No. 21-1598

In the Supreme Court of the United States

CITY OF ANAHEIM, SERGEANT DANIEL GONZALEZ, OFFICER WOOJIN JUN, AND OFFICER DANIEL WOLFE,
Petitioners,

v.

FERMIN VINCENT VALENZUELA, ET AL.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF *AMICI CURIAE* INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION AND LEAGUE OF CALIFORNIA CITIES IN SUPPORT OF PETITIONERS

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STATEMENT OF IDENTITY AND INTEREST OF *AMICI CURIAE*[1]

The International Municipal Lawyers Association ("IMLA") is a non-profit, nonpartisan professional organization consisting of more than 2,500 members. The membership is comprised of local government entities, including cities, counties and subdivisions thereof, as represented by their chief legal officers; state municipal leagues; and individual attorneys. Established in 1935, IMLA is the oldest and largest association of attorneys representing United States municipalities, counties, and special districts. IMLA's mission is to advance the responsible development of municipal law through education and advocacy by providing the collective viewpoint of local governments around the country on legal issues before the United States Supreme Court, the United States Courts of Appeals, and in state supreme and appellate courts.

The League of California Cities ("Cal Cities") is an association of 479 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. Cal Cities is advised by its Legal Advocacy Committee,

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[1] No counsel for a party authored the following *amici curiae* brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of the brief. No persons other than the *amici curiae,* their members, or their counsel made a monetary contribution to the preparation or submission of the brief. All parties received timely notice, through their counsel, and have consented in writing to the filing of this brief.

comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance.

Amici believe local governments and their officials have a responsibility to pay damages for Section 1983 violations, but *amici* also have a strong interest in ensuring that any liability and damages imposed on municipalities under Section 1983 be limited to those circumstances authorized under the applicable state law. The decision of the court below greatly expands, in direct conflict with this Court's precedent and in conflict with the relevant California law, the scope of liability imposed on municipalities and the amount of damages that can be awarded against them. The decision also deepens a circuit split, creating an uneven playing field for local governments around the country on the issue of whether federal courts will follow the relevant state law for certain types of damages under Section 1983. The issue presented has important federalism implications, expands liability for local governments beyond what Congress has proscribed, and therefore warrants this Court's review.

SUMMARY OF ARGUMENT

The Ninth Circuit flouted principles of federalism and supplanted its wisdom for that of the California legislature in its rejection of California laws limiting the recovery of certain types of damages in death cases. Contrary to the Ninth Circuit's holding in the present case, a state's decision to not allow every conceivable manner of damages to be recoverable in a death case does not mean that those laws are inconsistent with the policies of 42 U.S.C. §1983, as this Court made clear in *Robertson v. Wegmann,* 436 U.S. 584 (1978).

Rather, the Ninth Circuit's decision is inconsistent with the fundamental policy choice made by Congress to promote and encourage federalism. As this Court explained in *Robertson,* "§1988 quite clearly instructs us to refer to state statutes; it does not say that state law is to be accepted or rejected based solely on which side is advantaged thereby." *Id.* at 593.

California's limitation on the recovery of certain types of damages in death cases in no way prevents meaningful compensation from being awarded for the value of a decedent's life, and thus those limitations are not inconsistent with the policies of 42 U.S.C. §1983. Rather, it is clear that the Ninth Circuit's decision in this case, as well as the Seventh Circuit's decision in *Bell v. City of Milwaukee*, 746 F.2d 1205, 1250-51 (7th Cir. 1984), are inconsistent with the policies underlying 42 U.S.C. §1988 and federalism principles.

The circuit split on this issue creates an uneven playing field for local governments around the country, allowing municipalities in the Sixth Circuit to rely on

42 U.S.C. §1988 and its respect for state law damages in their budgeting and planning processes, while local governments in the Ninth and Seventh Circuits cannot.

This case presents important issues that cannot be resolved without this Court's intervention. This Court should grant the petition for writ of certiorari.

LEGAL ARGUMENT

I. THE NINTH CIRCUIT'S OPINION IN THE PRESENT CASE DISREGARDS THIS COURT'S DECISION IN *ROBERTSON*

At issue in the opinion below was whether California's law which forbids recovery of a decedent's "loss of life" damages is inconsistent with the policies of 42 U.S.C. §1983. The court below concluded that it is, explaining that its "analysis begins, and largely ends, with *Chaudhry"*, Pet. App. 8, referring to *Chaudhry v. City of Los Angeles,* 751 F.3d 1096 (9th Cir. 2014). Because the Ninth Circuit's decision below relied on *Chaudhry* and both decisions ignored this Court's holding in *Robertson v. Wegmann,* 436 U.S. 584, 591 (1978), the *amici* combine their discussion of the two decisions.

Citing to *Robertson,* the court below explained in its opinion that "Section 1983's goals include compensation for those injured by a deprivation of federal rights and deterrence to prevent future abuses of power." Pet. App. 8. But at no point in the *Robertson* opinion did this Court hold, or even suggest, that maximizing the compensation recoverable in an action brought pursuant to 42 U.S.C. §1983 was necessary in order to effectuate the policy of

"prevent[ing] abuses of power by those acting under color of state law."

At issue in *Robertson* was whether Louisiana's law that a tort claim abated when a plaintiff died and was not survived by a spouse, child, parent, or sibling was inconsistent with the policies underlying Section 1983. *Robertson, supra,* 436 U.S. 584 at 590-91. This Court concluded that Louisiana's law was not "in general inconsistent with these policies, and [that] indeed most Louisiana actions survive the plaintiff's death." *Id.* at 591.

This Court did, however, leave open the possibility that a law such as Louisiana's might be found to be inconsistent with the policies underlying Section 1983 where it was claimed that the alleged official illegality itself caused the plaintiff's death. *Id.* at 592. It was this caveat on which the Ninth Circuit based its decision in *Chaudhry v. City of L.A.*

> The Court's statement in *Robertson* that §1983 does not require compensation to the decedent's estate was made in a case where the alleged violation of federal law did not cause the decedent's death. … The Court in *Robertson* repeatedly distinguished Louisiana's abatement law from cases "in which deprivation of federal rights caused death." [Citation.]

751 F.3d 1096, 1104 (9th Cir. 2014).

The *Chaudhry* court concluded that "[t]he practical effect of [California Code of Civil Procedure] §377.34 is to reduce, and often to eliminate, compensatory damage awards for the survivors of people killed by

violations of federal law." *Ibid.* The court accordingly held that "California's prohibition against pre-death pain and suffering damages limits recovery too severely to be consistent with §1983's deterrence policy. Section 377.34 therefore does not apply to §1983 claims where the decedent's death was caused by the violation of federal law." *Id.* at 1105.

But the *Chaudhry* court failed to take into account a fundamental difference between the situation that confronted this Court in *Robertson* and the situation presented in *Chaudhry*. In *Robertson,* when the Louisiana law was applicable, its effect was to entirely abate the action, meaning that no damages in any amount could be obtained in compensation for the violation of the decedent's rights. That, of course, was not the case in *Chaudhry,* or in the present case.

This Court said nothing in *Robertson* to suggest that a state legislature's decision to simply limit the amount of damages recoverable in a Section 1983 action would necessarily be inconsistent with the policies underlying that statute. And the language of the opinion suggests the opposite: "§1988 quite clearly instructs us to refer to state statutes; it does not say that state law is to be accepted or rejected based solely on which side is advantaged thereby." *Id.* at 593.

Indeed, this Court in *Robertson* observed that "[a] state official contemplating illegal activity must always be prepared to face the prospect of a §1983 action being filed against him." *Robertson,* 436 U.S. at 592. And in *Farrar v. Hobby,* 506 U.S. 103, 113 (1992), this Court explained that "[a] judgment for damages in any amount, whether compensatory or nominal, modifies

the defendant's behavior for the plaintiff's benefit by forcing the defendant to pay an amount of money he otherwise would not pay."

Despite this, the implicit assumption underlying the *Chaudhry* court's decision was that a law enforcement officer's conduct is likely to be governed by the potential size of the damage award that might be made in a subsequent lawsuit, and not merely by the fact that such a lawsuit may be filed against the officer.

The closest either *Chaudhry* or the court below came to providing support for this assumption that a law enforcement officer's conduct might be affected by the potential size of the damage award to be made in a subsequent lawsuit is the comment in *Chaudhry,* cited by the court below, that "a prohibition against pre-death pain and suffering awards for a decedent's estate has the perverse effect of making it more economically advantageous for a defendant to kill rather than injure his victim." Pet. App. 8, citing to *Chaudhry, supra,* 751 F.3d at 1104.

But neither the *Chaudhry* court nor the decision below provided any facts or analysis that would suggest that allowing limits to be placed on the amount of damages recoverable in particular Section 1983 actions might actually affect a law enforcement officer's conduct in the field. And, as discussed above, this Court's decision in *Robertson* provides no support for such a conclusion, which is the very foundation on which both *Chaudry* and the decision in the present case are dependent.

II. THE AVAILABILITY OF DAMAGES UNDER RELATED STATE LAW CAUSES OF ACTION SHOULD BE CONSIDERED IN DETERMINING WHETHER LIMITS ON LOSS OF LIFE DAMAGES ARE INCONSISTENT WITH THE POLICIES UNDERLYING SECTION 1983

The court below also rejected the defendants' argument "that the damages in this case are already adequate", i.e. that the "$9.6 million in pre-death pain and suffering and wrongful death damages … sufficiently serves § 1983's deterrent purpose." The court explained that "the above awards address different injuries." Pet. App. 10. But there is nothing in *Robertson* that suggests that damages must be awarded for every possible injury caused by the violation of a decedent's rights in order to meet section 1983's twin goals of providing "compensation for those injured by a deprivation of federal rights and deterrence to prevent future abuses of power." Pet. App. 8.

The court below, in rejecting the defendants' argument, explained that "such a framework would still preclude recovery for the decedent who is penniless, without family, and killed immediately on the scene." Pet. App. 11. But that situation is likely to be extremely rare; almost every individual has someone who would qualify as an individual capable of pursuing a California wrongful death action, i.e. "the persons …who would be entitled to the property of the decedent by intestate succession." California Code of Civil Procedure section 377.60(a). It is hard to imagine

a situation where an individual literally has no relatives, however remote. And even if such a situation did arise, the California legislature is the body that should address it, not the federal judiciary.

The fact that damages are awarded under state law causes of action, rather than through the federal civil rights action, is evidence that the state's laws are not inconsistent with the goals of Section 1983, as case law in the area of recoverable attorney's fees indicates. For example, in *Hensley v. Eckerhart,* 461 U.S. 424, 435 (1983), this Court explained that while

> [m]any civil rights cases will present only a single claim[, i]n other cases the plaintiff's claims for relief will involve a common core of facts or will be based on related legal theories. Much of counsel's time will be devoted generally to the litigation as a whole, making it difficult to divide the hours expended on a claim-by-claim basis. Such a lawsuit cannot be viewed as a series of discrete claims. Instead the district court should focus on the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation.
>
> Where a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee. Normally this will encompass all hours reasonably expended on the litigation, and indeed in some cases of exceptional success an enhanced award may be justified. In these circumstances the fee award should not be reduced simply because the plaintiff failed to

> prevail on every contention raised in the lawsuit. [Citation.] Litigants in good faith may raise alternative legal grounds for a desired outcome, and the court's rejection of or failure to reach certain grounds is not a sufficient reason for reducing a fee. ***The result is what matters.***

(Emphasis added.)

The Third Circuit followed *Hensley* in determining the proper award of attorney's fees in the case of *Hawa Abdi Jama v. Esmor Corr. Servs.,* 577 F.3d 169 (3d Cir. 2009), in which the plaintiff recovered only $1.00 on her claim brought under the Religious Freedom Restoration Act, but $100,000 on her related state law tort claims. *Id.* at 171.

> [W]e conclude that the *Hensley* standard should guide a district court's consideration of pendent state claims in a litigation where a plaintiff has prevailed on a fee-eligible federal claim. … The District Court should determine whether Jama's RFRA and pendent state negligence claims involved a "common core of facts" or were based on "related legal theories." If the claims are related under this standard, the results on Jama's tort claims may inform the degree of Jama's overall success for the purposes of § 1988. … Thus, while the jury's nominal award must undoubtedly color the degree of Jama's success on her RFRA claim, the District Court should also consider the significance of the legal issue on which she prevailed and

> determine whether her victory served a public purpose.

Id. at 179-180.

The Sixth Circuit came to a similar conclusion in *Aubin v. Fudala,* 782 F.2d 287, 288 (1st Cir. 1986), in which the plaintiff obtained a $300,000 verdict on his negligence claim against the defendants, but only an award of nominal damages on his accompanying civil rights claim.

> First, the extent of a plaintiff's success in a civil rights suit is a practical question, involving a qualitative, as well as a quantitative, judgment. Where the plaintiff obtains a determination that the defendants violated the civil rights laws, the fact that the accompanying damage award is small or nominal does not automatically warrant a comparably meager fee. …
>
> Second, the district court's approach is inconsistent with *Hensley v. Eckerhart, supra.* … Analogously, it seems to us, plaintiff should receive significant fees when he has won a *partial* victory on a civil rights claim while receiving substantially the relief he there sought, though the jury awards it on a factually or legally related pendent state claim. …
>
> For another thing, this precedent makes sense in light of the fact that 'victory' in a civil rights suit is typically a practical, rather than a strictly legal matter. … If the Aubins, in fact, received the basic relief they sought (but on the

> state claim) and if, in fact, the state and federal claims are factually and legally interconnected, then their right to attorneys' fees is at least as strong as in these other cases.

Id. at 290-291; italics in original, citations omitted.

As the foregoing demonstrates, federal civil rights claims and state causes of action are often intertwined and courts have recognized, in the context of awarding fee under 42 U.S.C. section 1988, that the plaintiff's federal civil rights are vindicated even when the award of damages stems primarily from the state law causes of action. This same analysis should apply in determining whether the damages recoverable in a Section 1983 claim are so limited by state law as to make the cause of action essentially valueless.

The Sixth Circuit engaged in just such an analysis in *Frontier Ins. Co. v. Blaty,* 454 F.3d 590, 595 (6th Cir. 2006), in which the district court rejected the plaintiff's attempt to recover damages based on the decedent's "loss of the enjoyment of life." The plaintiff argued that Michigan's limitation on the recovery of hedonic damages was inconsistent with the policies underlying section 1983. The Sixth Circuit disagreed.

> To the extent that damages stemming from the death itself might be needed to fulfill the deterrent purpose of section 1983 (there being no compensation from the death as such), we see no reason to think that damages for injuries suffered by the decedent's survivors and hedonic damages suffered before death would not be sufficient in most cases. Michigan's wrongful

> death act, to repeat, authorizes an award of damages for survivors' losses of support, society, and companionship.

Id. at 601.

A review of the applicable California law, coupled with the result in the present case, demonstrates that, just as in *Frontier Ins. Co.*, California's limitation on the recovery of damages for "loss of life" does not render a Section 1983 action effectively valueless and therefore inconsistent with the policies underlying that statute.

California's wrongful death cause of action permits survivors to obtain monetary compensation for the loss of the decedent's "love, companionship, comfort, care, assistance, protection, affection, society, [and] moral support". *Quiroz v. Seventh Ave. Ctr.,* 140 Cal.App.4th 1256, 1264 fn.2 (2006). The individuals who would actually recover any award of damages for the decedent's loss of life will generally be the exact same individuals who would be able to bring a wrongful death action on their own behalf. Compare California Code of Civil Procedure section 377.60(a) (identifying those persons entitled to bring an action for wrongful death) with section 377.030 (and related sections 377.10 and 377.11) (identifying those persons entitled to pursue a survival action).

Additionally, under California law, a cause of action for wrongful death arising out of a law enforcement official's actions relies on the same standard of reasonableness as applies to claims arising under the Fourth Amendment. *Hernandez v. City of Pomona*, 46

Cal.4th 501, 513-514 (2009). So, an award of damages on such a wrongful death cause of action provides compensation for the identical wrongful conduct underlying a claim that the decedent's civil rights were violated, resulting in his or her death.

The jury's verdict in this action demonstrates that the nature of the damages recoverable in a wrongful death cause of action under California law provides meaningful compensation for the "value" of the decedent's life. The jury below determined that the monetary value of the decedent's "loss of life" – $3.6 million – was identical with the monetary value of the loss suffered by the decedent's survivors as a result of his death (two times $1.8 million).

All of this makes clear that the conclusion of the court below that California's "prohibition of loss of life damages is inconsistent with § 1983" – Pet. App. 10 – is wrong. This Court should grant the petition for writ of certiorari to reconcile the Ninth and Seventh Circuit opinions with this Court's decision in *Robertson* and ensure uniformity in the federal circuit courts on this important issue.

III. THE NINTH CIRCUIT'S DECISION REFLECTS A DISREGARD FOR THE CONCEPT OF FEDERALISM

As Justice Rehnquist explained in his concurring opinion in *Burnett v. Grattan,* 468 U.S. 42, 60 (1984) (discussing statutes of limitation):

> Congress … has instructed federal courts to refer to state statutes when federal law does not provide a rule of decision for actions brought

> under one of the civil rights statutes. See 42 U.S.C. § 1988. This admonition is more than a mere 'technical obstacle to be circumvented if possible.' [Citation.] Only if state law is 'inconsistent with the Constitution and laws of the United States,' 42 U. S. C. § 1988, are federal courts free to disregard otherwise applicable state statutes …

As noted earlier, in *Robertson,* when the Louisiana law was applicable, its effect was to entirely abate the action, meaning that no damages in any amount could be obtained in compensation for the violation of the decedent's rights. Nonetheless, this Court declined to hold that a state law could be ignored just because in rare occasions it might prevent a claim from being pursued under Section 1983.

> Our holding today is a narrow one, limited to situations in which no claim is made that state law generally is inhospitable to survival of § 1983 actions and in which the particular application of state survivorship law, while it may cause abatement of the action, has no independent adverse effect on the policies underlying § 1983. A different situation might well be presented, as the District Court noted, if state law 'did not provide for survival of any tort actions,' or if it significantly restricted the types of actions that survive.

Robertson, 436 U.S. at 594; citations omitted.

The sort of extremely rare situation mentioned in the opinion is better addressed by the state legislature,

which can properly consider and weigh the competing policy considerations, rather than by requiring courts to entirely ignore otherwise applicable state law.

In *Board of Regents v. Tomanio,* 446 U.S. 478, 492 (1980), this Court concluded that "[c]onsiderations of federalism are quite appropriate in adjudicating federal suits based on 42 U. S. C. § 1983." Specifically, in that case, this Court held "that the application of the New York law of tolling is in fact more consistent with the policies of 'federalism' invoked by the Court of Appeals than a rule which displaces the state rule in favor of an ad hoc federal rule." (*Id.* at 491-492.) The Ninth Circuit's decision in this case and in its earlier decision in *Chaudhry,* and the Seventh Circuit's decision in *Bell,* reflect just the sort of ad hoc federal rule-making that this Court rejected in *Tomanio.*

Congress's choice in Section 1988 to instruct the federal courts to defer to state law except when it clearly would be inconsistent with federal law reflects Congress's strong commitment to federalism. Decisions like the one in this case fail to reflect a proper respect for this policy choice made by Congress.

That is quite clear in the case of hedonic damages, where the Ninth Circuit has chosen to impose on municipalities a form of damages rejected by 90% of the states in our Union. But it is true also with *Chaudhry* and its decision to reject California's limitation on the recovery of pre-death pain and suffering damages.

As was pointed out in the petition, "[e]ffective January 1, 2022, California now allows recovery of such damages". Pet. 6, fn. 1. But that does not mean that

the overreach of the *Chaudhry* decision is no longer relevant or of concern. As the petitioners also point out, the statute will only remain in effect for four years, with "the impact of such awards to be assessed for possible future legislative action in four years." (*Ibid.*)

This ability to study and carefully evaluate changes in the law is one of the strengths of federalism. As the district court explained in *Venerable v. City of Sacramento,* 185 F. Supp. 2d 1128, 1131-33 (E.D. Cal. 2002), California's wrongful death statute is the product of decades of legislative review and revisions. That legislative process was "neither the product of anachronistic formalism nor inattention, but represents a considered judgment as to the appropriate balance among a number of competing considerations. … While one may disagree with the legislature's policy judgment, it is difficult to argue that the judgment is without a sound basis." *Id.* at 1132.

The Ninth Circuit's decision undermines this process. California could well decide after its four-year experiment that allowing pre-death pain and suffering damages in wrongful death cases is not a good policy choice. Yet if the *Chaudhry* decision remains in place, California municipalities will still remain subject to such damages, notwithstanding Congress's clear direction to the federal courts to defer to the states on these matters. And local governments in eleven other states in the Seventh and Ninth Circuits will similarly be handcuffed to federal court decisions on damages for pre-death pain and suffering, rather than allowing their state legislatures to determine what is the best policy decision for their state.

Municipalities should be able to rely on the decisions made by their state legislatures as to the nature and extent of monetary damages to which they and their taxpayers may be subject. They should not have to wonder from case to case whether a federal court is suddenly going to impose a new type of damages on them, damages that may be explicitly unavailable under the applicable state laws.

This is an issue of significant and growing concern to municipalities throughout the United States, particularly given the potential for these court-made rules to significantly increase the size of the verdicts that may be returned in civil rights cases, just as happened here. For this reason, the *amici* urge this Court to grant this petition and to draw a clear line limiting the ability of the federal courts to expand the types of damages available in cases brought under 42 U.S.C. section 1983.

CONCLUSION

For all these reasons, the *amici curiae* urge this Court to grant the pending petition for writ of certiorari.

Respectfully submitted,

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