991), are custom or widespread practice cases. Neither is a final-policymaker case let alone a circumstance where state law unequivocally restricted the final policymaker's power to make policy in the area at issue, and a *Monell* claim was permitted to proceed.

According to the amici curiae, if the Betts family lived in the Third through Sixth, Tenth, or Eleventh circuits, they would be able to recover from their local government under § 1983, but because they live in the Seventh Circuit they cannot. Amici Curiae Br., 16. That is incorrect. These circuits would follow this Court's direction and look to state law to determine if the coroner in a county within their circuit had final policymaking authority with respect to the government's business of returning decedents' remains after the coroner's duties were complete. *See Pembaur*, 475 U.S. at 483. If state law unequivocally established that municipal policy, and the coroner did in that state what he allegedly did in Illinois, he would not be making policy for the municipality for which it could be liable under § 1983. *See Praprotnik*, 485 U.S. at 127 ("When an official's discretionary

decisions are constrained by policies not of that official's making, those policies, rather than the subordinate's departures from them, are the act of the municipality."). On the other hand, if state law did not establish the municipal policy on the disposition of decedents' remains once the coroner's duties are complete and left that area of government business to the coroner, then the coroner's unconstitutional act would be that of the municipality and it would be liable under § 1983.

When it is understood that the decision below does not categorically bar final-policymaker *Monell* liability where a state law of general applicability—not intended to establish municipal policy—is also violated, there is no deep circuit split. Certiorari is therefore not warranted.

II. THE DECISION BELOW DOES NOT PRESENT AN EXCEPTIONALLY IMPORTANT QUESTION

It cannot be argued that review is unwarranted when a decision of the Court of Appeals raises a question that this Court deems "important and appears likely to recur in § 1983 litigation against municipalities." *See Praprotnik*, 485 U.S. at 121. However, the decision below does not raise such a question.

1. It is well-established that "only those municipal officials who have 'final policymaking authority' may, by their actions, subject the government to § 1983 liability." *Id.* at 123, quoting *Pembaur,* 475 U.S. at 483 (plurality opinion). However, "the challenged action must have been taken pursuant to a policy adopted by the official or officials responsible under state law for making policy

in that area of the city's business." *Id.* Therefore, "a federal court would not be justified in assuming that municipal policymaking authority lies somewhere other than where the applicable law purports to put it." *Id.* at 126. Accordingly, "[w]hen an official's discretionary decisions are constrained by policies not of that official's making, those policies, rather than the subordinate's departures from them, are the act of the municipality." *Id.* at 127. Were it otherwise, vicarious liability would be impermissibly imposed on the municipality for the policymaker's departure from municipal policy and a *respondeat superior* theory of liability is "incompatible with the causation requirement set out on the face of § 1983." *Id.* at 122.

2. The actual holding set forth in the decision below is a straightforward application of these well-established principles. The Seventh Circuit held that "[w]hen a state unequivocally restricts a final policymaker's power over a subject, he does not establish policy when violating that prohibition," Pet. App. 20a. The applicable law, the Illinois Coroner's Act, established for all Illinois coroners the municipal policy on the disposition of a decedent's remains after the coroner's duties are complete. Consequently, Coroner Hyland's discretionary decision in that area of coroner's office business was unequivocally constrained by municipal policy not of his making but rather established by the Illinois General Assembly in the Illinois Coroner's Act. Therefore, Hyland's discretionary decision to depart from that municipal policy and retain a part of the decedent's remains after his coroner's duties were complete was not an act of the municipality subjecting it to final policymaker *Monell* liability.

The dissenting judge misconstrued the majority's holding. This created an unnecessary debate, centered on separate and unrelated fact scenarios and on decisions of other circuits involving final policymakers' unconstitutional acts that also violated generally applicable state criminal statutes which did not establish municipal policy. Whether those cases were correctly decided is immaterial to the Seventh Circuit's narrow holding in this case.

3. There is arguably tension between *Roe* and *Bennett* as to whether sexual assault by a final policymaker can constitute municipal policy for *Monell* final-policymaker liability purposes. The Second Circuit in *Roe* rejected the Fifth Circuit's ruling in *Bennett*: "In our view, *Bennett* cannot be reconciled with *Pembaur* and *Praprotnik's* prohibition against finding municipal liability based on *respondeat superior*. Consequently, we decline to follow the Fifth Circuit's reasoning with respect to municipal liability under § 1983." 542 F.3d at 41. The Second Circuit in *Roe* reasoned that "[a]n official acts wholly outside his official policymaking capacity when he misuses his power to advance a purely personal agenda." *Id*. Respondents submit that *Roe* and *Bennett* can be reconciled. Under the respective factual and legal circumstances, while both committed sexual assault, only the sheriff in *Bennett*, and not the mayor in *Roe*, committed a constitutional tort in the area of government business for which he had final policymaking authority. Nevertheless, neither *Roe* nor *Bennett* conflict with the express holding of the decision below: "[w]hen a state unequivocally restricts a final policymaker's power over a subject, he does not establish policy when violating that prohibition." Pet. App. 20a. That is

because state law prohibiting sexual assault did not establish municipal policy for the municipalities in *Roe* and *Bennett* like the Illinois Coroner's Act did for the Boone County Coroner's Office in the decision below. Therefore, the instant case is not the proper vehicle to resolve any tension between *Roe* and *Bennett*. Nor is it the proper vehicle to resolve any tension in the decision below between the dissent and the majority expressed only in *dicta* based on hypothetical fact patterns and inapplicable or distinguishable cases.

III. THE DECISION BELOW IS ENTIRELY CORRECT

Petitioners contend that certiorari is warranted because the decision below is profoundly wrong. Pet. 28. However, their contention is based on the incorrect premise that the Seventh Circuit adopted a categorical rule that a final policymaker's unconstitutional act can never be municipal policy where that act also violates state law. That is not the holding below. The Seventh Circuit did not categorically bar final-policymaker *Monell* liability where the official's unconstitutional action also violates a state law of general applicability that does not establish municipal policy.

1. "When an official's discretionary decisions are constrained by policies not of that official's making, those policies, rather than the subordinate's departures from them, are the act of the municipality." *Praprotnik*, 485 U.S. at 127. Coroner Hyland did not possess final policy-making authority to establish his office's policy on the disposition of a decedent's remains after his coroner's duties were complete. The Illinois Coroner's Act established that policy for the Office of the Boone County Coroner.

Therefore, state law withdrew Coroner Hyland's authority to establish municipal policy with respect to the subject matter of the action taken: the disposition of the decedent's remains once the coroner's duties are complete. As a result, Hyland's alleged unconstitutional act violated his office's municipal policy which was unequivocally established by state law. Consequently, Hyland's alleged unconstitutional act cannot be attributed to Boone County for purposes of *Monell* final-policymaker liability.

2. The actual holding in the decision below is a straightforward application of well-established *Monell* final-policymaker principles set forth in this Court's opinions. The Seventh Circuit held that "[w]hen a state unequivocally restricts a final policymaker's power over a subject, he does not establish policy when violating that prohibition." Pet. App. 20a. The applicable law, the Illinois Coroner's Act, established for all Illinois coroners the municipal policy on the disposition of a decedent's remains after the coroner's duties are complete. Consequently, Coroner Hyland's discretionary decision in that area was unequivocally constrained by municipal policy not of his making but rather established by the Illinois General Assembly in the Illinois Coroner's Act. Therefore, Hyland's discretionary decision to depart from that municipal policy and retain a part of the decedent's remains after his coroner's duties were complete was not an act of the municipality subjecting it to final-policymaker *Monell* liability. Instead, responsibility would fall solely on Hyland for his alleged unconstitutional act. Thus, the decision below was entirely correct and certiorari is not warranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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November 19, 2026

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APPENDIX A

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

GARY BETTS and EARL BETTS,
Plaintiffs,

vs.

REBECCA WIGGET, in her official capacity as Boone County Coroner, and BOONE COUNTY, ILLINOIS, an Illinois municipal corporation,
Defendants.

Case No: 23-cv-50418
Honorable Iain D. Johnston

JURY DEMAND

THIRD AMENDED COMPLAINT

Plaintiffs, GARY BETTS and EARL BETTS, by their attorney, JAMES KELLY LAW FIRM, PC, and for their Third Amended Complaint against Defendants, REBECCA WIGGET, in her official capacity as Boone County Coroner and BOONE COUNTY, ILLINOIS, respectfully states:

INTRODUCTION

This Complaint is brought pursuant to 42 USC 1983, the Fourteenth Amendment to the United

States Constitution, Illinois common law and 745 ILCS 10/1 Et Seq. Plaintiffs allege that after the death of the Plaintiff's sister, Louise Betts, the coroner of Boone County at that time, Wesley Hyland, illegally, willfully, wantonly and without justification retained the skull of Louise Betts, instead of providing it with the rest of the body of Louise Betts to her next of kin for appropriate disposition as it was his duty to do. The fact that Coroner Hyland retained the skull of Louise Betts after the body of Louise Betts was provided to her family for internment was not discovered until November 2022. At the time when the fact that Coroner Hyland had retained the skull of Louise Betts was discovered, the next of kin to Louise were her brothers, Gary and Earl Betts. Plaintiffs seek compensatory and punitive damages for the wrongful and malicious acts of the Boone County Office of the Coroner.

I. JURISDICTION and VENUE

1. This Court has jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1343.

2. Venue is proper pursuant to 28 U.S.C. § 1391 as the acts and omissions alleged herein are alleged to have happened primarily in Boone County, Illinois; therefore, a substantial part of the actions giving rise to this claim, occurred in the Northern District of Illinois.

II. PARTIES

3. When the acts complained of in this Complaint were discovered GARY BETTS and EARL BETTS

were and are the nearest next of kin of their sister Louise Betts.

4. At present, Rebecca Wigget is the empowered Boone County Coroner officeholder.

5. The Boone County Coroner is an employee of Boone County. 55 ILCS 5/-3001 *et seq*.

6. At all relevant times, Boone County was a municipal corporation, pursuant to 50 ILCS 20/3(e), located in Illinois.

IV. FACTS

7. On or about September 27, 1977, Louise Betts ("Louise"), a minor, was kidnapped, raped, and murdered by Curtis J. Brownwell ("Brownwell").

8. Brownwell disposed of Louise's remains in a field located in Boone County, Illinois.

9. During the course of the police investigation into her murder, and the prosecution of Brownwell, Louise's remains were in the possession and control of the Boone County Coroner, Wesley Hyland.

10. After concluding their investigation, the Boone County Coroner released Louise's remains to her family for burial.

11. Unbeknownst to Louise's family, the Boone County Coroner had retained Louise's skull.

12. On or about April 3, 1978, Louise's remains were buried by her family at Sunset Memorial Gardens in Winnebago County, Illinois.

13. On or about November 17, 2022, Gary and Earl were informed by the Boone County Coroner that it was in possession of Louise's skull and two other skulls of unidentified individuals.

14. When Gary and Earl were informed that the Coroner's Office had retained Louise Bett'sskull, they werethenext of kin of Louise Betts.

15. Until November 17, 2022, Gary Betts ("Gary") and Earl Betts ("Earl") were under the understanding and belief that the Boone County Coroner had appropriately handled and disposed of Louise's remains and that her casket included all of her body parts.

16. Gary and Earl were led to believe their sister was at rest and were comforted by the belief that she would rest in peace.

17. When Louise's remains were released to her family for burial, the Boone County Coroner had surreptitiously retained Louise's skull in its possession and, at no time prior to November 17, 2022, returned the skull to Louise's family.

18. The Boone County Coroner's office had a duty by statute to provide Louise's complete remains to her next of kin.

19. Louise Betts' next of kin were never provided notice and an opportunity to be heard concerning retention by the Coroner's Office of the skull of Louise Betts.

20. The discovery of the facts that Louise Bett's skull was kept by Boone County Coroner resulted in tremendous shock to both Gary and Earl causing them significant stress, grief, depression, and anxiety, including an exacerbation of Gary's heart condition, along with additional medical and psychological trauma to both Gary and Earl.

21. On or about June 28, 2023, Louise's casket and vault were exhumed.

22. Louise's skull was placed in a body bag and into a new casket, which was newly purchased, along with a new vault, where she was then reburied.

23. Due to his anxiety from discovering the Boone County Coroner had retained Louise's skull as a trophy, Gary was admitted to Swedish American Hospital with chest pains.

24. Due to his anxiety, Gary had angioplasty surgery, with an insertion of a stent on July 27, 2023.

25. As the Boone County Coroner retained multiple bodily remains from multiple deceased, the Boone County Coroner maintained a pattern, practice, policy, or custom of willfully and wantonly withholding parts of bodily remains from families and friends.

26. This pattern and practice were so longstanding and pervasive that it had the force and effect of the law.

27. The Boone County Coroner was a policy making official within the Office of Coroner.

28. The Boone County Coroner controls the operation of the Boone County Coroner's Office. 55 ILCS 5/3-3003.

29. 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.

30. 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.

31. 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. *Id.*

32. 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.

33. 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.

34. The Boone County Coroner pursuant to Illinois law makes policy concerning the investigation of the categories of deaths indicated above, the conduct of such investigations and the disposition of deceased remains upon completion of such investigations.

35. The Boone County Coroner is the final decision maker for Boone County concerning such investigations and the disposition of the deceased remains.

36. The Boone County Coroner at the time of the conclusion of the investigation of Louise Betts' death made the final decision concerning the disposition of Louise Betts' remains.

37. Pursuant to Illinois state law the Boone County Coroner was the final decision maker in Boone County concerning the policy with respect to release of Louise Betts' remains.

38. The release of Louise Betts' remains to her next of kin without Louise Betts' skull was therefore the official policy of Boone County.

39. The conduct of the Boone County Coroner's Office was willful, and wanton.

40. No legal basis exists for the Boone County Coroner to retain Louise's skull for decades after Louise's other remains were released to Louise's family.

COUNT I
Deprivation of property without due process of law
(FEDERAL CLAIM)

41. ¶1-40 are realleged as if fully set forth herein.

42. The Fourteenth Amendment to the U.S. Constitution provides that no state shall deprive any person of property without due process of law.

43. The Boone County Coroner, Wesley Hyland, intentionally kept Louise Betts' skull and failed to return it with the rest of her corpse to her next of kin.

44. The Coroner was acting in his official capacity and was the final decision maker with respect to the policy of releasing Louise Betts' remains to her next of kin.

45. At the time that Coroner Hyland retained Louise Betts' skull, the next of kin of Louise Betts had a property right to appropriately dispose of Louise Betts' corpse.

46. The next of kin of Louise Betts were never provided with notice and the right to be heard concerning the retention of Louise Betts' skull.

47. The failure to provide notice and an opportunity to be heard prior to depriving Louise Betts' next of kin of their property right to properly dispose of all the remains of Louise Betts is a denial of due process to the next of kin of Louise Betts.

48. As a proximate result of the Boone County Coroner's actions, Gary and Earl Betts were injured by denying them due process.

WHEREFORE, Plaintiffs pray for judgment against Defendants in a fair and reasonable amount, including compensatory and punitive damages, attorney's fees and costs, and for any other relief the Court deems just and proper.

COUNT II
TORTIOUS INTERFERENCE WITH THE RIGHT TO APPROPRIATLEY DISPOSE OF LOUISE BETT'S REMAINS - REBECCA WIGGET IN HER OFFICIAL CAPACITY AS BOONE COUNTY CORONER
(STATE CLAIM)

49. ¶1-48 are realleged as if fully set forth herein.

50. Gary and Earl, next of kin, had a right to make appropriate disposition of Louise's remains.

51. The Boone County Coroner was in possession of Louise's bodily remains and was responsible by law for ensuring all Louise's remains were returned to her family for appropriate disposition.

52. The Boone County Coroner had a duty not to interfere with Gary and Earl's right to properly dispose of Louise's bodily remains.

53. The Boone County Coroner breached this duty in one or more of the following ways:

a. failing to release complete bodily remains to Louise's family; and
b. tortiously interfering with Gary and Earl's rights to appropriately dispose of Louise's remains.

54. As a proximate result of Defendant's acts and omissions, Plaintiffs experienced and suffered severe emotional distress, mental suffering, embarrassment, humiliation, and financial losses, all of which were the foreseeable consequence of Defendant's conduct.

WHEREFORE, Plaintiffs pray for judgment against Defendant in a fair and reasonable amount, including compensatory and punitive damages, attorney's fees and costs, and for any other relief the Court deems just and proper.

COUNT III
INDEMNIFICATION - BOONE COUNTY
(STATE CLAIM)

55. ¶1-54 are realleged as if fully set forth herein.

56. At all times relevant, Illinois had in full force and effect the Illinois Local Governmental and Local Governmental Employee Tort Immunity Act, specifically 745 ILCS 10/1 Et Seq.

57. At all times relevant, the Boone County Coroner has been an appointed or elected official in Boone County and an employee for purposes of the Tort Immunity Act.

58. Boone County is responsible for the Boone County Coroner's budget, payment of salaries, payment required for disposition of remains and maintains control over protocols with respect to handling bodies associated with homicides. 55 ILCS 5/3-3034 and 55 ILCS 5/5-1085.5.

59. Accordingly, Boone County is responsible for any judgment for compensatory damages rendered against the Boone County Coroner.

WHEREFORE, Plaintiffs pray for judgment against Defendant in a fair and reasonable amount, including compensatory damages and costs, and for any other relief the Court deems just and proper.
Respectfully submitted,

GARY BETTS and EARL BETTS, Plaintiffs

By: */s/* *Jay L. Cohen*
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