

STATE OF MICHIGAN
IN THE SUPREME COURT

ROBERT REEVES,

Plaintiff-Appellant,

v.

**COUNTY OF WAYNE; ASSISTANT
CORPORATION COUNSEL**

DAVIDDE STELLA, sued in his
individual and official capacity; and

ASSISTANT PROSECUTING

ATTORNEY DENNIS DOHERTY, sued in his
Individual and official capacity.

Defendants-Appellees.

**DEFENDANTS-APPELLEES' ANSWER TO
PLAINTIFF-APPELLANT'S APPLICATION FOR LEAVE TO APPEAL**

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STATEMENT OF JURISDICTION

Plaintiff did not identify the basis for this Court's jurisdiction in his application, but Defendants do not contest that Plaintiff's timely filed application for leave to appeal vested this Court with jurisdiction over his claims.

COUNTER-STATEMENT OF QUESTIONS INVOLVED

1. Whether this Court should depart from its holdings in *Smith v Dep't of Public Health*, *Jones v Powell*, and *Bauserman v Unemployment Ins Agency* to recognize a damages remedy for alleged violations of the Michigan Constitution, for which remedies already exist via other mechanisms?

The Court of Appeals answered, “No.”

The Circuit Court answered, “No.”

Plaintiff-Appellant answers, “Yes.”

Defendants-Appellees answers, “No.”

INTRODUCTION

Plaintiff asks this Court to recognize a species of liability that it has unequivocally rejected for over 35 years. This Court's opinions have been unambiguous in holding that where a remedy already exists to redress a plaintiff's claimed wrong, it will not also allow a claim for money damages under the Michigan Constitution. That is just the situation Plaintiff now occupies; he can pursue (and indeed he has) money damages for the alleged wrongs via a claim under 42 U.S.C. § 1983. His arguments to the contrary are not persuasive, nor novel. This Court should deny leave to appeal.

STATEMENT OF FACTS

I. UNDERLYING FACTS

For purposes of this pleadings-stage appeal, Defendant accepts the allegations in the complaint, which are as follows. Plaintiff, Robert Reeves, brought this action after a July 2019 run-in with the Michigan State Police resulted in him and an associate named Javone Williams being arrested on suspicion of stealing a skid-steer loader from Home Depot. [COA Opinion, p. 2] Plaintiff was not charged, but his car and \$2,280 were not returned to him by the Michigan State Police; instead they were "retained as part of 'omnibus forfeiture proceedings' submitted to the Wayne County Prosecutor." [COA Opinion, p. 2] The Michigan State Police sought an arrest warrant for Plaintiff, among others, in September 2019, but "did not follow through with them." [COA Opinion, p. 2] Plaintiff filed a class-action lawsuit challenging the validity of the Wayne County forfeiture program in February 2020. [COA Opinion, p. 2] After that lawsuit was filed, Defendant Doherty 1) ordered the release of property belonging to Plaintiff and Williams by the Michigan State Police and 2) contacted the Michigan State Police and requested a revised warrant naming only those two. [COA Opinion, p. 2] Defendants filed charges against Plaintiff twice, which were dismissed at preliminary examinations in February 2021 and January 2022. [COA Opinion, pp. 2-3] Plaintiff alleges that this prosecution was retaliatory.

II. PROCEDURAL HISTORY

As relevant to this appeal, Plaintiff brought claims under the Michigan Constitution, as well as under the United States Constitution by way of a claim under 42 U.S.C. § 1983. Defendants filed a motion for summary disposition in lieu of an answer, under MCR 2.116(C)(7) (governmental and prosecutorial immunity) and (C)(8) (failure to state a claim). The Wayne County Circuit Court dismissed the Michigan Constitution claim but allowed the 1983 claim to proceed. Defendants appealed the denial of the motion as to the 1983 claim, and Plaintiff cross-appealed the granting of the motion as to the Michigan Constitution claim. The Court of Appeals affirmed the dismissal of the Michigan Constitution claim, while also reversing the trial court's grant of prosecutorial immunity to Defendant Doherty; Defendants filed a motion for reconsideration as to that portion of the Court of Appeals' opinion. After that motion for reconsideration was denied by the Court of Appeals, Plaintiff filed the instant application for leave to appeal.

ARGUMENT

The Court of Appeals did not misapply *Bauserman* in declining to allow Plaintiff to pursue a claim under the Michigan Constitution against non-state actors.

I. THE HISTORY OF MICHIGAN-CONSTITUTION DAMAGES CLAIMS

A. *Smith v Dep't of Public Health* did not recognize a claim against municipalities or their employees.

In *Smith v Department of Public Health*, 428 Mich 540, 544; 410 NW2d 749 (1987), this Court recognized that the State may be liable for damages flowing from violations of the Michigan Constitution. It drew heavily from *Bivens v Six Unknown Federal Narcotics Agents*, 403 US 388 (1971) in developing this theory. *Smith*, 428 Mich at 645. Because this was a novel holding, the Court found that the record before it was insufficient to decide whether the actual case it was considering was such a case, and declined to hold that monetary damages *were* available in any particular case, but instead that they *may be* available in *appropriate* cases. *Id* at 647. One important factor it noted before remanding the case was that a right must have a remedy, and thus damages were more likely to be appropriate in cases where

no other remedy was available; this concern was particularly relevant to claims against the State, because of its Eleventh Amendment immunity from suit. *Id* at 647. *Smith* never intimated that such suits might extend past the State to municipalities or their employees, who have no such immunity.

B. *Jones v Powell* did not recognize a claim against municipalities or their employees.

The *Smith* decision bred confusion, and courts grappled with how far it reached. Thus, the Supreme Court subsequently clarified that its holding in *Smith* was limited:

Smith provides no support for inferring a damage remedy for a violation of the Michigan Constitution in an action against a municipality or an individual government employee. . . . *Smith* only recognized a narrow remedy against the state on the basis of the unavailability of any other remedy. Those concerns are inapplicable in actions against a municipality or an individual defendant. Unlike states and state officials sued in an official capacity, municipalities are not protected by the Eleventh Amendment. . . . A plaintiff may sue a municipality in federal or state court under 42 U.S.C. § 1983 to redress a violation of a federal constitutional right . . . [or] bring an action against an individual defendant under § 1983 and common-law tort theories.

Jones v Powell, 462 Mich 329, 335, 337; 612 NW2d 423 (2000); see also *Bennett v Detroit Police Chief*, 274 Mich App 307, 316 n 3; 732 NW2d 164 (2006) (a violation of the Michigan Constitution does not give rise to a viable cause of action against “entities other than the state”); *Lavey v Mills*, 248 Mich App 244, 250; 639 NW2d 261 (2001) (a violation of the Michigan Constitution does not give rise to a viable cause of action against “individual government employees”). In short, *Jones* went beyond *Smith*’s mere non-mention of claims against municipalities and their employees and specifically and unequivocally disclaimed that any such claim existed.

C. *Bauserman v Unemployment Agency* did not recognize a claim against municipalities or their employees.

Bauserman v Unemployment Agency, 509 Mich 673; 983 NW2d 855 (2022) was another case against the State itself, not a municipality or its employees. In *Bauserman*, this Court undertook to finally define the amorphous and noncommittal “appropriate case” first contemplated in by *Smith* in 1987. To that end, it held that “a cause of action exists except in two specific circumstances: (1) when the Constitution has delegated to another branch of government the obligation to enforce the constitutional right at issue or (2) when another branch of government has provided a remedy that we consider adequate.” *Id*, 509 Mich at 706. The Court’s reasoning was clear that a direct remedy for constitutional violations should be available (against the State), but only in the limited circumstance that the right is left without an already-existing remedy. *Id*, 509 Mich at 707. The *Bauserman* Court, despite considering a case having nothing to do with municipalities or their employees, made a specific note that it was only recognizing a cause of action against “the state” and specifically declining to extend a monetary remedy for state constitutional violations to “municipal governments or individual actors.” *Bauserman*, 509 Mich at 708 n 13. This signaled an intent to not make the *Smith* Court’s mistake by leaving the extent of the holding unclear; instead, the *Bauserman* Court sought to make clear exactly what it was and was not holding. It was not holding that municipalities or their employees can be liable for money damages for alleged violations of the Michigan Constitution.

II. THERE IS NO REASON FOR THIS COURT TO ALLOW A CLAIM UNDER THE MICHIGAN CONSTITUTION AGAINST MUNICIPALITIES OR THEIR EMPLOYEES.

Smith, *Jones*, and *Bauserman* speak with one voice: Michigan courts will not leave a plaintiff with no remedy at all. But this case is not one where Plaintiff has no remedy at all. Indeed, the remedy under 42 U.S.C. § 1983 is one “[this Court] consider[s] adequate.” It provides for money damages to vindicate infringements on the very rights that Plaintiff alleges were violated here. Plaintiff suggests that because the Michigan Constitution *may* provide protections broader than those of

the United States Constitution, and because the Michigan’s free-expression rights *may* be broader than those protected by the First Amendment, then damages under 1983 *must* not be adequate under *Bauserman*. This argument is disingenuous; it is telling that Plaintiff focuses only on the breadth of the rights, rather than pointing out any particular action which violated his Michigan Constitution rights but not his First Amendment rights. Instead, he notes that Article I, § 5 contains some words the First Amendment does not, argues that “every one of these words should be given meaning,” and then proceeds to his next argument without suggesting what meanings those words should be given or how they apply to his claims herein.

Moreover, Justice WELCH addressed Plaintiff’s very concern in her concurrence in *Bauserman*. She first noted that an alternative remedy need not be identical or provide the same level of protection to be adequate, and noted with approval an Alaska Supreme Court case that found federal remedies could be adequate to vindicate state-created rights. *Bauserman*, 509 Mich at 720 (2022) (Welch, J., concurring) (citing *Lum v Koles*, 314 P3d 546, 556-57 (Alas 2013)). She reasoned that “[t]he threshold question for judges is whether a remedy is adequate, not whether it is ideal or equally comprehensive.”

CONCLUSION

Plaintiff has not demonstrated any reason that this case warrants departing from this Court’s clear and unified direction in *Smith*, *Jones*, and *Bauserman*. There is an adequate remedy available for him to attempt to vindicate his allegedly-violated rights, and the Court of Appeals has allowed his claim for that remedy to go forward. This Court should deny his application for leave to appeal.

Respectfully submitted,

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Dated: October 10, 2025

CERTIFICATE OF COMPLIANCE

I certify that Appellees' brief complies with the type-volume limitation as laid out in Administrative Order 2019-6 of the Michigan Supreme Court for electronic briefs and contains 1,641 words, excluding the contents exempted by Rule 7.212(B) of the Michigan Court Rules.

I further certify that Appellee's brief complies with the type face requirements of the same order. I prepared the brief in Microsoft® Word 365 and used Times New Roman, a proportionally spaced font, at 12 point. All other formatting requirements, including line length, margin length, and line spacing have been complied with to the best of my ability.

So certified,

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PROOF OF SERVICE

I hereby certify that on **Friday, October 10, 2025**, I electronically filed the foregoing document with the Clerk of the court using the MiFile system, which will send notification to the following: *All Parties and Attorneys of Record*. I further certify that I served the same upon attorney Barton Morris at his email address of record.

/s/ Edward Tucker

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