25-952

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JENNIFER VITSAXAKI,

Plaintiff-Appellant,

v.

SKANEATELES CENTRAL SCHOOL DISTRICT; SKANEATELES CENTRAL SCHOOLS' BOARD OF EDUCATION,

Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of New York
Case No. 5:24-cv-001155

MOTION OF CHILD & PARENTAL RIGHTS CAMPAIGN FOR LEAVE TO FILE AN AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANT AND FOR REVERSAL

MARY E. MCALISTER (Counsel of Record)
VERNADETTE R. BROYLES
CHILD & PARENTAL RIGHTS CAMPAIGN, INC.
5425 Peachtree Pkwy. # 110
Norcross, GA 30092
770.448.4525
mmcalister@childparentrights.org
vbroyles@childparentrights.org
Attorneys for Amicus Curiae

CORPORATE DISCLOSURE STATEMENT

Amicus Curiae Child & Parental Rights Campaign ("CPRC") is a nonprofit organization, does not have a parent corporation, and does not issue stock. CPRC is not aware of any publicly owned corporation, not a party to the appeal, with a financial interest in the outcome of this case.

Motion for Leave to File Amicus Curiae Brief

Pursuant to F.R. App. P. 29(a)(3), Proposed Amicus Curiae, Child & Parental Rights Campaign, Inc. ("CPRC") moves this Court for leave to file the attached proposed Amicus Curiae Brief in Support of Plaintiff-Appellant Jennifer Vitsaxaki, seeking reversal of the district court's order of dismissal. [Dkt. 32]. CPRC has considerable experience challenging policies such as those at issue here. CPRC's experience with the issues raised by the district court will greatly help this Court in addressing the fundamental constitutional rights at issue.

CPRC has obtained the consent of Plaintiff-Appellant to file the attached Amicus Curiae brief. However, counsel for Defendants-Appellees declined to consent. Therefore, CPRC is required to seek leave from this Court.

Interest of Amicus

CPRC is a nonprofit, public-interest law firm that represents parents across the country in challenging school district policies that threaten parental rights, including, as is true of the district here, policies that intentionally withhold vital information from parents regarding their children's health and well-being. CPRC represents parents challenging school districts which have concealed from parents that their

children are being treated as something other than their biological sex at school, including the use of alternate names and pronouns and permitted use of opposite sex privacy facilities. *See, e.g., Blair v. Appomattox County School District,* 2024 WL 3165312 (Opinion granting motions to dismiss) (WD Va June 25, 2024), Fourth Circuit Court of Appeals Case No. 24-1682; *Foote v. Ludlow School Committee,* 128 F.4th 336 (1st Cir. 2025); *Landerer v. Dover Area School District,* 2025 WL 492002 (decision on Motion to dismiss) (MD PA February 13, 2025), Case No. 1:24-CV-00566; *Littlejohn v. Leon County School Board,* 132 F.4th 1232 (11th Cir. 2025); *Perez v. Broskie,* MD FL Case No. 3:22-cv-83, and *Willey v. Sweetwater County School District #1,* Tenth Circuit Court of Appeals Case No. 25-8027.

In these cases, CPRC has addressed issues raised by Defendants virtually identical to the issues raised by Defendants here. In responding to dispositive motions in various jurisdictions, CPRC has developed considerable knowledge regarding the interplay between municipal liability and constitutional rights, the same interplay that is at issue here. In fact, the district court here cited *Foote* [Dkt 32, pp. 27-29] and noted that it addressed allegations "nearly identical" to the allegations

under consideration here. [Dkt. 32, p. 27]. Those nearly identical allegations point to the relevance of CPRC's knowledge and research to this Court's consideration of the district court's decision.

CPRC's Amicus Brief Will Provide Valuable Information and Perspectives to the Court

As the attached proposed amicus brief attests, in representing parents across the country in similar challenges, CPRC has witnessed that plaintiffs such as Ms. Vitsaxaki have been subjected to a nearly unscalable wall in trying to survive a motion to dismiss based on *Monell v. Department of Social Servs.*, 436 U.S. 658 (1978). District courts misapply the pleading standards of *Bell Atlantic v. Twombly,* 550 U.S. 544 (2007) and *Ashcroft v. Iqbal,* 556 U.S. 662 (2009) to *Monell* claims to create an irresoluble dilemma that deprives them of their fundamental parental rights and undermines the purposes 42 U.S.C. §1983.

CPRC's brief provides the court with the legislative history of Section 1983 and how courts' present approach to *Monell* liability is contradictory to the intent of Congress. CPRC's brief further describes how district courts have misapplied *Twombly* and *Iqbal* to create a *de facto* heightened pleading standard that was specifically rejected by the Supreme Court in *Leatherman v. Tarrant County Narcotics Intelligence*

and Coordination Unit, 507 U.S. 163 (1993). That *de facto* heightened pleading standard places plaintiffs like Ms. Vitsaxaki in "Catch 22" situation. Plaintiffs are deprived of the ability to pursue their claims because they have not included significant factual detail that cannot be obtained without discovery, which plaintiffs are not permitted to pursue because the case is dismissed.

CPRC's brief describes how district courts' analysis of *Monell* claims against school boards and districts effectively grants institutions the absolute immunity that Section 1983 was supposed to halt. The brief shows how this reality has left parents like Ms. Vitsaxaki with no recourse to vindicate their fundamental parental rights and municipal officials unaccountable.

The information provided by CPRC arising from its years of representing parents whose rights have been infringed by school districts is critically important to this Court's analysis of the nearly identical claims present in this case.

Conclusion

Based on the foregoing, CPRC respectfully requests that this Court grant its motion for leave to file the attached Amicus Curiae Brief.

Dated: June 10, 2025

/s/*Mary E. McAlister*
MARY E. MCALISTER (COUNSEL OF RECORD)
VERNADETTE R. BROYLES
CHILD & PARENTAL RIGHTS CAMPAIGN, INC.
5805 State Bridge Road, Suite G310
Johns Creel. GA 30097
770.448.4525
mmcalister@childparentrights.org
vbroyles@childparentrights.org
Attorneys for Amicus Curiae

CERTIFICATE OF SERVICE

I hereby certify that on June 11, 2025, I electronically filed the foregoing motion with the United States Court of Appeals for the Second Circuit by using the CM/ECF system. I certify that counsel for all parties in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Mary E. McAlister
MARY E. MCALISTER

EXHIBIT 1

PROPOSED AMICUS CURIAE BRIEF

25-952

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JENNIFER VITSAXAKI,

Plaintiff-Appellant,

v.

SKANEATELES CENTRAL SCHOOL DISTRICT; SKANEATELES CENTRAL SCHOOLS' BOARD OF EDUCATION,

Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of New York
Case No. 5:24-cv-001155

BRIEF OF CHILD & PARENTAL RIGHTS CAMPAIGN AS AMICUS CURIAE IN SUPPORT OF APPELLANT AND FOR REVERSAL

MARY E. MCALISTER (Counsel of Record)
VERNADETTE R. BROYLES
CHILD & PARENTAL RIGHTS CAMPAIGN, INC.
5425 Peachtree Pkwy. # 110
Norcross, GA 30092
770.448.4525
mmcalister@childparentrights.org
vbroyles@childparentrights.org
Attorneys for Amicus Curiae

CORPORATE DISCLOSURE STATEMENT

Amicus Curiae Child & Parental Rights Campaign ("CPRC") is a nonprofit organization, does not have a parent corporation, and does not issue stock. CPRC is not aware of any publicly owned corporation, not a party to the appeal, with a financial interest in the outcome of this case.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

Rules

INTEREST OF AMICUS CURIAE [1]

Child & Parental Rights Campaign (CPRC) is a nonprofit, public-interest law firm that represents parents like Plaintiff across the country in challenging school district actions that threaten parental rights, including, as is true of the district here, policies that intentionally withhold vital information from parents regarding their children's upbringing and well-being. CPRC represents parents challenging school districts which have concealed from parents that their children are being treated as something other than their biological sex at school, including the use of alternate names and pronouns and permitted use of opposite sex privacy facilities. *See, e.g., Blair v. Appomattox County School District,* Fourth Circuit Court of Appeals Case No. 24-1682; *Foote v. Ludlow School Committee,* First Circuit Court of Appeals Case No. 23-1069; *Landerer v. Dover Area School District,* MD of PA Case No. 1:24-cv-00566; *Littlejohn v. Leon County School Board,* Eleventh Circuit Court of Appeals Case No. 23-10385; *Perez v. Broskie,* MD FL Case No. 3:22-cv-

[1] No counsel for a party authored this brief in whole or in part; no one, other than amicus and its counsel, made a monetary contribution for its preparation or submission.

83, and *Willey v. Sweetwater County School District #1,* Tenth Circuit Court of Appeals Case No. 25-8027.

In these cases, CPRC has faced challenges to pleadings nearly identical to those faced by Plaintiff here. CPRC has observed a disturbing trend in district courts applying the standards for municipal liability described in *Monell v. Department of Social Servs.*, 436 U.S. 658 (1978), and the pleading standards of *Bell Atlantic v. Twombly,* 550 U.S. 544 (2007) and *Ashcroft v. Iqbal,* 556 U.S. 662 (2009), to create an impenetrable labyrinth for plaintiffs seeking to use 42 U.S.C. §1983 to vindicate their constitutional rights. Parents such as Plaintiff here encounter secret school district policies that deprive them of their fundamental parental rights. When they discover the secret policies and bring a Section 1983 claim for the violation of their rights, they are told that they cannot proceed because they have not provided sufficient factual details to state a plausible claim. As these policies are being enacted and/or implementing purposely withholding information from parents, parents cannot provide factual details that are in the possession of Defendants without discovery and cannot engage in discovery unless they survive the motion to dismiss. Parents are left with no remedy for

the violation of their constitutional rights, undermining the *raison d'etre* for Section 1983.[2]

CPRC respectfully submits this amicus curiae brief detailing the impossible dilemma plaintiffs like Mrs. Vitsaxaki face when trying to use Section 1983 for its intended purpose. District courts have misinterpreted *Monell* to create the very *de facto* sovereign immunity for municipalities that *Monell* rejected. Courts have erected virtually unscalable obstacles in the form of plausibility standards exceeding the requirements of *Iqbal* and impermissible heightened pleading standards. Finally, district courts make it impossible for plaintiffs to remedy the purported pleading insufficiencies by refusing to grant plaintiffs the appropriate latitude to obtain the information before shutting the courthouse doors in their faces.

Parents like Mrs. Vitsaxaki should not be denied their opportunity to vindicate their constitutional rights under the vehicle provided by Congress. CPRC respectfully requests that this Court reverse the district court's order.

---

[2] *See* Fred Smith, *Local Sovereign Immunity,* 116 COLUMBIA L. REV. 409, 464 (2016) (citing Rep. Samuel Shellabarger, the author of Section 1983).

LEGAL ARGUMENT

I. The district court's decision exemplifies how *Monell* has been used to create *de facto* sovereign immunity for municipalities.

"[A] municipality has no 'discretion' to violate the Federal Constitution." *Owen v. City of Independence*, 445 U.S. 622, 649 (1980). Those words penned by Justice Brennan in rejecting sovereign immunity for local government entities under Section 1983 ring hollow in decisions such as the district court's here, which reflect a *de facto* adoption of local sovereign immunity.[3]

In *Owen,* the Supreme Court determined that passage of Section 1983 abrogated common law immunity for municipalities. "By including municipalities within the class of 'persons' subject to liability for violations of the Federal Constitution and laws, Congress ...abolished whatever vestige of the State's sovereign immunity the municipality possessed." 445 U.S. at 647-48. The *Owen* decision followed *Mount Healthy City School District Board of Education v. Doyle,* in which the Court said, "the record before us indicates that a local school board such as petitioner is more like a county or city than it is like an arm of the

[3] *Id.* at 416.

State. We, therefore, hold that it was not entitled to assert any Eleventh Amendment immunity from suit in the federal courts." 429 U.S. 274, 280–81 (1977). Despite the Court's rejection of municipal immunity, "cities [and school districts] are nonetheless generally protected from federal constitutional suits due to subsequent cases interpreting and applying *Monell v. Department of Social Services*."[4] "As a functional matter, the municipal causation requirement [imposed by *Monell*] and the individual immunities that local officers receive [qualified immunity] render specific classes of governmental defendants insusceptible to suit, even when there is a determination that a government's agent has violated constitutional rights."[5]

That *de* facto municipal immunity has developed as the result of *Monell*'s requirement that plaintiffs must prove that a local government's policy or custom caused a constitutional violation, 436 U.S. at 690, and subsequent cases narrowly interpreting "policy" and "policymakers."[6]

---

4 *Id.* at 430.

5 *Id.* at 416.

6 *Id.* at 413-14. *See also,* David Jacks Achtenberg, *Taking History Seriously: Municipal Liability Under 42 U.S.C. § 1983 And The Debate Over Respondeat Superior,* 73 FORDHAM L.R. 2183, 2190-91 (2005), citing *Jett v. Dallas Indep. Sch. Dist.*, 491 U.S. 701 (1989) and *City of St. Louis v. Praprotnik*, 485 U.S. 112, 130 (1988).

The municipal causation requirement as it has evolved over time has proven fatal to litigants seeking justice for civil rights violations. It has been more than 30 years since the Supreme Court found a municipal policy unconstitutional.[7] Equally restrictive rulings from lower courts, such as the ruling here, mean that local governments are often "inoculated from accountability, including for conduct that would render them liable for violations of state law."[8] When individual defendants are granted qualified immunity, the causation requirement often leaves those whose constitutional rights have been violated with "no defendant to sue at all."[9]

> Regularly leaving plaintiffs without this remedy undermines representative government. Apposite are the words of Representative Samuel Shellabarger, the author of § 1983, who shepherded the provision through the House of Representatives: "This act is remedial, and in aid of the preservation of human liberty and human rights. All statutes and constitutional provisions authorizing such statutes are liberally and beneficently construed. It would be most strange and, in civilized law, monstrous were this not the rule of interpretation." Cong. Globe, 42d Cong., 1st Sess. 68 app. (1871). The frequency with which plaintiffs are left without remedy for constitutional violations raises questions about

---

7 *Smith, supra* n. 2 at 414, citing *Pembaur v. City of Cincinnati*, 475 U.S. 469, 485 (1986).

8 *Id.* at 414-15.

9 *Id.*

> whether this legislative promise is adequately fulfilled today.[10]

Congress enacted Section 1983 to, *inter alia,* provide a remedy for violations of federal law where such remedies "though adequate in theory, [were] not available in practice."[11] Inoculating municipalities from suit and leaving plaintiffs without remedy for violation of their constitutional rights, as is true here if the district court's order is not reversed, renders Section 1983 virtually meaningless as a vehicle for vindication of civil rights violations.

II. Plaintiffs' efforts to hold municipalities accountable are further hampered by lower courts' misapplication of plausibility pleading standards to *Monell* claims.

As well as having to overcome *de facto* municipal immunity, Plaintiffs seeking to hold school districts liable for constitutional violations must also satisfy district courts' interpretations of the *Twombly* and *Iqbal* pleading standards. Application of those standards make it "particularly challenging for plaintiffs to survive motions to dismiss; in many cases, plaintiffs cannot find the type of evidence that

---

10 *Id.* at 464.

11 *Id.* at 474-75.

would support their *Monell* claims without formal discovery."[12] In *Twombly*, the Supreme Court ruled that plaintiffs must allege a "plausible" entitlement to relief in their complaint to withstand a motion to dismiss. 550 U.S. at 545. Two years later in *Iqbal*, the Court clarified that a "plausible" complaint is one filled with factual allegations—legal conclusions will not suffice. 556 U.S. at 678. The circumstances in *Iqbal* foreshadowed the difficulties the ruling would create for plaintiffs like Mrs. Vitsaxaki. The Supreme Court dismissed Iqbal's claim against the attorney general and FBI director because Iqbal could not prove that the defendants had intentionally promulgated a discriminatory policy to detain Arab and/or Muslim men. *Id.* at 683. As one scholar noted, "it was near impossible for Iqbal to have evidence of Ashcroft and Mueller's intent before discovery—indeed, that is the very type of evidence that can only possibly be unearthed during discovery."[13]

Plaintiffs like Mrs. Vitsaxaki pleading a *Monell* claim after *Iqbal* often face the same Catch-22 dilemma. A plaintiff might have access to enough facts to survive *Monell* if she is challenging a policy as

---

[12] Joanna C. Schwartz, *Municipal Immunity*, 109 VIRGINIA L. REV., 1181, 1187 (October 2023)

[13] *Id.* at 1215.

unconstitutional on its face or questioning obvious misconduct by a final policymaker.[14] However, if a plaintiff is alleging that there is an unwritten policy, custom or failure to train, facts necessary to support the claim, *e.g.*, proof of past misconduct, training records or investigation files, may only be available through discovery.[15] In that case, unless the trial court acknowledges the problem and permits at least preliminary discovery, the plaintiff will be foreclosed from bringing her claim against the municipality.[16] This, perversely, only encourages more secrecy and withholding of information from citizens by public officials.

Circuit Courts of Appeal have acknowledged the challenges facing plaintiffs trying to state a claim for municipal liability under *Monell* at the pleading stage in light of the plausibility standards of *Twombly* and *Iqbal*. In *Haley v. City of Boston,* the city argued that plaintiff's allegations of a police department policy of withholding evidence from criminal defendants and failure to train staff that the policy was unconstitutional failed to meet the plausibility standards. 657 F.3d 39, 52 (1st Cir. 2011). The First Circuit disagreed, saying that the argument

14 *Id.*
15 *Id.*
16 *Id.*

"elevates hope over reason." *Id.* Citing *Iqbal*'s statement that "evaluating the plausibility of a pleaded scenario is a 'context-specific task that requires the reviewing court to draw on its judicial experience and common sense,'" the Court found that "the municipal liability claims pleaded by Haley step past the line of possibility into the realm of plausibility." *Id.* at 53. "Although couched in general terms, Haley's allegations contain sufficient factual content to survive a motion to dismiss and open a window for pretrial discovery." *Id.*

Some district courts have similarly recognized that the challenges facing plaintiffs trying to plead municipal liability mean that motions to dismiss are premature.

> For example, a judge in the Eastern District of Pennsylvania denied defendant's motion to dismiss plaintiff's failure-to-train claim, observing that, in order to prevail on that claim, the plaintiff would need to "prove that the Township had a pattern of engaging in constitutional violations such as those present in this case" and that the plaintiff needed "a sufficient period of discovery to adduce this evidence." The court therefore concluded that the motion to dismiss was premature.[17]

---

[17] *Id.* at 1215, citing *Keahey v. Bethel Township*, No. 11-cv-07210 (E.D. Pa. June 10, 2014), Memorandum at 14, Dkt. No. 7.

However, as one professor's study showed, the vast majority of motions to dismiss municipal liability claims are granted,[18] demonstrating the challenge faced by plaintiffs trying to assert a claim of municipal liability for civil rights violations.

As discussed in Part I, the difficulties of proving *Monell* claims compromise the compensation and deterrence goals of Section 1983 and mean that victims of clear constitutional abuses may be left empty-handed, unable to recover under Section 1983—even if their constitutional rights have been violated.[19] And municipal officials remain unaccountable. That is the situation faced by Mrs. Vitsaxaki unless this Court reverses the district court's order.

III. District courts impermissibly utilize a *de facto* heightened pleading standard for *Monell* claims.

Further complicating parents' efforts to vindicate their fundamental rights, district courts employ a *de facto* heightened pleading standard that was specifically rejected by the Supreme Court in *Leatherman v. Tarrant County Narcotics Intelligence and Coordination*

---

[18] *Id.* at 1208, describing research showing 83 percent of motions were granted in whole or in part, or were undecided.

[19] *Id.* at 1227.

Unit, 507 U.S. 163 (1993). In *Leatherman,* the Supreme Court overturned a Fifth Circuit decision which applied the principle that in cases against government officials plaintiffs had to state the basis for their claims with factual detail and particularity. *Id.* at 167. The Court said, "it is impossible to square the 'heightened pleading standard' applied by the Fifth Circuit in this case with the liberal system of 'notice pleading' set up by the Federal Rules." *Id.* at 168.

FED R. CIV. P. 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief," and the Supreme Court has interpreted it strictly. "The Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is 'a short and plain statement of the claim' that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Conley v. Gibson*, 355 U.S. 41, 47 (1957). FED. R. CIV. P. 9(b) provides a particularity pleading requirement only for "averments of fraud or mistake," in which "the circumstances constituting fraud or mistake shall be stated with particularity." Thus, the Federal Rules do not prescribe particularity in pleading for complaints alleging municipal liability

under § 1983. "*Expressio unius est exclusio alterius*." *Leatherman,* 507 U.S. at 168. "Perhaps if Rules 8 and 9 were rewritten today, claims against municipalities under §1983 might be subjected to the added specificity requirement of Rule 9(b). But that is a result which must be obtained by the process of amending the Federal Rules, and not by judicial interpretation." *Id.* "In the absence of such an amendment, federal courts and litigants must rely on summary judgment and control of discovery to weed out unmeritorious claims sooner rather than later." *Id.* at 168-69.

Imposing a particularity pleading requirement on claims for municipal liability "wrongly equates freedom from liability with immunity from suit." *Id.* at 166. *Monell* affirmed that a municipality cannot be held liable under § 1983 on a *respondeat superior* theory. 436 U.S. at 691. However, the Court did not grant municipalities immunity. To the contrary, *Monell* overruled *Monroe v. Pape*, 365 U.S. 167 (1961), which provided that local governments were wholly immune from suit under Section 1983. In *Owen*, the Court rejected a claim that municipalities should be afforded qualified immunity, like that afforded individual officials, based on the good faith of their agents. 445 U.S. at

650. "These decisions make it quite clear that, unlike various government officials, municipalities do not enjoy immunity from suit–either absolute or qualified–under § 1983. In short, a municipality can be sued under § 1983, but it cannot be held liable unless a municipal policy or custom caused the constitutional injury. *Leatherman,* 507 U.S. at 166.

To successfully plead such a policy or custom, a plaintiff need not provide detailed factual allegations as required under Rule 9, but a "short and plain statement of the claim that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Conley,* 355 U.S. at 47; *Accord, Leatherman*, 507 U.S. at 168. Allegations that a town violated the First and Fourteenth amendments when a former police officer who had sued the police chief was singled out for termination out of malice, subjected to harsher discipline than would have been imposed on another officer comparably charged, and was treated in this manner in retaliation for the 1996 lawsuit against the Chief stated a claim of municipal liability under 42 U.S.C. § 1983. *Williams v. Town of Southington,* 205 F.3d 1327 (2d Cir. 2000). Contrary to the district court's conclusion, the allegations were general and

succinct, not conclusory, and therefore satisfied the notice pleading standard of Fed. R. Civ. P. 8(a). *Id.* (citing *Leatherman*, 507 U.S. at 168).

Similarly, in this case Mrs. Vitsaxaki alleged specific, non-conclusory facts that more than satisfy the notice pleading standards of Rule 8 in the context of *Leatherman* and *Iqbal*. The allegations pushed the complaint over the threshold necessary to survive a motion to dismiss. By dismissing the case, the district court foreclosed Mrs. Vitsaxaki from conducting discovery to obtain the information required for her to redress the violation of her rights. Other parents challenging secretive school policies have faced similar outcomes.

IV. District courts deny plaintiffs the latitude required to obtain the facts necessary to meet their heightened plausibility and pleading standards.

A final barrier to pleading a Section 1983 claim erected by district courts is denying plaintiffs appropriate latitude to obtain facts necessary to state a claim when the critical information regarding the genesis and implementation of the parent non-notification policy is in the hands of defendants and recoverable only through discovery. Such latitude is necessary for a proper analysis of the plausibility of parents' claims in light of the case-specific nature of the evaluation. As the Supreme Court

observed in *Iqbal,* "[d]etermining whether a complaint states a plausible claim for relief will…be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." 556 U.S. at 672. A context-specific evaluation requires reviewing, *inter alia,* the relationship between the parties, their relative access to essential information, and the nature of the claims asserted. When, as is true here, critical information is necessarily in the hands of an institutional defendant and not accessible to, or specifically withheld from, an individual plaintiff without legal process, the plaintiff should have greater latitude in meeting the *Iqbal* plausibility standard.

This Court has recognized the need for greater latitude in pleading even in the context of fraud cases which require more particularized allegations under Fed. R. Civ. P. 9. *Wexner v, First Manhattan Co.,* 902 F.2d 169, 172 (2d Cir. 1990). This Court recognized that even the generally rigid requirement under Rule 9 that fraud be pleaded with particularity can be relaxed when facts necessary for that particularity are peculiarly within the opposing party's knowledge. *Id.* That need for greater latitude is all the more pronounced when the pleadings standards themselves are more relaxed as is true under Rule 8.

Mrs. Vitsaxaki cannot be expected to have historical and contextual information about a school district policy prescribing that parents not be informed when their children assert a discordant gender identity or asked to be treated by school officials as something other than their sex. Only school district staff would have information regarding the genesis and implementation of the policy. That information critical to analyzing the policy would not be accessible to Mrs. Vitsaxaki except through discovery.

The pleading rules have tightened since *Twombly* and *Iqbal,* but courts continue to acknowledge that plaintiffs should be accorded some latitude where information needed to fill in knowledge gaps is in the control of the defendants. In such circumstances, the "interests of justice" may warrant remand for limited discovery to fill in the informational gaps. No such latitude was provided for Mrs. Vitsaxaki.

Mrs. Vitsaxaki 's allegations of a school policy that conceals information from parents and inserts school officials between parents and children were sufficient to permit Mrs. Vitsaxaki's Section 1983 challenge to proceed to discovery. The district court's determination that more specificity was needed exceeds the requirements of Rule 8. Mrs.

Vitsaxaki was not provided the latitude necessary to overcome the inequitable access to information and proceed with her claim.

Courts have repeatedly affirmed that detailed factual allegations are not necessary to survive a motion to dismiss even after *Iqbal*. The appropriate test is whether the facts contained in the complaint show that elements such as causation are "plausible." *Iqbal,* 556 U.S. at 678. When, as here, critical facts to complete the plausibility analysis are available only to the defendants and are obtainable only through discovery, the interests of justice require giving the plaintiff the latitude to acquire the information. The district court's failure to accord Mrs. Vitsaxaki that latitude was reversible error.

V. Courts' application of *Monell* to deny plaintiffs the opportunity to challenge constitutional violations renders Section 1983 effectively meaningless.

Section 1983 was enacted more than 150 years ago as a means to compensate people, like Mrs. Vitsaxaki, whose constitutional rights have been violated and to deter future misconduct. "*Monell* doctrine in its current form undermines both of these values."[20] Plaintiffs who seek recovery under Section 1983 from a municipal entity and individual

[20] Schwartz, *supra* n.12, at 1189.

actors face a two-pronged attack, *i.e.,* a claim of qualified immunity by the individuals and, because of the jurisprudence that has developed under *Monell, de facto* municipal immunity by the institution. A decision in defendants' favor on both grounds leaves the party whose constitutional rights have been violated with no recourse. In addition, state actors who escape both individual and municipal liability are not deterred from continuing to violate constitutional rights. Other state actors are not only not deterred but are actually emboldened by the realization that a Section 1983 claim will likely be dismissed. "*Monell* doctrine is unsettled; multiple open questions lead courts to apply widely varying standards, even in the same circuit, which likely encourages defendants to file more motions and creates greater uncertainties for plaintiffs evaluating the costs and benefits of pursuing a *Monell* claim."[21]

The unsettled nature of the *Monell* doctrine is reflected in intra-Court disagreements on the Supreme Court. "On at least ten occasions during the decade after *Monell*, the Court struggled to define the kinds of circumstances, relationships, and patterns of authority determinative

[21] *Id.* at 1188.

of whether a municipality is liable for the misconduct of its employees."[22] Emblematic of the disagreement is Justice Breyer's dissent, joined by Justices Ginsburg and Stevens, calling for a re-examination of *Monell* in *Board of the County Commissioners v. Brown*, 520 U.S. 397, 430–31 (1997). "Essentially, the history on which *Monell* relied consists almost exclusively of the fact that the Congress that enacted § 1983 rejected an amendment (called the Sherman amendment) that would have made municipalities vicariously liable for the marauding acts of *private citizens*." *Id.* at 432 (emphasis in original). That fact "does not argue against vicarious liability for the act of municipal *employees* particularly since municipalities, at the time, were vicariously liable for many of the acts of their employees." *Id.* (emphasis in original). "*Monell*'s basic effort to distinguish between vicarious liability and liability derived from 'policy or custom' has produced a body of law that is neither readily understandable nor easy to apply." *Id.* at 433.[23] "Today's case provides a good example," *id.,* as does Mrs. Vitsaxaki 's case.

---

[22] *Id.* at 1193, quoting Peter H. Schuck, *Municipal Liability Under Section 1983: Some Lessons from Tort Law and Organization Theory*, 77 GEO. L.J. 1753, 1753 (1989).

[23] Justice Souter echoed Justice Breyer's call for re-examination in a separate dissent. 520 U.S. at 430.

"By imposing an 'official policy' requirement, the Court has bound itself to a doctrine whose principal consequence is to deny citizens recoveries against local governments for damage caused by officials' constitutional violations."[24] That is evident in Mrs. Vitsaxaki 's case and in other cases involving secrets being kept from parents throughout the country. It is also antithetical to the protections offered to the public against rogue state actors in Section 1983 since 1871.

CONCLUSION

This Court should not sanction the continuing misuse of *Monell* to deny plaintiffs their rights under Section 1983 as occurred in this case. It should overrule the lower court's decision and permit Mrs. Vitsaxaki to proceed with her claim.

Dated: June 11, 2025

/s/*Mary E. McAlister*
MARY E. MCALISTER (COUNSEL OF RECORD)
VERNADETTE R. BROYLES
CHILD & PARENTAL RIGHTS CAMPAIGN, INC.
5805 State Bridge Road, Suite G310
Johns Creel. GA 30097
770.448.4525
mmcalister@childparentrights.org
vbroyles@childparentrights.org
Attorneys for Amicus Curiae

[24] *Id.* at 1200, quoting Schuck, 77 GEO. L.J., at 1755.

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENT

This brief complies with the word-count limitation of Fed. R. App. P. 29(a)(5) because, according to the word-count feature of the program used to prepare it and excluding the items listed in Fed. R. App. P. 32(f), it contains 4,028 words.

This amicus brief also complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 365 in 14-point Century Schoolbook font.

/s/ Mary E. McAlister
MARY E. MCALISTER

CERTIFICATE OF SERVICE

I hereby certify that on June 10, 2025, I electronically filed the foregoing brief with the United States Court of Appeals for the Second Circuit by using the CM/ECF system. I certify that counsel for all parties in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Mary E. McAlister
MARY E. MCALISTER