No. 09-1361

IN THE
Supreme Court of the United States

CITY OF RENO, RYAN ASHTON,
AND DAVID ROBERTSON,
Petitioners,

v.

CHARLA AND DUSTIN CONN,
Respondents.

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

PETITIONERS' SUPPLEMENTAL BRIEF

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PETITIONERS' SUPPLEMENTAL BRIEF

Pursuant to Supreme Court Rule 15.8, petitioners submit this brief to address the impact on this case of the Court's recent decision in *Connick* v. *Thompson*, No. 09-571 (Mar. 29, 2011).

Following standard procedure, six sets of medical professionals performed medical, mental-health, and suicide-prevention evaluations of arrestee Brenda Clustka in the days before her suicide at the Washoe County jail. (Respondents incorrectly state that she "committed suicide while in the custody of the City of Reno." Supp. Br. Resps. 1.) Respondents sued not the county or jail personnel, but the City of Reno and its two arresting police officers. They alleged that the city was deliberately indifferent for not training officers on the street to diagnose and report detainees' symptoms of suicidal tendencies and that the officers were individually liable for not diagnosing and reporting those symptoms. The district court granted summary judgment for petitioners. The Ninth Circuit reversed, in an opinion by Judge Reinhardt, and denied rehearing en banc over a dissent by Chief Judge Kozinski joined by six other judges. Pet. 3-15.

Like *Connick*, this is a single-incident failure-to-train case. This Court's decision in *Connick*, like the dissent below, underscores that single-incident liability should remain narrow and truly exceptional, a principle ignored by the Ninth Circuit's decision below. Although *Connick*'s reasoning applies here, this case arises in a distinct factual context involving police rather than lawyers. *Connick* informs but did not resolve the circuit splits on both questions presented, which remain

substantial, important, and recurring. Thus, this Court should grant certiorari.

1. In *Connick*, this Court stressed that "[a] pattern of constitutional violations by untrained employees is ordinarily necessary to demonstrate deliberate indifference for purposes of failure to train." Slip op. at 9-10 (internal quotation marks omitted). Single-incident liability is reserved for "the possibility, however rare, that the unconstitutional consequences of failing to train could be so patently obvious" as to give notice even without "proof of a pre-existing pattern of violations." *Id.* at 11. A "stringent standard of fault," including a pattern requirement, is essential to keep municipal liability from "collaps[ing] into *respondeat superior*." *Id.* at 18. Reading 42 U.S.C. § 1983 more expansively would give "courts *carte blanche* to micromanage local governments throughout the United States." *Id.* at 16.

The respondent in *Connick* noted that during the decade before his armed robbery trial, four convictions had been reversed because prosecutors in petitioner Connick's office had violated *Brady* v. *Maryland*, 373 U.S. 83 (1963). Slip. op at 10. This Court nevertheless refused to treat those four reversals over the course of ten years as a pattern putting petitioners on notice of a need for training. *Id.* Moreover, respondent had not pleaded and proven a pattern of violations but rather had pursued a single-incident theory of liability. *See id.*

2. In the wake of *Connick*, respondents here attempt to shift to a pattern-or-practice theory of liability. Supp. Br. Resps. 2-3. But, as in *Connick*,

respondents never pleaded or proved a pattern of constitutional violations by Reno's officers that might give rise to a training violation—in other words, jail suicides allegedly due to the deliberate indifference of police officers. On the contrary, they argued only that *single-incident* liability should lie because the need for suicide-prevention training and policies was obvious. First Am. Compl. ¶64; Pls.' Opp'n Summ. J. 29-30; Appellants' Opening Br. 47-48. Even their brief in opposition to certiorari does not contain the word "pattern." Respondents never pleaded below that four previous suicides in the sixteen months preceding Clustka's April 28, 2005 suicide, Opp. 6, out of more than 24,000 jail admissions, constituted a pattern of suicides—let alone a pattern of constitutional violations caused by failure to train. Nor did they ever adduce any evidence connecting those suicides at the *county* jail to the *city's* officer-training policies.

As in *Connick*, nothing in the record here connects those suicides to one another or makes them factually similar enough to prove a pattern attributable to the city's failure to train. Respondents erroneously claim the Ninth Circuit "identified specific evidence of a substantial pattern of constitutional violations." Supp. Br. Resps. 3. The Ninth Circuit found no such pattern, but simply marshaled evidence to show that jail suicides were "highly predictable" and thus could support single-incident liability for failure to train. Pet. App. 47-48. Nowhere does its opinion use the word "pattern." Nor is suicidal-risk detection "'a relevant respect'" in which *police officers*, not medical personnel, require training. Supp. Br. Resps. 1

(quoting *Connick*, slip op. at 9). *Connick* thus rejects respondents' loosening of the pattern requirement. *Id.* at 3.

The decision below accepted the single-incident-liability theory. It effectively adopted a blanket rule that assessing suicide risk is a recurring part of officers' duties that always requires training even absent a pattern of constitutional violations. That amounts to a *per se* rule authorizing municipal liability for any jail suicide whose symptoms police officers could have detected, even where no pattern of violations notified the city of a need for training.

The 5-2 circuit split on municipal liability for failure to provide suicide-prevention training, absent proof of a pattern of constitutional violations, persists after *Connick*. Pet. 18-23; Pet. Reply 3-6. The issue remains an important and recurring one that requires this Court's resolution. *Amicus* Br. 6-17.

3. The second question presented and circuit split implicated in this case are not affected by *Connick*. That issue concerns the scope of individual officers' liability and qualified immunity for failure to diagnose and report symptoms of suicidal tendencies. Pet. 28-37.

Connick does, however, underscore the need for affirmative proof of actual causation. Slip op. at 7 n.5. As petitioners have argued, "there is no basis here to find either deliberate indifference to a known risk or causation." Pet. 35. Six sets of trained medical professionals screened Clustka but did not detect a genuine suicide risk. Three of those medical screenings, two more arrests, and almost

two days intervened between the seatbelt incident and Clustka's suicide. Pet. 6-10; Pet. App. 7, 14-15. There is no basis on which a jury could find that petitioners' actions caused Clustka's suicide or could have prevented it.

CONCLUSION

For the reasons set forth above and in the petition and reply brief, this Court should grant the petition; or in the alternative summarily reverse the decision below; or in the alternative grant the petition, vacate, and remand for further proceedings in light of *Connick*.

Respectfully submitted,

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