

No.

In the Supreme Court of the United States

LATHFIELD INVESTMENTS, LLC, ET AL.,
Petitioners,

v.

CITY OF LATHRUP VILLAGE,
Respondent.

*On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Sixth Circuit*

PETITION FOR A WRIT OF CERTIORARI

CALEB R. TROTTER	KATHRYN D. VALOIS
ROBERT H. THOMAS	<i>Counsel of Record</i>
Pacific Legal Foundation	Pacific Legal Foundation
555 Capitol Mall	4440 PGA Blvd.
Suite 1290	Suite 307
Sacramento, CA 95814	Palm Beach Gardens, FL
	33410
BRIDGET F. CONLAN	(916) 503-9011
Pacific Legal Foundation	KValois@pacificlegal.org
3100 Clarendon Blvd.	
Suite 1000	
Arlington, VA 22201	

Counsel for Petitioners

QUESTION PRESENTED

The City of Lathrup Village, Michigan, prohibits leasing commercial property without a license. But the City will not issue a license unless the property owner first discloses the names of prospective tenants and a description of the tenants' principal business activity.

Petitioners omitted this information in a license application to comply with a nondisclosure provision in its lease agreements, were denied a license, and are therefore prohibited from renting their property. They sued under 42 U.S.C. § 1983, challenging the disclosure requirement as an unconstitutional "Law impairing the Obligation of Contracts." U.S. Const. art. I, § 10.

The Sixth Circuit, joining the Fourth, held that "an alleged Contracts Clause violation cannot give rise to a cause of action under § 1983." App. 37a. In contrast, the Second, Third, Eighth, and Ninth circuits have concluded either expressly or implicitly that a Contracts Clause claim may be brought under Section 1983.

The question presented is:

Whether 42 U.S.C. § 1983 provides a cause of action for a Contracts Clause claim.

PARTIES TO THE PROCEEDING

The Petitioners are Lathfield Investments, LLC, Lathfield Holdings, LLC, and Lathfield Partners, LLC.

Respondent is the City of Lathrup Village, Michigan.

CORPORATE DISCLOSURE STATEMENT

Lathfield Investments, LLC, Lathfield Holdings, LLC, and Lathfield Partners, LLC, have no parent corporations and no publicly held company owns 10% or more of any of their stock.

STATEMENT OF RELATED CASES

These proceedings are directly related to the above-captioned case under Rule 14.1(b)(iii):

Lathfield Investments, LLC v. City of Lathrup Village, No. 24-1318 (6th Cir. Apr. 28, 2025).

Lathfield Investments, LLC v. City of Lathrup Village, No. 21-CV-10193 (E.D. Mich. Dec. 20, 2023).

Lathfield Investments, LLC v. City of Lathrup Village, No. 21-CV-10193 (E.D. Mich. Nov. 9, 2023).

Lathfield Investments, LLC v. City of Lathrup Village, No. 2021-185589-CZ (Oakland Cnty. Cir. Ct. Jan. 8, 2021).

TABLE OF CONTENTS

Petition for a writ of certiorari	1
Opinions below	2
Jurisdiction	2
Constitutional and statutory provisions involved	3
Statement of the case	3
A. Petitioners	3
B. Regulation of Lathrup Village Commercial Real Estate	4
C. This lawsuit	5
Reasons for granting the petition	6
I. Certiorari is warranted to resolve a circuit split	7
II. Section 1983 provides a cause of action to bring Contracts Clause claims	13
A. The importance of the Contracts Clause	13
B. Section 1983 is the way to bring a Contracts Clause claim	15
III. The Petition presents an excellent vehicle to resolve these conflicts	17
Conclusion	18

APPENDIX

United States Court of Appeals for the Sixth Circuit, No. 24-1318, Opinion (April 28, 2025)	1a
United States District Court, Eastern District of Michigan, Southern Division, No. 21-cv-10193, 2023 WL 7418216, Opinion and Order Granting the Motion for Summary Judgment Filed by De- fendants Lathrup Village and the DDA (ECF No. 40) and Granting in Part and Denying in Part the	

Motion for Summary Judgment Filed by Defendants Wright and McKenna (ECF No. 42) (November 9, 2023).....	44a
United States District Court, Eastern District of Michigan, Southern Division, No. 21-cv-10193, Opinion and Order Denying Motion for Reconsideration (December 20, 2023)	94a
State of Michigan, 6th Circuit Court for Oakland County, No. 4:21-cv-10193-FKB-CI, Complaint (January 28, 2021).....	102a
United States District Court, Eastern District of Michigan, Southern Division, No. 21-cv-10193, Exhibit 16, Municipal Ordinances, Defendants’ Motion for Summary Judgment (ECF No. 40-16) (July 31, 2023)	131a

TABLE OF AUTHORITIES

Page(s)

Cases

<i>Alachua Cnty. Educ. Ass’n v. Carpenter</i> , 757 F.Supp.3d 1248 (N.D. Fla. 2024)	12
<i>Allied Structural Steel Co. v.</i> <i>Spannaus</i> , 438 U.S. 234 (1978)	1, 14
<i>Att’y Gen. v. Mich. Pub. Serv. Comm’n</i> , 642 N.W.2d 691 (Mich. Ct. App. 2002)	17
<i>Cap. One Pub. Funding, LLC v. Lunsford</i> , No. 1:18-CV-3938-LMM, 2018 WL 9877380 (N.D. Ga. Oct. 19, 2018)	13
<i>Carter v. Greenhow</i> , 114 U.S. 317 (1885)	7-11, 13, 17
<i>Chapman v. Houston Welfare Rights Org.</i> , 441 U.S. 600 (1979)	8-9
<i>Crosby v. City of Gastonia</i> , 635 F.3d 634 (4th Cir. 2011)	7, 10-11
<i>Dennis Melancon, Inc. v.</i> <i>City of New Orleans</i> , 703 F.3d 262 (5th Cir. 2012)	12
<i>Dennis v. Higgins</i> , 498 U.S. 439 (1991)	7-10, 13, 16-17
<i>El Paso v. Simmons</i> , 379 U.S. 508 (1965)	13
<i>Elliott v. Bd. of Sch. Trs.</i> , 876 F.3d 926 (7th Cir. 2017)	12
<i>Gallo v. District of Columbia</i> , No. 23-7158, 2025 WL 1446283 (D.C. Cir. May 20, 2025), <i>petition for</i> <i>cert. filed</i> (U.S. Sep. 5, 2025)	12

<i>Gonzaga Univ. v. Doe</i> , 536 U.S. 273 (2002)	16
<i>Hague v. Committee for Industrial Org.</i> , 307 U.S. 496 (1939)	8-9
<i>Heights Apartments, LLC v. Walz</i> , 30 F.4th 720 (8th Cir. 2022).....	7, 9, 10
<i>Hughes v. Oklahoma</i> , 441 U.S. 322 (1979)	8
<i>Kaminski v. Coulter</i> , 865 F.3d 339 (6th Cir. 2017)	5, 7, 11-12, 15
<i>Kunelius v. Town of Stow</i> , 588 F.3d 1 (1st Cir. 2009).....	12
<i>Lathfield Investments, LLC v.</i> <i>City of Lathrup Vill.</i> , 136 F.4th 282 (6th Cir. 2025).....	1
<i>Marbury v. Madison</i> , 1 Cranch 137 (1803)	14
<i>Martin v. Hunter’s Lessee</i> , 14 U.S. (1 Wheat.) 304 (1816)	2
<i>McKesson Corp. v. Div. of Alcoholic Bev-</i> <i>erages and Tobacco, Dep’t of</i> <i>Bus. Reg. of Fla.</i> , 496 U.S. 18 (1990)	8
<i>Melendez v. City of New York</i> , 16 F.4th 992 (2d Cir. 2021)	7, 10
<i>Mitchum v. Foster</i> , 407 U.S. 225 (1972)	16
<i>Monell v. N.Y. City Dep’t of Soc. Servs.</i> , 436 U.S. 658 (1978)	16
<i>Monroe v. Pape</i> , 365 U.S. 167 (1961)	15-16
<i>Murray v. City of Charleston</i> , 96 U.S. 432 (1877)	2

<i>Poirier v. Hodges</i> , 445 F. Supp. 838 (M.D. Fla. 1978)	12
<i>Robb v. Connolly</i> , 111 U.S. 624 (1884)	14
<i>S. Cal. Gas Co. v. City of Santa Ana</i> , 336 F.3d 885 (9th Cir. 2003)	7, 9–10
<i>South-Central Timber Development, Inc.</i> <i>v. Wunnicke</i> , 467 U.S. 82 (1984)	8
<i>Storer Cable Commc'ns v.</i> <i>City of Montgomery</i> , 806 F. Supp. 1518 (M.D. Ala. 1992)	12
<i>Sturges v. Crowninshield</i> , 17 U.S. (4 Wheat.) 122 (1819)	1
<i>Sveen v. Melin</i> , 584 U.S. 811 (2018)	10
<i>U.S. Trust Co. of New York v.</i> <i>New Jersey</i> , 431 U.S. 1 (1977)	13
<i>Watters v. Bd. of Sch. Dirs.</i> , 975 F.3d 406 (3d Cir. 2020)	7, 9-10
Constitutions	
Mich. Const. art. I, § 10	5, 17
U.S. Const. amend. XIV	15
U.S. Const. art. I, § 10, cl. 1	1
Statutes	
28 U.S.C. § 1254(1)	2
42 U.S.C. § 1983	1-3, 5-6, 18
Civil Rights Act of 1871	15
Second Enforcement Act of 1871	15

Rules of Court

S. Ct. Rule 10(a).....	6
S. Ct. Rule 10(c)	6

Other Authorities

Lathrup Village Code of Ordinances,	
ch. 18, art. II, § 18-33(a).....	4
ch. 18, art. IV, § 18-184(a).....	4
Sunstein, Cass R., <i>Section 1983 and the</i>	
<i>Private Enforcement of Federal Law</i> ,	
49 U. Chi. L. Rev. 394 (1982)	15

PETITION FOR A WRIT OF CERTIORARI

The Contracts Clause prohibits state and local governments from enacting any “Law impairing the Obligation of Contracts.” U.S. Const. art. I, § 10, cl. 1. It expresses the basic principle that “contracts should be inviolable.” *Sturges v. Crowninshield*, 17 U.S. (4 Wheat.) 122, 206 (1819). Historically, the Contracts Clause was “the strongest single constitutional check on state legislation” during the early years of the Republic. *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 241 (1978).

Yet the Sixth Circuit dismissed Petitioners’ Contracts Clause claim on the grounds that the civil rights cause of action provided by 42 U.S.C. § 1983 is inapplicable to the Contracts Clause, deepening a circuit split and leaving claimants in another circuit without a means of vindicating their constitutional rights under the clause. *See Lathfield Investments, LLC v. City of Lathrup Vill.*, 136 F.4th 282, 305 (6th Cir. 2025) (finding Lathfield could not establish a Contracts Clause claim under the U.S. Constitution, the Michigan Constitution, or a private right of action under Michigan law). App. 36a-38a. Unlike the Sixth and Fourth Circuits, the Ninth Circuit has explicitly held that Contracts Clause claims may be brought via Section 1983, while the Second, Third, and Eighth Circuits have decided Contracts Clause cases under the implicit assumption that Section 1983 is the proper vehicle. The First, Fifth, Seventh, Tenth, Eleventh and D.C. Circuits have yet to directly address this split. The result of this confusing state of affairs is that the viability of Contracts Clause claims depends on geography and geography alone.

This Court has stressed “the importance, and even necessity of *uniformity* of decisions throughout the whole United States, upon all subjects within the purview of the constitution.” *Martin v. Hunter’s Lessee*, 14 U.S. (1 Wheat.) 304, 347-48 (1816). Uniformity requires definitive guidance on whether federal Contracts Clause claims may be raised under Section 1983. Allowing a lack of uniformity to persist violates “one of the highest duties of this court,” namely, “to take care [that] the prohibition [of the Contracts Clause] shall neither be evaded nor frittered away.” *Murray v. City of Charleston*, 96 U.S. 432, 448 (1877).

This Court should grant the petition for a writ of certiorari to resolve the split, provide desperately needed guidance on Section 1983, and bring the scattered lower courts into alignment.

OPINIONS BELOW

The Sixth Circuit opinion is reported at 136 F.4th 282 and is reprinted in Petitioners’ Appendix (App.) at App. 1a-43a.

The opinion of the United States District Court for the Eastern District of Michigan is unpublished but available at 2023 WL 7418216 and printed at App. 44a-93a.

The district court’s denial of reconsideration is unpublished but available at 2023 WL 8806159 and is printed at App. 94a-101a.

JURISDICTION

The final decision of the Sixth Circuit sought to be reviewed was issued on April 28, 2025. App. 1a-43a. This petition is timely filed, and the Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I, Section 10, Clause 1, of the United States Constitution provides, in relevant part: “No State shall . . . pass any . . . Law impairing the Obligation of Contracts[.]”

42 U.S.C. § 1983 provides, in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . , subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

STATEMENT OF THE CASE

A. Petitioners

Lathfield Investments, LLC, Lathfield Holdings, LLC, and Lathfield Partners, LLC (collectively, “Lathfield”) are in the real estate business in Michigan. *See* App. 48a. In 2020, Lathfield purchased property consisting of land, commercial buildings, and a parking lot in the City of Lathrup Village, Michigan. App. 45a. Originally constructed in the 1960s, the City has licensed the property for use as offices, auto wholesalers, barber shops, salons, nail studios, and retail shops App. 105a. Lathfield has no plans to change the use of the property. App. 105a.

Unlike many commercial property owners, Lathfield does not enter a traditional landlord-tenant relationship with the entities who agree to use its properties. App. 110a. Rather, Lathfield licenses the use of

its property to small businesses. App. 110a, 121a. Lathfield’s license agreements include a “confidentiality and non-disclosure” provision in which the parties agree to not disclose any “confidential information,” including “the names of licensees” and “the licensees['] business identity or business operations in the licensed space.” App. 77a.

B. Regulation of Lathrup Village Commercial Real Estate

The City of Lathrup Village regulates the commercial use of real property. In order to lease commercial property in Lathrup Village, the property owner must obtain a landlord rental license.¹ Lathrup Vill. Code of Ordinances ch. 18, art. IV, § 18-184(a). See App. 140a. In addition, commercial property owners must “file on an annual basis with the city clerk ... a list of all tenants in such building and the principal business of each tenant.” Lathrup Vill. Code of Ordinances ch. 18, art. II, § 18-33(a). See App. 136a.

After Lathfield purchased the Lathrup Village property in 2020, it sought to comply with the City’s license requirement for commercial landlords and applied for a landlord rental license. App. 5a. Because of the confidentiality provision in Lathfield’s license agreement, however, it did not provide a list of names and principal businesses of its licensees (tenants) as required by section 18-33(a) of the City Code. App. 6a, 136a. As a result, the City denied Lathfield’s applica-

¹ In the courts below, Lathfield pressed a distinction between a landlord-tenant relationship and the licensor-licensee business model it operates under. For the purposes of this Petition, however, the distinction is immaterial.

tion for a landlord rental license and subsequently denied general business applications submitted by Lathfield's licensees. App. 6a.

C. This Lawsuit

Petitioners initiated suit on January 8, 2021, by individually filing three separate suits in the 6th Circuit Court for Oakland County, Michigan. All three complaints raised substantially similar allegations and claims premised on the City's actions following Lathfield's purchase of the Lathrup Village property, including the denial of Lathfield's landlord rental license. Because the complaints all brought causes of action claiming that the City violated 42 U.S.C. § 1983 and various provisions of the United States Constitution, including the Contracts Clause of Article I, Section 10, the City removed the cases to the United States District Court for the Eastern District of Michigan where they were consolidated.

The district court granted summary judgment to the City on all of Lathfield's claims. Relevant to this Petition, the district court ruled against Lathfield's Contracts Clause claim, reasoning that the nondisclosure provisions of its tenant agreements allowed enough disclosure to comply with the ordinance and "would be void as against public policy" if not. App. 77a-78a.

On appeal, the Sixth Circuit affirmed on alternative grounds. App. 36a-37a. The court held that it was bound by *Kaminski v. Coulter*, 865 F.3d 339, 347

(6th Cir. 2017), where a prior panel held that “an alleged Contracts Clause violation cannot give rise to a cause of action under” 42 U.S.C. § 1983.² App. 37a.

REASONS FOR GRANTING THE PETITION

The Petition should be granted for three reasons.

First, there is an entrenched circuit split on an important point of law. The Sixth and Fourth Circuits hold that Contracts Clause claims are not cognizable under Section 1983, while the Second, Third, Eighth, and Ninth Circuits say the opposite. *See* Supreme Court Rule 10(a). This inevitably leads to disparate outcomes for civil rights claimants in different circuits. Worse still, because the Sixth and Fourth Circuits have failed to clarify how litigants are to raise Contracts Clause claims (if not via Section 1983), the Clause has been sidelined in nine States. Without clarity, the practical protection of the Contracts Clause thus unjustly depends on the victim’s location, unless this Court resolves the split.

Second, the split raises an important procedural question of federal constitutional law meriting the Court’s review: what *is* the appropriate mechanism to bring a Contracts Clause suit? Whether the answer is Section 1983, or some other procedure, this Court’s guidance is needed. *See* Supreme Court Rule 10(c). Uncertainty on such a fundamental question leads to confusion, not only among the lower courts but also among citizens who have to guess how to plead their constitutional rights in court.

² The court additionally held that, assuming Section 1983 provided a cause of action, Lathfield’s Contracts Clause claim would still fail as the relevant contracts were entered into after the enactment of the challenged City ordinance.

Third, the Petition is an appropriate vehicle for these issues. The posture of the case means the Court can address the question presented to clarify the law without wading into the merits of the underlying Contracts Clause claim.

I. Certiorari Is Warranted To Resolve A Circuit Split

The decision below deepens an existing circuit split over whether Section 1983 provides a cause of action for claims arising under the Contracts Clause. As noted above, the Second, Third, Eighth, and Ninth Circuits all hold that Contracts Clause claims arise under Section 1983. *See Melendez v. City of New York*, 16 F.4th 992, 996, 1032-47 (2d Cir. 2021); *Watters v. Bd. of Sch. Dirs.*, 975 F.3d 406, 413 (3d Cir. 2020); *Heights Apartments, LLC v. Walz*, 30 F.4th 720, 727-28 (8th Cir. 2022); *S. Cal. Gas Co. v. City of Santa Ana*, 336 F.3d 885, 887 (9th Cir. 2003). In contrast, the Fourth and Sixth Circuits expressly reject that Section 1983 provides a cause of action for Contracts Clause claims. *See Crosby v. City of Gastonia*, 635 F.3d 634, 641 (4th Cir. 2011); *Kaminski*, 865 F.3d at 347; App. 36a-37a.

The competing views amongst the lower courts stem from differing interpretations of this Court’s opinions in *Carter v. Greenhow*, 114 U.S. 317 (1885), and *Dennis v. Higgins*, 498 U.S. 439 (1991). *Carter* was a suit brought under the predecessor statute to Section 1983 challenging a Virginia official’s refusal to accept bond coupons offered as payment for taxes as a result of an 1882 statute prohibiting tax collectors from accepting anything other than “gold, silver, United States treasury notes, and national bank cur-

rency.” *Carter*, 114 U.S. at 318-19. Because the plaintiff taxpayer alleged that the bond coupons were authorized by an 1879 statute that made the coupons acceptable for payment of all state taxes, he claimed that his right to pay with bond coupons was “secured to him by the constitution of the United States,” and any refusal to accept them as payment violated his rights “under color of” state law. *Id.* at 319-20. While the Court recognized that the plaintiff’s claim was premised on enforcing the contract abrogated by the 1882 statute, the Court held that the plaintiff failed to sufficiently assert his rights under the Contracts Clause or show they had been deprived. *Id.* at 322.

This Court gave *Carter* a “narrow reading” in subsequent decisions, including *Dennis*. See 498 U.S. at 451 n.9 (citing *Chapman v. Houston Welfare Rights Org.*, 441 U.S. 600, 613, n.29 (1979), and *Hague v. Committee for Industrial Org.*, 307 U.S. 496, 527 (1939) (opinion of Stone, J.)). In *Dennis*, the Court considered whether the Commerce Clause confers individual rights that can be asserted through Section 1983. *Id.* at 450-51. In considering Section 1983’s protection of “rights, privileges, or immunities,” the Court reiterated that the Commerce Clause is a “substantive ‘restriction on permissible state regulation,’” *id.* at 447 (quoting *Hughes v. Oklahoma*, 441 U.S. 322, 326 (1979)), a “self-executing limitation” on state power, *id.* (quoting *South-Central Timber Development, Inc. v. Wunnicke*, 467 U.S. 82, 87 (1984)), and that individuals may seek injunctive and declaratory relief against state action that usurps those prohibitions. *Id.* (citing, e.g., *McKesson Corp. v. Div. of Alcoholic Beverages and Tobacco, Dep’t of Bus. Reg. of Fla.*, 496 U.S. 18, 31 (1990)). As a result, the Court held that the “combined restriction on state power and entitlement

to relief under the Commerce Clause amounts to a” Section 1983 “right, privilege, or immunity.” *Id.* In dissent, Justice Kennedy analogized to *Carter*, which he interpreted as holding that Section 1983 does not provide a cause of action for Contracts Clause claims. *Dennis*, 498 U.S. at 457 (Kennedy, J., dissenting). But the *Dennis* majority explicitly rejected the dissent’s reliance on *Carter*, reasoning that *Chapman* and *Hague* had already confined *Carter* to its facts, including the plaintiff’s failure to plead a Contracts Clause violation. *Id.* at 451 n.9.

Faithfully applying a narrow construction of *Carter*, the Ninth Circuit held that Section 1983 provides a cause of action for a Contracts Clause violation. *S. Cal. Gas*, 336 F.3d at 887. In line with *Dennis*, the court held that *Carter* was decided only “as a matter of pleading,” and explained that Section 1983 construed “liberally and beneficently” guards against Contracts Clause violations. *Id.* (right to be free from impairment of obligations of contract “is a right secured by the first article of the United States Constitution.”).

Unlike, but consistent with, the express holding of the Ninth Circuit that Section 1983 provides a cause of action for Contracts Clause claims, the Third and Eighth Circuits “assume” a plaintiff may bring a Contracts Clause claim under Section 1983. *Watters*, 975 F.3d at 413 (“We will assume for purposes of this appeal that § 1983 confers a private right of action premised on the type of Contracts Clause claim that the teachers bring.”);³ *Heights Apartments*, 30 F.4th at

³ While the Third Circuit assumed Contracts Clause claims were cognizable via Section 1983, the court recognized the split of authority on the question, *Watters*, 975 F.3d at 413 n.2, and

727-28 (“While this Court has not expressly decided whether there is a private right of action under § 1983 for a Contract Clause violation, there have been cases in this circuit in which such a cause of action has been asserted. . . . We assume, without deciding, the uncontested issue of whether a cause of action for a Contract Clause violation may be brought under § 1983.”).⁴ The Second Circuit likewise indirectly held that a Contracts Clause claim can be brought under Section 1983. *See Melendez*, 16 F.4th at 996. Without commenting on the cause of action for Contracts Clause claims, the court proceeded to apply this Court’s balancing test for Contracts Clause claims, *see Sveen*, 584 U.S. at 818-19, and reversed dismissal of the claim. 16 F.4th at 1032-47.

In contrast, the Fourth Circuit expressly disagreed with the Ninth Circuit’s holding in *Southern California Gas* that Section 1983 provides a cause of action for Contracts Clause claims. *Crosby*, 635 F.3d at 640-41. It interpreted *Carter* to bar Section 1983 actions for Contracts Clause claims unless the plaintiff has no adequate remedy for an established contractual impairment or is entirely denied judicial review of their claim. *Id.* at 640. The Fourth Circuit minimized *Dennis*, reasoning that it did not address “the continuing vitality of *Carter* . . . with respect to the Contracts Clause.” *Id.* at 641. Without hinting at an alternative

ultimately dismissed the claim after applying the balancing test for Contracts Clause claims as articulated by this Court in *Sveen v. Melin*, 584 U.S. 811, 818-19 (2018). *See* 975 F.3d at 413.

⁴ Like the Third Circuit, the Eighth Circuit recognized the circuit split but analyzed the merits of the Contracts Clause claim, as no party had disputed Section 1983’s applicability to Contracts Clause claims. *Heights Apartments*, 30 F.4th at 727-28.

vehicle to vindicate Contracts Clause rights, the Fourth Circuit held that “an attempted § 1983 action alleging state impairment of a private contract will not lie.” *Id.* at 641.

Likewise, in *Kaminski*, the Sixth Circuit—without briefing or argument on the issue—considered whether the Contracts Clause is enforceable under Section 1983 as a constitutional “right, privilege, or immunity.” *Kaminski*, 865 F.3d at 345. Applying *Carter*’s logic to Section 1983, the majority deemed the Contracts Clause “a structural limitation placed upon the power of the States,” not “an individual constitutional right enforceable under § 1983[.]” *Id.* at 346. It did so despite acknowledging that “there is considerable debate over” the question of whether the Contracts Clause is “enforceable by section 1983[.]” and that *Carter* may no longer “retain[] much precedential force.” *Id.* at 345-46. Judge Moore dissented, concluding that the panel majority’s holding conflicted with implicit circuit precedent and the “directive that § 1983 be broadly construed.” *Id.* at 349. Nonetheless, the majority defended its rule as better aligned with Supreme Court precedent, the text and history of Section 1983, and the principle that only the Supreme Court can overrule its own precedent. *Id.* at 346.

In the instant case, the Sixth Circuit, following its divided opinion in *Kaminski*, took the same approach as the Fourth Circuit and held that “an alleged Contracts Clause violation cannot give rise to a cause of action under § 1983.” App. 37a (citing *Kaminski*, 865 F.3d at 347). The court followed dicta in *Carter* stating that the Contracts Clause guarantees an individual right “only indirectly and incidentally.” App. 37a. Reasoning that “the Supreme Court has never defini-

tively held that that an alleged Contracts Clause violation is cognizable as a § 1983 claim” the Sixth Circuit concluded that it was bound by its prior decision in *Kaminski*, so Petitioners could not bring a Contracts Clause claim under Section 1983. *Id.*

The First, Fifth, Seventh, and D.C. Circuits have dodged the question. *See Kunelius v. Town of Stow*, 588 F.3d 1, 20 (1st Cir. 2009) (declining to address question upon concluding that Contracts Clause not implicated); *Dennis Melancon, Inc. v. City of New Orleans*, 703 F.3d 262, 279 n.14 (5th Cir. 2012) (declining to decide question after holding that plaintiffs were unlikely to prevail on merits of Contracts Clause claim and affirming denial of preliminary injunction); *Elliott v. Bd. of Sch. Trs.*, 876 F.3d 926, 931-32 (7th Cir. 2017) (declining to address question after defendants expressly waived the argument); *Gallo v. District of Columbia*, No. 23-7158, 2025 WL 1446283, at *3 (D.C. Cir. May 20, 2025) (declining to decide the question after holding that plaintiff failed to allege elements of Contracts Clause claim), *petition for cert. filed*, (U.S. Sep. 5, 2025) (No. 25-265). These cases reaffirm the uncertainty permeating the lower courts.

Finally, uncertainty reigns within the Eleventh Circuit, as the Court of Appeals has not yet weighed in, but a split has developed among the district courts. *Compare Poirier v. Hodges*, 445 F. Supp. 838, 842 (M.D. Fla. 1978) (holding that the Contracts Clause “is not a right redressable under 42 U.S.C. § 1983”), *with Alachua Cnty. Educ. Ass’n v. Carpenter*, 757 F.Supp.3d 1248, 1256 (N.D. Fla. 2024) (“Plaintiffs’ Contracts Clause claim is properly before this Court under section 1983.”), and *Storer Cable Commc’ns v. City of Montgomery*, 806 F. Supp. 1518, 1529 (M.D. Ala. 1992) (“It is well settled that § 1983 provides a

cause of action against municipalities for alleged violations of . . . the contracts clause”). *See also Cap. One Pub. Funding, LLC v. Lunsford*, No. 1:18-CV-3938-LMM, 2018 WL 9877380, at *4 n.3 (N.D. Ga. Oct. 19, 2018) (“the Court need not decide what appears to be an open question in the Eleventh Circuit—that is, whether a Contract Clause violation may be pursued under § 1983.”).

All of this shows that uncertainty and confusion pervade the lower courts on the question presented. While the Ninth Circuit holds that *Carter* means little and *Dennis* controls, the Sixth Circuit believes that this Court would have to overrule *Carter* to find an individual right in the Contracts Clause. Only this Court’s intervention can clear up the confusion and resolve the ongoing disagreement.

II. Section 1983 Provides A Cause of Action To Bring Contracts Clause Claims

A. The Importance of the Contracts Clause

Despite its lack of use in recent years, the Contracts Clause remains one of the fundamental protections individuals have against unreasonable government intrusion. Its inclusion in the Constitution reflects the importance the Framers placed on an express limitation of government power. *U.S. Trust Co. of New York v. New Jersey*, 431 U.S. 1, 14-15 (1977). Over the last century, however, Contracts Clause protections have slowly eroded, giving increased deference to government involvement in private and public contracts. *See El Paso v. Simmons*, 379 U.S. 508, 508-09 (1965) (the State “has the sovereign right . . . to protect the . . . general welfare of the people and we must

respect the wide discretion on the part of the legislature in determining what is and what is not necessary[.]” (cleaned up).

Despite this increased deference, the Contracts Clause remains part of our written Constitution. It is not a dead letter. And as such, it must be understood to impose some limits on the power of government to abridge existing contractual relationships. *Allied Structural Steel Co.*, 438 U.S. at 240-41. The scope of that protection remains an open case-by-case question for the judiciary. However, one must first have access to the judiciary to raise such a question. Without Section 1983, Contracts Clause claims are rendered inaccessible, as no other enabling statute exists for affected individuals to assert such claims.

Given these high stakes, the guarantees of the Contracts Clause must have a vehicle for vindication in the federal courts. Yet neither the Fourth nor Sixth Circuits suggested any cause of action that could substitute for Section 1983 and allow individuals to pursue a remedy for the impairment of contractual obligations. Broad inability to raise a Contracts Clause claim simply cannot be the case. *See Marbury v. Madison*, 1 Cranch 137, 163 (1803) (“The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right.”). State and federal courts exist “to guard, enforce, and protect every right granted or secured by the constitution of the United States and the laws made in pursuance thereof[.]” *Robb v. Connolly*, 111 U.S. 624, 637 (1884). Closing the courthouse doors to plaintiffs in the Fourth and Sixth Circuits who suffer

Contracts Clause violations undermines that judicial duty.

B. Section 1983 is the way to bring a Contracts Clause claim

The import of Section 1983 and its predecessors cannot be understated. Originally created as the Second Enforcement Act of 1871, this Act was “one of the means whereby Congress exercised the power vested in it by [§] 5 of the Fourteenth Amendment” to enforce provisions of the Fourteenth Amendment after the Civil War. *Kaminski*, 865 F.3d at 345. The Act was uniquely created to provide both a criminal and private cause of action. *Id.*

Three years later, in 1874, Congress codified and revised several laws, including the Civil Rights Act of 1871, whose private cause of action was expanded to protect deprivations of rights “secured by the Constitution and laws.” Cass R. Sunstein, *Section 1983 and the Private Enforcement of Federal Law*, 49 U. Chi. L. Rev. 394, 402 (1982). The resulting statute, codified as Revised Statute 1979 and later re-codified as 42 U.S.C. § 1983, was substantially identical to the current Section 1983. *Kaminski*, 865 F.3d at 345. And since the Court’s decision in *Monroe v. Pape*, 365 U.S. 167, 180 (1961), Revised Statute 1979 has been read to afford federal rights valid causes of action in federal courts:

It is abundantly clear that one reason the legislation was passed was to afford a federal right in federal courts because, by reason of prejudice, passion, neglect, intolerance or otherwise, state laws might not be enforced and the claims of citizens to the enjoyment of rights, privileges, and immunities guaranteed by the Fourteenth

Amendment might be denied by the state agencies.

365 U.S. at 180.

This history highlights the true purpose of Section 1983's predecessors: protecting historically underprotected classes from lack of access to state courts. See *Mitchum v. Foster*, 407 U.S. 225, 242 (1972) (“The very purpose of [§] 1983 was to interpose the federal courts between the States and the people as guardians of the people’s federal rights—to protect the people from unconstitutional action under color of state law[.]”). The Section 1983 we know today serves the same purpose—providing any person who is deprived of their rights, privileges, or immunities under the Constitution with a cause of action to seek redress. 42 U.S.C. § 1983; *Gonzaga Univ. v. Doe*, 536 U.S. 273, 285 (2002). To omit the Contracts Clause from this protection now, despite Section 1983 coverage of every other Constitutional provision (except those covered explicitly by other federal statutes), without having any other enabling statute in place to provide private causes of action in federal court, leaves affected individuals with no ability to vindicate their constitutional rights. This simply cannot be the case.

To date, the Court “has never restricted” Section 1983 coverage to only certain constitutional provisions. *Dennis*, 498 U.S. at 445. “Rather, [it has] given full effect to its broad language, recognizing that § 1983 ‘provide[s] a remedy, to be broadly construed, against all forms of official violation of federally protected rights.’” *Id.* (quoting *Monell v. N.Y. City Dep’t of Soc. Servs.*, 436 U.S. 658, 700-01 (1978)). The Court has also “rejected attempts to limit the types of constitutional rights that are encompassed within the

phrase ‘rights, privileges, or immunities’” within Section 1983. *Dennis*, 498 U.S. at 445. The logic utilized in *Dennis*, which examined Section 1983’s applicability over the Commerce Clause, should equally apply to the Contracts Clause as both clauses are explicit structural provisions, equating to the “rights, privileges, or immunities” protected by the Constitution.

In keeping with this precedent and the virulent need for individuals to have access to courts, the Court should grant certiorari to clarify that Section 1983 is at minimum a catchall statute that protects all unspecified federal rights, regardless of where they are found in the Constitution or federal law.

III. The Petition Presents An Excellent Vehicle To Resolve These Conflicts

The Petition cleanly presents the issue of whether Section 1983 is an appropriate vehicle to bring a Contracts Clause claim.

If Lathfield cannot bring its Contracts Clause claim via Section 1983, it cannot proceed at all in any court, as Michigan does not provide a state law cause of action. This situation is different from *Carter*, which even if this Court was to find was correct, would be of cold comfort to Lathfield, who has no other remedy available at law. 114 U.S. at 321-23. Petitioners here brought Contracts Clause claims pursuant to the U.S. and Michigan Constitutions. App. 37a. But because the Michigan Contracts Clause, Mich. Const. art. I, § 10, is interpreted “no[] . . . more expansively than its federal counterpart,” *Att’y Gen. v. Mich. Pub. Serv. Comm’n*, 642 N.W.2d 691, 698 (Mich. Ct. App. 2002), and no Michigan law is read as providing an independent cause of action for state Contracts Clause claims, *see* App. 37a, the existence of a federal cause of action

is dispositive here. That provides the Court with a direct opportunity to resolve this narrow, but important question. Namely, whether Section 1983 is an appropriate mechanism for an individual to bring a Contracts Clause claim. And if not, to clarify how a Contracts Clause claim should be pleaded.

Finally, the district court granted summary judgment in favor of the City on the Contracts Clause claims and the Sixth Circuit affirmed. Thus, this Court would not need to address any issues of fact to answer the question presented.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

CALEB R. TROTTER
ROBERT H. THOMAS
Pacific Legal Foundation
555 Capitol Mall
Suite 1290
Sacramento, CA 95814

BRIDGET F. CONLAN
Pacific Legal Foundation
3100 Clarendon Blvd.
Suite 1000
Arlington, VA 22201

KATHRYN D. VALOIS
Counsel of Record
Pacific Legal Foundation
4440 PGA Blvd.
Suite 307
Palm Beach Gardens, FL
33410
(916) 503-9011
KValois@pacificlegal.org

Counsel for Petitioners

SEPTEMBER 2025