NO. 22-2773

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

DERRICK JEROME BATES,
Plaintiff-Appellant,

vs.

TYLER RICHARDSON and WAYNE JERMAN,
in their individual and official capacities and the CITY OF CEDAR RAPIDS, IOWA,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Iowa, Cedar Rapids Division
1:18-cv-30
The Honorable Judge C.J. Williams

BRIEF OF APPELLANT

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SUMMARY OF THE CASE AND REQUEST FOR ORAL ARGUMENT

The issue here is whether or not Plaintiff-Appellant Bates' (herein "Bates") constitutionally protected rights were violated when he was arrested by Officer Richardson for interference with official acts officers; and if so, whether Officer Richardson is entitled to qualified immunity.

This Court already found that "[t]he relevant facts [were] too confused and contested to conclude, as a matter of law, that Officer Richardson had arguable probable cause to believe that Bates' failure to cooperate and commands to stop and get on the ground, combined with him speaking loudly and expressing anger at Richardson's actions, constituted interference with official acts in violation of § 1983." *See Irvin v. Richardson*, 20 F.4th 1199 (8th Cir. 2021). On appeal again, the factual record before this Court, remains exactly the same as in Bates' first appeal. Defendants overstates the importance of *State v. Wilson*, 968 N.W.2d 903 (Iowa 2022) in deciding this issue of arguable probable cause. This case should be left to the trier of fact and summary judgment should have been denied and should be denied by this Court for the second time.

Bates appeals Defendants Second Summary Judgment and respectfully requests 15 minutes of oral argument per side.

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JURISDICTIONAL STATEMENT

The District Court had original jurisdiction over this case under 28 U.S.C. § 1331 because the primary cause of action arose pursuant to 42 U.S.C. § 1983. The District Court also had jurisdiction over the state law claim because it was so related to the 42 U.S.C. § 1983 claim that it formed part of the same case or controversy and jurisdiction was conferred pursuant to 28 U.S.C. § 1367.

On July 25, 2022 the Defendants' Second Motion for Summary Judgment was granted. Bates now appeals. The Notice of Appeal was filed on August 22, 2022 (App. 623 R. Doc. 74). This Circuit Court has appellate jurisdiction under 28 U.S.C. § 1291-1294.

STATEMENT OF THE ISSUES

1. **WHETHER THE DISTRICT COURT ERRED IN DETERMINING THERE WAS GOOD CAUSE TO CONSIDER DEFENDANTS' SECOND MOTON FOR SUMMARY JUDGMENT.**

   Aaron v. Target Corp., 357 F.3d 768 (8th Cir. 2004)
   Kelly v. Ethicon, No. 21-1769, 2021 U.S. App. LEXIS 32289 (8th Cir. Oct. 28, 2021)
   McCabe v. Bailey, No. 05-cv-73-LRR, 2008 U.S. Dist. LEXIS 118824 (N.D. Iowa Apr. 7, 2008)

2. **WAS THERE ARGUABLE PROBABLE CAUSE TO ARREST BATES FOR INTERFERENCE WITH OFFICIAL ACTS.**

   Irvin v.Richardson, 20 F.4th 1199 (8th Cir. 2021)
   State v. Wilson, 968 N.W.2d 903 (Iowa 2022)

3. **WHETHER *MONELL* LIABILITY CAN BE DETERMINED ON DEFENDANTS' SECOND MOTION FOR SUMMARY JUDGMENT.**

   Irvin v.Richardson, 20 F.4th 1199 (8th Cir. 2021)
   Soltesz v. Rushmore Plaza Civic Center, 847 F.3d 941 (8th Cir. 2017)
   Waters v. Madson, 921 F.3d 725 (8th Cir. 2019)

STATEMENT OF THE CASE

A. Factual Background This Court has already set forth the facts in *Irvin v. Richardson*, 20 F.4th 1199 (8th Cir. 2021). There were no new facts used by the district court in granting the subsequent summary judgment motion. The relevant facts, as previously determined by this Court are as follows:

> "Officer Richardson responded, arriving at the scene minutes later. Driving on Higley Avenue towards the intersection of Higley and Wellington, he saw a black man enter a corner house, called out to him, but the man did not respond. Officer Richardson then saw a woman flagging him down and stopped to speak with her. The woman was the 911 caller, but that was not confirmed until after the officers' encounter with Irvin and Bates. In a ten-second exchange, the woman told Richardson that someone had gone around the corner wearing "white and black pants." Richardson asked, "white shirt, black pants?" and she responded, "er, white and blue." Officer Richardson then drove to the intersection and turned right onto Wellington. He saw two people -- later identified as Bates and Irvin -- walking away from him along the left side of the street. The dashcam video shows Bates wearing a red shirt and black pants and Irvin wearing a blue shirt and blue pants.
>
> Officer Richardson got out of his car and yelled, "Stop. Stop." Irvin and Bates turned their heads, then stopped. Richardson said, "Yeah, you guys." Bates replied, "No, we didn't do nothing." Richardson yelled, "Stop right now! Stop!" and drew his gun, pointed it at Irvin and Bates, and ordered them to get on the ground. Officer Jupin, whose squad car had arrived from the opposite direction, drew his gun and did the same. Irvin and Bates slowly got down on their knees. Richardson yelled, "Face down!" Richardson handcuffed Irvin. Jupin handcuffed Bates. A pat-down determined that neither was armed.
>
> Handcuffed and seated on the ground, 16-year-old Irvin remained quiet. Bates, 33 years old, became agitated, speaking loudly and expressing anger that the officers had pulled their guns on him. Jupin stayed with Irvin and Bates while Richardson went a block away and talked to a heavyset black man in a white t-shirt the officers spotted while detaining Irvin and Bates.

> Richardson ordered the man to stop and put his hands on a stone wall next to the sidewalk. The man complied. Richardson patted him down for weapons, found none, and soon released him.
>
> Other officers arrived, giving Officer Jupin an opportunity to interview a bystander who witnessed the earlier disturbance. The witness said neither Bates nor Irvin was involved. Jupin returned to Irvin and Bates, who had been handcuffed for approximately 12 minutes, uncuffed them, and told them they were free to go. Irvin and Bates remained at the scene. Fifteen minutes later, Richardson arrested Bates for interference with official acts in violation of Iowa Code § 719.1(1).
>
> Irvin and Bates filed administrative complaints with the Cedar Rapids Police Department, which ruled them unfounded, and these § 1983 actions. In addition to state-law claims for false arrest, Irvin and Bates asserted multiple Fourth Amendment violations: the officers lacked reasonable suspicion for an investigative Terry stop; the stop became an arrest without probable cause; Bates was later arrested without probable cause; and Chief Jerman and the City of Cedar Rapids failed to properly train the officers and ratified their unconstitutional conduct. The district court granted summary judgment dismissing all claims concluding, *inter alia*, that the officers did not violate plaintiffs' Fourth Amendment rights and therefore they are entitled to qualified immunity. These consolidated appeals followed." *Irvin v. Richardson*, 20 F.4th 1199, 1202-1204 (8th Cir. 2021).

B. Procedural Background On June 27, 2019, the District Court granted Defendants' first summary judgment motion. (App. 341 R. Doc. 49, at 40). Bates timely appealed. On December 16, 2021, this Court affirmed in part and reversed in part the District Court's order granting the Defendants' first summary judgment motion. *Irvin v. Richardson*, 20 F.4th 1199 (8th Cir. 2021). This Court found that there were genuine issues of material fact as to whether Officer Richardson had probable cause to arrest Bates for interference with official acts. *Id*. This Court therefore reversed and remanded the state false arrest claim and Section 1983 false

arrest claim. *Id*. This Court also reversed and remanded the dismissal of the *Monell* claims against Chief Jerman and the City finding that the district court's "reasoning no longer applies" given the reversal of the false arrest clams and that Chief Jerman's liability for Officer Richardson's actions was a "fact intensive" issue. *Id*.

Defendants sought leave to file a successive motion for a second bite at summary judgment after remand. Bates filed a timely resistance. (App. 394 R. Doc. 64). The district court granted the Defendants' motion and the subsequent summary judgment motion followed. (App. 401 R Doc. 65). On April 4, 2022, Defendants filed a second motion for summary judgment, asserting that the Iowa Supreme Court's recent decision in *State v. Wilson*, 968 N.W.2d 903 (Iowa 2022) "restated and clarified the fairly low evidentiary standard to sustain a criminal conviction for interference with official acts under Iowa Code § 719.1." (App. 407 R. Doc. 68). As result of *Wilson*, Defendants argued they were entitled to judgment as a matter of law as to all of Bates' remaining claims. The Defendants relied upon an identical statement of material facts as their initial summary judgment motion. (App. 448 R. Doc. 68-2). On May 19, 2022, Bates filed a timely resistance. (App. 571 R. Doc. 70). On July 25, 2022, the District Court granted Defendants' second motion for summary judgment. (App. 597 R. Doc. 72). Bates timely appealed.

SUMMARY OF ARGUMENT

Bates asserts that (1) the District Court erred in granting Defendants' motion for leave to file a second summary judgment motion; (2) the District Court erred in finding there was arguable probable cause to arrest Bates for Interference with Official Acts in light of *State v. Wilson*, 968 N.W.2d 903 (Iowa 2022). The district court, taking *Wilson* into consideration, concluded, "this case depends on its circumstances." The fact and circumstances of this case have not changed since the Eighth Circuit ruled "the relevant facts are simply too uncertain and contested to conclude, as a matter of law, that Officer Richardson had probable cause to arrest Bates. *Irvin* at 1208. *Wilson* does nothing to change this Court's prior ruling. For the same reason, the District Court erred in determining Officer Richardson is entitled to qualified immunity because he had arguable probable cause to arrest Bates for interference.

The District Court again drew conclusions and inferences from Officer Richardson's Arbitrator squad car video in favor of the *Defendants* despite the Eighth Circuit's ruling that the facts were too contested to grant summary judgment on Bates' claims. As the Eighth Circuit already reasoned, even in light of *Wilson*, these issues should again be left for the trier of fact to determine at trial.

ARGUMENT

I. THE DISTRICT COURT ERRED IN DETERMINING THERE WAS GOOD CAUSE TO CONSIDER DEFENDANTS' SECOND MOTION FOR SUMMARY JUDGMENT.

A. Standard of Review

"We review for abuse of discretion a district court's decision to permit a successive summary judgment motion." *Kelly v. Ethicon*, No. 21-1769, 2021 U.S. App. LEXIS 32289 *1 (8th Cir. Oct. 28, 2021). A district court may, in its discretion, allow a file a successive motion, particularly if good reasons exist. *Whitford v. Boglino*, 63 F.3d 527, 530 (7th Cir. 1995); *See generally*, James W. Moore, *et al*., Moore's Federal Practice P 56.20(2) (2d ed. 1994). Good cause may exist for a successive summary judgment especially if one of the following grounds exist: "(1) an intervening change in controlling law; (2) the availability of new evidence or an expanded record; and (3) need to correct clear error or prevent manifest injustice." *Whitford* at 530. "Avoiding an unnecessary trial may also constitute good cause for considering a successive motion for summary judgment." *Id.* Defendants' motion for leave to file a second summary judgment motion fails on these grounds.

B. General Discussion

After remand from this Court, Defendants filed a motion for leave to file an untimely[1] second summary judgment motion arguing recently decided Iowa case law may avoid the necessity of trial. (App. 384 R. Doc. 62). In their motion, Defendants never identified the which *new* Iowa case law changed Iowa law nor

[1] The trial management order set the deadline of April 9, 2019 for dispositive motions. (JA 003).

explained how or why it would avoid a trial on the merits. Bates timely resisted the Defendants motion. (App. 394 R. Doc. 64). On March 3, 2022, the District Court granted the Defendants' motion and stated the following:

> "Here, it is difficult for the Court to assess whether there would be any merit to defendants' successive dispositive motion. It may very well be, as plaintiff argues, that a recent change to Iowa law can have no legal impact on this case. It may also be that a genuine issue of material fact will remain precluding summary judgment on this case. On the other hand, without knowing the basis for the motion, the Court cannot rule out the possibility that a dispositive motion may succeed." (App. 405 R. Doc. 65, at 4-5).

While the District Court is afforded "considerable discretion in entertaining successive dispositive motions," that discretion is not without limits. *See e.g.*, *McCabe v. Bailey*, No. 05-cv-73-LRR, 2008 U.S. Dist. LEXIS 118824 *3 (N.D. Iowa Apr. 7, 2008) "Nowhere in the Second Motion, however, do Defendants attempt to make a showing of extraordinary circumstances permitting them to file a second motion for summary judgment." *Id.* *4. "An abuse of discretion occurs if a relevant factor that should have been given significant weight is not considered, if an irrelevant or improper factor is considered and given significant weight, or if a court commits clear error of judgment in the course of weighing proper factors." *Aaron v. Target Corp*., 357 F.3d 768, 774 (8th Cir. 2004).

The threshold question is whether the district court abused its discretion in finding good cause to grant the Defendants' motion for leave to file a successive

motion for summary judgment. Here, the district court "committed clear error of judgment in the course of weighing proper factors." *Aaron* at 774. Nowhere in Defendants' motion for leave to file successive motion for summary judgment do they even attempt to explain how or why an intervening change is actually a *change* from that which this Court relied on in reversing the district court's grant of summary judgment. (App. 384 R. Doc. 62). Instead, Defendants' make a conclusory statement that some new unidentified but recently decided Iowa case law may avoid the necessity of trial without identifying the case law. (App. 384 R. Doc. 62). As a result, the district court could not properly determine whether any purported change constituted good cause. Because Defendants failed to even identify the new Iowa case law, the district court could not properly determine the new case "may avoid the necessity of trial." *Whitford* at 530. Furthermore, Defendants' failure prevented Bates from arguing against this good cause factor. The district court's ruling conceded this point when it held, "Here, it is difficult for the Court to assess whether there would be any merit to defendants' successive dispositive motion." (App. 405 R. Doc. 65, at 4-5). The district court's deferential finding of "good cause" because of an unidentified intervening change in the law was nothing more than supposition without any substantive basis.

Despite the district court's inherent authority to permit the filing of a successive dispositive motion, it must still properly weigh good cause factors. It

failed to do so. The Defendants should not be allowed to "hide the ball" from Bates and the District Court and then be rewarded with good cause. Under these circumstances, the District Court abused its discretion in permitting the filing of Defendants second motion for summary judgment.

II. THE DISTRICT COURT ERRED IN DETERMINING THERE WAS ARGUABLE PROBABLE CAUSE TO ARREST BATES FOR INTERFERENCE WITH OFFICIAL ACTS.

A. Summary Judgment Standard and Standard of Review.

Summary judgment is only proper if there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). The moving party has the burden of proving both the absence of any material facts and entitlement to judgment as a matter of law. Fed. R. Civ. P. 56(a). A fact is "material" if it "might affect the outcome of the suit under the governing law." *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 248 (1986) (Internal Citations Omitted).

This court reviews summary judgment de novo, and all evidence and reasonable inferences must be viewed in the light most favorable to the nonmovant. *Wierman v. Casey's General Store*, 638 F.3d 984, 993 (8th Cir. 2011).

B. General Discussion

Defendants second motion for summary judgment relies on *State v. Wilson*,

968 N.W.2d 903 (Iowa 2020) together with the very same factual record as the original motion for summary judgment. The only issue for this Court is whether *Wilson* has any legal impact on whether probable cause existed to arrest Bates for Interference With Official Acts. It doesn't. Defendants admit that "Wilson does not change the law as it stood when Bates was arrested. . ." (App. 409 R. Doc. 68, at 3). The facts have also not changed since the first appeal. The District Court erred in determining *Wilson* had any legal impact on this Court's decision in *Irvin v. Richardson*, 20 F.4th 1199 (8th Cir. 2021). Summary judgment can, and should, be reversed on appeal for this reason alone.

1. The Iowa Supreme Court's decision in *State v. Wilson*, 968 N.W.2d 903 (Iowa 2022) has no legal impact on Count One and Count Two.

The district court found that *Wilson* provides a "clearer" picture of that what constitutes Interference With Official Acts under Iowa law. (App. 609 R. Doc. 72, at 13). It does so even though Defendants admit *Wilson* does nothing to overrule any prior precedent. (***Wilson does not change the law as it stood when Bates was arrested, but as opinion of the Iowa Supreme Court, it provides guidance on Iowa law that was not available to either this court, when ruling in June, 2019, or the Eighth Circuit when deciding Plaintiff's appeal in December, 2021***.") (App. 409 R. Doc. 69, at 3-4). The law, as it stood, and still stands in Iowa, was set forth by this Court in the prior appeal of this very case. "[T]he Iowa Supreme Court held in *State v. Lewis*, 675 N.W.2d 516, 526 (Iowa 2004), that the mere act of walking away

from the officer and ignoring his directions to stop under these circumstances is not interference with official acts." *Irvin v. Richardson*, 20 F.4th 1199, 1208 (8th Cir. 2021). The Eighth Circuit stated the following:

> "Turning to Bates's § 1983 false arrest claim, in *Small v. McCrystal*, we affirmed the denial of qualified immunity to an Iowa police officer who made a § 719.1(1) arrest in similar circumstances because, viewing the facts most favorably to the plaintiff, "he was walking away" from the officers and if he shouted an obscenity, it was verbal harassment within the meaning of § 719.1(3). 708 F.3d 997, 1004-05 (8th Cir. 2013). We conclude the same reasoning applies here. The relevant facts are too confused and contested to conclude, as a matter of law, that Officer Richardson is entitled to qualified immunity because he had arguable probable cause to believe Bates's failure to cooperate with commands to stop and get to the ground, combined with speaking loudly and expressing anger at Richardson's actions, constituted interference with official acts in violation of § 719.1(1). Thus, the issue of qualified immunity must await further development at trial." *Irvin v. Richardson*, 20 F.4th 1199, 1208 (8th Cir. 2021).

Defendants admit that "Richardson decided to charge Bates with Interference With Official Acts based solely upon Bates' refusal to stop in response to Richardson's repeated commands. (App. 463 R. Doc. 68-2, at 16). The plain language of Iowa Code § 719.1 still requires "active interference." *State v. Smithson*, 594 N.W.2d 1, 2-3 (Iowa 1999). Clearly established Iowa law demonstrates that refusing to stop and walk away from officers is not "active interference." Defendants admit that this clearly established law in Iowa has not changed—even post-*Wilson*.

In *Wilson*, the Iowa Supreme Court cites to *Lawyer v. City of Council Bluffs*, 361 F.3d 1099, 1107 (8th Cir. 2004) and *State v. Donner*, 243 N.W.2d 850, 854 (Iowa

1976) for the long-standing rule that the standard for establishing a violation for Interference With Official Acts is "generally very low." *Wilson* at 928. This is not new law. Both *Lawyer* and *Donner* ask the key question of "whether an officer's actions were hindered," in determining whether a person is engaged in interference. 361 F.3d at 1007. *Wilson* does nothing to change any existing law or clarify existing law in the Defendants favor. In fact, when the Eighth Circuit determined there was insufficient evidence to determine whether or not Officer Richardson had probable cause to arrest Bates for Interference With Official Acts, it presumably already knew (and Defendants could have emphasized) that the standard in *Lawyer* and *Donner* was "generally very low." Because of this long-standing rule, this Court had to know the key question was whether Officer Richardson's actions were hindered was the status of the law at the time of its decision in the first appeal. *Wilson* does absolutely nothing more than reaffirm clearly established Eighth Circuit and Iowa precedent which this Court already had access to when it made its decision to reverse summary judgment.

As a result, this Court has already examined the rules from *Lewis*, *Smithson* and *State* v. *Sullivan*, No. 08-0541, 2009 Iowa App. LEXIS 69 (Iowa Ct. App. Feb. 4, 2009) which were reaffirmed in *Wilson* and rejected the claim that such a low bar entitled Richardson to qualified immunity. *Irvin* at 1207-08. The fact that Defendants did not specifically argue *Lawyer* or *Donner* (which were relied on in

Wilson) in the first appeal is of no consequence. The District Court's attempt to re-evaluate *Lewis*, *Smithson* and *Sullivan* in light of *Wilson* is nothing more than an attempt to re-hash its own overturned ruling in the first appeal.

The holding from the first appeal still holds true: "The factual record here [from the Arbitrator audio and video] is simply too contested and too uncertain to determine as a matter of law that Officer Richardson is entitled to qualified immunity. This Court was right then and the District Court's ruling on summary judgment should be reversed again for the same reason.

The same reasoning applies from *Wilson* to the remanded common law claim of false arrest in Count Two against Officer Richardson. Wilson adds nothing new to the existing record or existing law. In Iowa, a claim of false arrest "has two elements." *Baldwin v. Estherville, Iowa,* 218 F.Supp.3d 987, 1003 (N.D. Iowa 2016). Defendants concede Bates was arrested against his will. (App. 463 R. Doc. 68-2, at 16). The District Court now finds Bates' arrest was lawful based on *Wilson*. (App. 612 R. Doc 72, at 16). As argued above, *Wilson* makes no new law and does nothing to change clearly established precedent relevant to the appeal in this case. The lack of immunity for Officer Richardson as to Count Two based on a common law false arrest claim has already been decided by this Court and that decision must govern.

C. The false arrest claim survives and a genuine issue of material fact remains as to whether Chief Jerman ratified the illegal conduct of Richardson.

This Court has already held that Bates' *Monell* claims are bound to the underlying Constitutional false arrest claim. As shown above, this false arrest claim should survive and the district court's decision reversed on appeal. Thus, this Court's statement from the first appeal is instructive:

> "What remains on appeal are the *Monell* claims based on Officer Richardson's arrest of Bates for violating Iowa Code § 719.1(1)(a), an alleged constitutional violation which has not yet been determined on the merits. Bates argues the district court erred in granting summary judgment dismissing these claims because whether Chief Jerman, exercising oversight authority, "reviewed the internal investigation of the officers' conduct, and specifically ratified the illegal conduct of Richardson" is a genuine issue of material fact for the jury. See generally *Soltesz v. Rushmore Plaza Civic Ctr*., 847 F.3d 941, 947 (8th Cir. 2017), applying *City of St. Louis v. Praprotnik*, 485 U.S. 112, 127, 108 S. Ct. 915, 99 L. Ed. 2d 107 (1988). Defendants respond that Bates "cannot make the requisite showings to proceed on his theory of ratification because he cannot present any evidence the City failed to investigate or correct an officer's misconduct," citing *Mettler v. Whitledge*, 165 F.3d 1197, 1205 (8th Cir. 1999).
>
> "On the issue of ratification, the district court concluded, "[b]ecause neither Officer Richardson nor Officer Jupin committed any unlawful acts, Chief Jerman did not 'ratify' any unlawful actions by his alleged failure to adequately investigate the April 24, 2016 incident." This reasoning no longer applies to Bates's *Monell* claims based on his actual arrest. Even if Bates prevails on this false arrest claim against Officer Richardson, rigorous standards of culpability and causation will apply to whether Chief Jerman's after-the-fact determination was actionable ratification of a constitutional violation. See *Waters*, 921 F.3d at 743. But "ratification issues are fact intensive. We decline to resolve these *Monell* issues as a matter of law on this summary judgment record and therefore include these issues in reversing the grant of summary judgment dismissing Bates's separate false arrest claims." *Irvin v. Richardson*, 20 F.4th 1199, 1209 (8th Cir. 2021).

In the first appeal, Bates successfully argued that the issue of whether Chief Jerman ratified Officer Richardson's decision to unlawfully arrest him was a question of fact for the jury to decide. *See Soltesz v. Rushmore Plaza Civic Center*, 847 F.3d 941, 947 (8th Cir. 2017). As shown above, this Court agreed with Bates with the warning that rigorous standards of causation and culpability will apply at trial. The District Court, however in granting summary judgment on Bates' *Monell* claim for the second time, ignored this Court's ruling. In doing so, the District Court cited to *Waters v. Madson*, 921 F.3d 725, 743 (8th Cir. 2019) and held, "a police chief's after-the-fact determination that officers acted lawfully, could not establish the causation necessary to sustain a *Monell* claim." (App. 621 R. Doc. 72, at 25). *Waters* is distinguishable from this case.

In *Waters*, the Eighth Circuit was reviewing a grant of a motion to dismiss for failure to state a claim under Fed. R. Civ. P. 12(b)(6). Under the strict federal pleading standards, the Eighth Circuit found appellants did not establish a causal link between an official municipal custom or policy and alleged constitutional violations in their pleading. Unlike *Waters*, this case is on appeal from a motion for summary judgment when this Court is required to view all the facts in the light most favorable to the non-moving party. The District Court erred in relying on *Waters* in dismissing Bates' *Monell* claims. Furthermore, this Court specifically cited to *Waters* and still determined that ratification issues are fact-intensive and declined to

resolve the *Monell* claims as a matter of law on summary judgment. Unless this Court is going to reverse itself on the exact same factual record and the same legal authority, the decision from Bates' first appeal must govern this second appeal.

CONCLUSION

Bates respectfully requests that the Court reverse the District Court's Order granting Defendants' motion for summary judgment and remand the case for a trial on the merits on Count One and Two and the corresponding *Monell* claims. It is overwhelmingly clear that the District Court erred in granting leave for Defendants' Second Summary Judgment motion and granting summary judgment based on the same factual record and legal authority from the first appeal. This Court's decision in *Irvin* still applies and is controlling.

Dated: November 16, 2022.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

1. This Brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7) because it does not exceed 30 pages, and it also complies with Fed. R. App. P. 32(a)(7)(B) because the Brief contains 4,240 words, excluding the parts of the Brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This Brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and type style requirements of Fed. R. App. P. 32(a)(6) because this Brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2016 using 14-point Times New Roman.

3. This Brief has been scanned for viruses and is virus free.

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CERTIFICATE OF SERVICE

I hereby certify that on November 16, 2022, I electronically field the foregoing Brief with the Clerk of Court for the United States Court of Appeals for the Eighth Circuit, and all counsel of record by using the CM/ECF system.

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