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THE UNINDEMNIFIED

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ABSTRACT

Police officers rarely pay anything towards settlements and judgments entered against them. This observation has been taken to mean that local governments virtually always agree to indemnify their officers and pay the entirety of settlements and judgments entered against them. Yet indemnification decisions are more nuanced, complex, and uncertain—and officers are denied indemnification more often—than payout data suggest.

This Article examines the unindemnified: the authority under which officers may be denied indemnification by their employers; the circumstances in which local governments deny or threaten to deny officers indemnification; the ways that indemnification denials influence the litigation of civil rights cases (including why even unindemnified officers rarely pay); the impact of indemnification denials and threatened denials on our system of constitutional remediation; and steps that legislators, government officials, and litigants could take to better align indemnification rules and practices with the compensatory and deterrence goals of § 1983.

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INTRODUCTION

Police officers rarely contribute anything toward settlements and judgments entered against them. From 2006–2011, in eighty-one jurisdictions across the country, plaintiffs were awarded more than $730 million to resolve police misconduct suits.[1] Police officers in those eighty-one jurisdictions personally contributed to payments in just .41% of those cases, and contributed just .02% of the total awarded.[2] No officer personally satisfied a punitive damages judgment entered against them, and officers were spared financial sanctions even when they violated policy, were fired, and/or were sent to prison for their misdeeds.[3]

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[1] See Joanna C. Schwartz, Police Indemnification, 89 N.Y.U. L. Rev. 885, 890 (2014).

[2] See id.

[3] See id.

These findings have been taken to mean that local governments virtually always agree to indemnify their police officers and pay the entirety of settlements or judgments entered against them; a sort of de facto *respondeat superior* liability.[4] But indemnification decisions are more nuanced, complex, and uncertain—and local governments deny officers indemnification more often—than payout data suggest.

This Article examines the unindemnified: the authority by which police officers may be denied indemnification by their employers; the circumstances under which local governments deny officers indemnification; the ways in which indemnification denials influence the litigation of police misconduct cases (including why even unindemnified officers rarely pay); the impact of indemnification denials and threatened denials on our system of constitutional remediation; and steps that legislators, government officials, and litigants could take to better align indemnification rules and practices with the compensatory and deterrence goals of § 1983. Although I flagged these topics for future inquiry more than a decade ago,[5] and

[4] See, e.g., Aaron L. Nielson & Christopher J. Walker, Qualified Immunity and Federalism, 109 Geo. L.J. 229, 264 (2020) ("[T]here is often little difference functionally between suits against officers in their individual capacities and suits against those same officers in their official capacities…because the government almost always indemnifies the officers."); Noah Smith-Drelich, The Constitutional Tort System, 96 Ind. L.J. 571, 580 (2021) ("[I]ndemnification constitutes a de facto form of vicarious liability, a private tort doctrine that shifts the financial costs of wrongdoing from individual employee tortfeasors to their employers."). This was also the conclusion I initially drew from these findings, see Schwartz, *supra* note 1 at 840, although further research and reflection led me to revise my views in the ways outlined in the sources cited *infra* note 6 and throughout this Article. For other scholarship assuming that widespread indemnification is equivalent to a de facto *respondeat superior* liability, see, for example, John C. Jeffries, J., In Praise of the Eleventh Amendment and Section 1983, 84 Va. L. Rev. 47, 50 (1998) ("In the generality of cases, constitutional tort actions against government officers are functional substitutes for direct access to government treasuries."); David F. Hamilton, The Importance and Overuse of Policy and Custom Claims: A View from One Trench, 48 DePaul L. Rev. 723, 729-32 (1999) (arguing that "widespread" indemnification obviates the need for plaintiffs to pursue claims against municipalities).

[5] See Schwartz, supra note 1 at 917 ("Variation in government indemnification practices—and other variations across jurisdictions in judges' application of qualified immunity and other doctrines, the strength of the plaintiffs' bar, city attorney practices and community norms—may well impact whether cases are filed, how plaintiffs' lawyers frame their clients' claims, the frequency with which plaintiffs recover, and the amount plaintiffs receive. Future research should examine these distinctions to better understand regional variations in litigation practice and the extent to which §1983 doctrine achieves its deterrence and compensation goals in different parts of the country.").

have touched on them periodically since,[6] this is the first in-depth exploration of these important and overlooked facets of constitutional litigation.[7]

Part I sets out what we know: There is a wide range of indemnification statutes, rules, and policies across the country, and police officers virtually never pay anything in settlements or judgments against them, but local governments deny officers indemnification more often than their near-universal insulation from financial liability suggests.[8] Some jurisdictions have policies of never indemnifying their officers.[9] Other jurisdictions periodically deny officers indemnification on the ground that their conduct violates the terms of applicable indemnification provisions.[10] Even when local governments deny or threaten to deny indemnification, though, their officers rarely pay.[11]

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[6] See Joanna C. Schwartz, Municipal Immunity, 109 Va. L. Rev. 1181, 1227-28 (2023) (reporting that in jurisdictions with policies of never indemnifying their officers, or that threaten to deny officers indemnification, lawyers must bring municipal liability claims to assure relief) [hereinafter *Municipal Immunity*]; Joanna C. Schwartz, Civil Rights Ecosystems, 118 Mich. L. Rev. 1539, 1537 (2020) (explaining that "[a]lthough…officers virtually never contribute to the satisfaction of settlements and judgments entered against the, there is significant variation among cities' and counties' indemnification policies and practices.") [hereinafter *Civil Rights Ecosystems*]; Joanna C. Schwartz, Qualified Immunity and Federalism All the Way Down, 109 Geo. L.J. 305, 332-34 (2020) (describing indemnification decisionmaking as contingent and depending on a number of different factors, even as individual officers rarely pay) [hereinafter *Qualified Immunity and Federalism All the Way Down*].

[7] There are additional important—yet largely overlooked—facets of our constitutional litigation compensation scheme that must wait for another day. For example, some local governments fail to satisfy their obligations to indemnify because they are bankrupt or so cash-strapped that they take the position that they do not have the resources to satisfy police settlements and judgments entered against their officers. See, e.g., Civil Rights Ecosystems, supra note 6, at 1564-65 (discussing the difficulty of executing judgments against officers in East Cleveland because of the financial troubles in that jurisdiction); Melissa B. Jacoby, Unjust Debts: How Our Bankruptcy System Makes America More Unequal, 91-122 (The New Press: 2025) (describing how local governments have used bankruptcy laws to erase millions in civil rights litigation debt). Bankrupt and cash-strapped municipalities' obligations to satisfy settlements and judgments on behalf of their officers raise complex questions about government finances, accountability, and §1983 litigation that merit examination but are beyond the scope of this Article.

[8] See supra note 1 and accompanying text.

[9] See infra note 71 and accompanying text.

[10] See infra note 72 and accompanying text.

[11] See infra notes 76-81 and accompanying text.

Part II peers inside the black box of indemnification decisionmaking to explore when and why local governments deny or threaten to deny officers indemnification, how these decisions influence civil rights litigation, and what indemnification uncertainty means for officers themselves. Drawing on cases in which indemnification was disputed, interviews with dozens of attorneys, and correspondence with local government officials, this Part illuminates the legal, strategic, financial, and political considerations that appear to shape local governments' indemnification decisions. Local governments' decisionmaking calculus varies by jurisdiction, reflecting differences in what might be called their "civil rights ecosystems"[12]—the local mix of legal rules, people, and informal practices that influence how constitutional accountability operates on the ground. As a result, the same indemnification policy can be applied in vastly different ways depending on the strength of the plaintiffs' bar, the pressures applied by unions, the likelihood of a plaintiff's verdict at trial, and the strategic behavior of defense counsel in that jurisdiction.[13] Regardless of a local government's reason for denying (or threatening to deny) an officer indemnification, indemnification uncertainty consistently disadvantages plaintiffs while leaving most officers' bank accounts untouched.[14] One might assume that denying officers indemnification would put the officers' finances at risk. Instead, it is plaintiffs, not officers, who tend to suffer the most, financially, when officers are denied indemnification.

Part III considers the implications of these findings. Commentators have assumed that widespread indemnification amounts to a de facto *respondeat superior* liability.[15] Current indemnification practices may seem indistinguishable from de facto *respondeat superior* to officers, as they rarely pay anything toward settlements and judgments against them.[16] Current practices may also seem indistinguishable from de facto *respondeat superior* to plaintiffs in jurisdictions that always (or nearly always) indemnify their officers.[17] But in jurisdictions that regularly deny—or threaten to deny—their officers indemnification, current practices are a far cry from *respondeat superior*: In these jurisdictions, indemnification denials and threatened denials increase the challenges of civil rights litigation for plaintiffs in several ways,

[12] See Civil Rights Ecosystems, supra note 6.

[13] See infra Part II.A.3.

[14] For further discussion of the reasons even unindemnified officers rarely pay, see infra Part II.C.3.

[15] *See supra* note 4 and accompanying text.

[16] See Schwartz, supra note 1.

[17] See id

giving local governments a strategic boost in an adversarial setting already gravely tilted in their favor.[18]

Part IV offers several recommendations to better align indemnification policies and practices with the compensatory and deterrence goals of § 1983. Indemnification laws were enacted with the expectation that governments would compensate plaintiffs when their officers acted within the scope of the indemnification laws' terms, and officers would pay plaintiffs when they violated those terms.[19] But in places where indemnification is uncertain, both the compensatory and deterrence goals of indemnification laws are frustrated: Plaintiffs go uncompensated or undercompensated when indemnification is uncertain, and decisions by local government officials and plaintiffs combine to protect the finances of officers regardless of the depths of their misconduct.[20] Legislatures could amend their indemnification laws so that plaintiffs are assured compensation when they are awarded a settlement or judgment and officers are financially sanctioned when they have violated the terms of the indemnification agreement.[21] Local government officials charged with making indemnification decisions could commit to exercise their authority in ways that do not frustrate these compensation and deterrence goals.[22] Unless or until these types of reforms are adopted, however, it will be left to plaintiffs and their lawyers to counteract the destabilizing effects of indemnification denials and threatened denials. Accordingly, this Part suggests various ways that plaintiffs can ensure indemnification—or, at least, secure clarity about governments' indemnification decisions—as early as possible, and create litigation and political consequences for local governments that use indemnification denials strategically to discourage plaintiffs from vindicating their rights under § 1983.[23]

I. WHAT WE KNOW: INDEMNIFICATION RULES AND OUTCOMES IN CONSTITUTIONAL TORT CASES

Indemnification agreements are promises by employers to provide their employees with financial protections when sued, including the costs of defending a case and the payment of any judgment entered against them.[24] Indemnification agreements are

[18] See infra Part II.B.

[19] See infra notes 36-38, and 260 and accompanying text.

[20] See infra Part III.B.

[21] For steps that could be taken by state and local legislators see infra Part IV.A.

[22] For steps that could be taken by local government decisionmakers, see infra Part IV.B.

[23] For further discussion of these strategies, see infra Part IV.C.

[24] See generally, e.g., RESTATEMENT (THIRD) OF AGENCY §§ 1.01, 101 cmt. c, 8.14 (A.L.I. 2006) (describing employers' duty to indemnify employees' losses when they have so agreed, or where

considered necessary to employ and retain employees, particularly when their work exposes them to personal liability,[25] and are common in employment agreements in a variety of fields.[26]

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fairness demands); 42 C.J.S. *Indemnity* §§ 1-4, 31, 44 (2026) (explaining indemnity agreements shift the burden of liability and resulting financial consequences, including the cost of legal defense, regardless of the merits to the indemnitor based on their relationship with the indemnitee, whether expressly created or implied in equity); 2 C.J.S. *Municipal Corporations* §§ 472, 633, 803 (2026) (specifying that municipalities have the discretionary power, and are sometimes obligated, to use their funds to indemnify their employees by providing and financing legal defense as well as judgments entered); Alexandra McLeod, Note, *To Indemnify or Not to Indemnify? When CCO Insurance Is the Answer*, 6 AM. U. BUS. L. REV. 325, 327 (2017) (defining indemnification as "the act of a corporation compensating one or more of its directors, officers, employees, or agents for liability they have personally incurred due to actions they took in their official capacities with the corporation" and describing that indemnification includes legal defense).

[25] See, e.g., Joseph P. Monteleone & Nicholas J. Conca, 51 Business Lawyer 573, 574 (1996) (explaining that statutes permitting indemnification of corporate officers and directors were "intended to encourage capable individuals to serve as directors and officers secure in the knowledge that they would be insulated from personal liability if corporate actions, taken in good faith, were brought under attack by way of a legal proceeding."); Josephine Sandler Nelson & Richard O. Parry, *Protecting Employee Rights and Prosecuting Corporate Crime: A Proposal for Criminal Cumis Counsel*, 10 BERKELEY BUS. L.J. 115, 130, 169 (2013) (explaining that because corporate officers and directors seek to protect their personal finances from the expense of litigation, courts and corporations both recognize indemnification as an important means to retain talent). These goals of indemnification are even written into some standard agreements. See ALAN S. GUTTERMAN, BUSINESS TRANSACTIONS SOLUTIONS § 33:238 (2026) (providing standard Delaware indemnification agreement stating explicitly that the company is indemnifying in order to "attract and retain" top talent given increasing litigation frequency and decreasing availability of liability insurance); MARVIN HYMAN, 2 CORP. FORMS § 18:19.70. (2026) (providing indemnification agreement template stating that it is "not only reasonable and prudent but necessary" for companies to indemnify directors and officers in order to "attract and retain competent and experienced persons" willing to serve despite increasing litigation exposure).

[26] For descriptions of indemnification agreements in a range of contexts, see, e.g., Bernard Black, Brian Cheffins, & Michael Klausner, Outside Director Liability, 58 Stan. L. Rev. 1055, 1083-84 (describing the role of indemnification protections in outside director liability); James L. Buchwalter, Cause of Action to Enforce Contractual Right of Indemnification Respecting Personal Injury Claims, 75 Causes of Action 2d 551 (2016) (updated July 2025) (describing indemnification of personal injury claims); Di Guo, Xinyu Hua, & Kun Jiang, Indemnification, Monitoring, and Competition: Evidence from R & D Contracts, 24 Am. L. & Econ. Rev. 203 (2022) (describing indemnification agreements in research and development contracts); Phillip E. Hassman, Annotation, *Validity and Construction of Statute Authorizing or Requiring Governmental Unit to Indemnify Public Officer or Employee for Liability Arising out of Performance of Public Duties*, 71 A.L.R. 3d 90 (1976 Supp. 2026) (surveying indemnification

This Part sets out what we know about indemnification rules, decisions, and outcomes in constitutional tort litigation against state and local law enforcement officers. There is a tangle of state laws, local policies, and local government officials' discretionary decisions that determine whether law enforcement officers will be indemnified by their employers.[27] Despite wide variation across the country in indemnification rules and policies, police officers virtually never pay anything in settlements or judgments entered against them.[28] Indemnification is not as certain as the payout numbers suggest, though: some jurisdictions have policies of never indemnifying their officers, and other jurisdictions sometimes deny—or threaten to deny—their officers indemnification.[29]

A. On the Books: Indemnification Laws and Policies

Although employers have been indemnifying their employees for centuries, local government agreements to indemnify their officers against legal liability are a relatively new phenomenon.[30] Before 1961—when the Supreme Court first recognized the right to sue local government officials for constitutional violations under § 1983[31]—there was little need for indemnification because suits against local officials were relatively uncommon.[32] But in the years after *Monroe v. Pape*, the number of § 1983 suits against police officers and other government officials grew dramatically, from several hundred to tens of thousands between 1961 and 1979.[33] During this same

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statutes across a variety of public employment contexts including teachers, first responders, health care workers, and transit operators)

[27] See infra Part I.A. A similar tangle of laws, policies, and practices inform indemnification decisions in the private sector, as well. For one discussion, see Pamela H. Bucy, Indemnification of Corporate Executives Who Have Been Convicted of Crimes: An Assessment and Proposal, 24 Ind. L.J. 279 (1991).

[28] See infra Part I.B.

[29] See infra Part I.C.

[30] Note that Congress regularly assumed the costs of liability awards against federal government officers in the early 19th century. James E. Pfander & Jonathan L. Hunt, Public Wrongs and Private Bills: Indemnification and Government Accountability in the Early Republic, 85 N.Y.U. L. Rev. 1862 (2010).

[31] See Monroe v. Pape, 365 U.S. 167 (1961).

[32] Even without formal indemnification provisions, there were ways for officers to avoid personal liability when they were sued. For a description about how this process seems to have worked in Chicago before 1961, see infra note 59.

[33] See Theodore Eisenberg, Section 1983: Doctrinal Foundations and an Empirical Study, 67 Cornell L. Rev. 482, 523 (1982) ("Between 1961 and 1979, nonprisoner civil rights cases filed

period, municipal liability insurance premiums doubled and many jurisdictions were left uninsured.[34] As John Rappaport explains: "Then—and only then—did the law enforcement community begin to express 'dismay about legal liability.'"[35]

Concerns about rising civil rights liability and the fall of the municipal insurance market led state legislatures to pass statutes requiring or allowing for indemnification of police officers and other government employees.[36] The legislative history of these statutes suggest that legislators considered indemnification protections necessary for police departments to hire and retain officers who would act decisively without threat of financial liability.[37] But state legislatures also created indemnification exceptions and limits. As the sponsors of an indemnification bill in Nassau County wrote, they did not intend to provide "blanket immunity" but to "alleviate [officers'] concern that their actions, although proper, may subject them to personal liability."[38]

States take different approaches to balancing interests in protecting officers from financial liability when they act properly and exposing them to liability when they act improperly. Surveys of state indemnification statutes published in 1983 and 2020 each found a wide range of provisions.[39] Some states require that both state and local employees be indemnified; some cover state but not local employees (or vice versa); some give state and local governments discretion to determine whether they will

in federal district courts increased from 296 to 13,168; state prisoner filings in federal courts showed a similar jump, increasing from 218 in 1966 to 11,195 in 1979.").

[34] See John Rappaport, How Private Insurers Regulate Public Police, 130 Harv. L. Rev. 1539, 1555-56 (2017).

[35] Id. at 1556.

[36] These concerns also led states to create municipal liability pools that would protect municipalities in lieu of insurance. See id.

[37] See Qualified Immunity and Federalism All the Way Down, supra note 6, at 323 (indemnification statutes were passed to 'assure 'the zealous execution of official duties by public employees,' 'avoid placing a burden upon state employment,' and 'create a secure working environment wherein employees do not feel paralyzed in the performance of their duties for fear of being sued.'") (quoting Chang v. County of Los Angeles, 204 Cal. Rptr. 3d 293, 298 (Ct. App. 2016); Miller v. Egan, 828 A.2d 549, 561 (Conn. 1995); Strength v. Ala. Dep't of Fin. 622 So. 2d 1283, 1288 (Ala. 1993).

[38] See Lemma v. Nassau Cty. Police Officer Indemnification Bd., 105 N.E.3d 1250, 1255 (N.Y. 2018) (alteration in original) (quoting Sponsors' Mem. In Support, Bill Jacket, L 1983, ch 872 at 8).

[39] See Peter H. Schuck, Suing Government: Citizen Remedies for Official Wrongs 85 (1983) (surveying state indemnification statutes in the early 1980s); Nielson and Walker, supra note 4 (surveying state indemnification statutes in 2020).

indemnify their officers.[40] State indemnification statutes also vary in agencies' obligations to provide representation to their officers: some states mandate that agencies provide their officers with representation while others leave it to the agencies' discretion.[41] State statutes also differ in their indemnification exceptions: some require employers to indemnify officers' conduct so long as it is within the course and scope of employment; others allow or require employers not to indemnify officers for conduct that is intentional, reckless, willful, malicious, criminal, fraudulent, or grossly negligent, or for awards of punitive damages.[42] Sixteen state statutes have indemnification caps ranging from $25,000 to $5 million.[43] As Aaron Nielson and Christopher Walker explain, their 2020 survey of state indemnification statutes "demonstrates the extraordinary depth, complexity, and diversity of state indemnification practices at play."[44]

The depth, complexity, and diversity of state police indemnification statutes is amplified by variation in local jurisdictions' rules and practices. In some jurisdictions, the scope of indemnification protections are the product of union agreements or local laws; in others, indemnification practices are informal and unwritten.[45] These local rules and practices—which are consistent with, but build on, state law—may set out how, when, and by whom indemnification decisions are made, and how officers can challenge indemnification denials.[46] Local rules may also cap indemnification—for example, Houston limits indemnification to $100,000 per officer and $300,000 per incident,[47] and Atlanta purports to limit indemnification to $2,000 per officer "for any and all civil actions instituted as the result of any single or continuing incident or

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[40] Nielson and Walker, supra note 4, at 269-72.

[41] Compare Cal. Gov't Code §825(a) (imposing the duty to defend on California agencies for conduct within the course and scope of employment so long as the request for representation was timely made) with Fla. Stat. § 111.07 (providing that any "agency of the state, or any county, municipality, or political subdivision of the state" is authorized to defend its employees from civil actions, including "any civil rights lawsuit seeking relief personally against [the employee]" and that if no defense is provided to the employee, and the employee "prevails in the action," the employer entity must reimburse the employee for "for court costs and reasonable attorney's fees.").

[42] Nielson & Walker, supra note 4, at 272-78 273 & n.246.

[43] Id. at 278-79.

[44] Id. at 269.

[45] See Qualified Immunity and Federalism All the Way Down, supra note 6, at 331-32.

[46] See id. at 332.

[47] See Civil Rights Ecosystems, supra note 6, at 1576-77.

occurrence."[48] Local indemnification rules and practices can be cloaked in obscurity, particularly if they are not committed to writing.[49] Available information about practices in a handful of jurisdictions reveal a range of decisionmakers (including city attorneys, city councils, and administrative law judges) applying a range of provisions to determine officers' entitlement to indemnification.[50]

Jurisdictions also vary in the timing of their indemnification decisions. Some jurisdictions decide indemnification at the outset of a case.[51] Others wait to formally decide whether an officer is entitled to indemnification until there is a final judgment.[52] Indeed, indemnification provisions regularly provide that the officer's entitlement to indemnification depends on factors that can only be determined after trial, including what the evidence revealed,[53] whether punitive damages were

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[48] Atlanta Municipal Code §2-783(h)(1), https://library.municode.com/ga/atlanta/codes/code_of_ordinances?nodeId=PTIICOORENOR_CH2AD_ARTVIIOFEM_DIV1GE_S2-783DECILI.

[49] See, e.g., Telephone interview with plaintiff's attorney Mike Laux (Aug. 12, 2024) (explaining, when describing indemnification in Little Rock, Arkansas: "[I]t's all very murky. It's all very clandestine. You never get a straight answer about a lot of things when you're talking the way…an insurer would."). It may be that a lack of clarity about indemnification policies and practices afford local governments strategic benefits during litigation. See infra note 127 and accompanying text for further discussion of this possibility.

[50] See, e.g., Teressa E. Ravenell & Armando Brigandi, The Blurred Blue Line: Municipal Liability, Police Indemnification, and Financial Accountability in Section 1983 Litigation, 62 Vill. L. Rev. 839 (2017) (describing indemnification practices in Philadelphia); City of Minneapolis v. Lehner, No. A16-0608, 2017 WL 24682, at *1-2 (Minn. Ct. App. Jan. 3, 2017) (describing the indemnification decisionmaking process in Minneapolis); Lemma v. Nassau Cty. Police Officer Indemnification Bd., 105 N.E.3d 1250, 1253 (N.Y. 2018) (describing the indemnification decisionmaking process in Nassau County); Richard Emery & Ilann Margalit Maazel, Why Civil Rights Lawsuits Do Not Deter Police Misconduct: The Conundrum of Indemnification and a Proposed Solution, 28 Fordham Urb. L.J. 587, 592-96 (2000) (describing the indemnification decisionmaking process in New York City); Lisa D. Hawke, Municipal Liability and Respondeat Superior: An Empirical Study and Analysis, 38 Suffolk U.L. Rev. 831, 847-50 (2005) (describing local indemnification provisions across the country).

[51] See, e.g., Schwartz, supra note 1, at 916 n.134 (explaining that New Jersey and Honolulu decide whether to indemnify officers at the beginning of the case, when they decide whether to provide officers with representation).

[52] See Ilann M. Maazel, Punitive Damages and Indemnification: What Should Juries Be Told?, N.Y.L.J. Mar. 20, 2012, at 3 ("Many municipalities, including the City of New York, take the litigation position that indemnification decisions are not made until after trial."). See also infra notes 53-54 (describing a variety of conditions in state indemnification laws that require indemnification decisions be made post-trial).

[53] See, e.g., Ravenell & Brigandi, supra note 50, at 845 (explaining that Pennsylvania law requires a municipality to indemnify a police officer "when a judge determines that the official

awarded,[54] and/or whether the officer participated adequately in the defense of his case.[55] In cases that resolve through pre-trial settlements—which account for the vast majority of successful police misconduct suits—the government may never make a formal indemnification decision.[56]

B. At the Bank: Litigation Payouts

Indemnification rules governing litigation against law enforcement officers are a hodgepodge, with varying exceptions, limitations, and processes in nearly 18,000 agencies across the country.[57] Despite this significant variation in indemnification

caused the injury while acting within the scope of his or her duties *unless*…[a] judge or jury has determined that the officer's 'act[ion] constituted a crime, actual fraud, actual malice, or willful misconduct,' in which case the municipality is prohibited from indemnifying a police officer.").

[54] Nielson & Walker, supra note 4, at 277-78 (describing provisions in sixteen states that prohibit or permit the denial of indemnification for punitive damages).

[55] See, e.g., Cal. Gov't Code § 825(a) (conditioning indemnification on a requirement that "the employee or former employee reasonably cooperates in good faith in the defense of the claim or action."); Ill. St. § 350/2(a) (explaining that a state employee's request for representation in a suit "shall constitute an agreement by the State employee to cooperate with the Attorney General in his defense of the action and a consent that the Attorney General shall conduct the defense as he deems advisable and in the best interests of the employee."); Mont. Code. Ann. § 2-9-305(6) (requiring that indemnified officers must "cooperate reasonably" with their defense); Nev. Rev. Stat. § 41.0349 (providing that an officer will be denied indemnification after a judgment is entered if the "employee failed to cooperate in good faith in the defense of the action"); North Dakota Code § 32-12.2-03(6) (requiring that indemnified officer must provide "complete disclosure and cooperation" in their defense); Okla. Stat. tit. 51, § 162(B) (requiring that, in order to recover indemnification, the judge must conclude by a preponderance that "the employee reasonably cooperated in good faith in the defense of the action upon which the judgment or settlement was awarded and for which indemnification is sought"); Or. Rev. Stat. § 30.285(4) (providing that the employee will be automatically indemnified so long as they "shall cooperate fully with the Attorney General and the department [of Admin. Services] in the defense" and can be denied indemnification if the employee "has not so cooperated or has otherwise acted to prejudice defense of the claim").

[56] The same is true in other areas of law. See Back, Cheffins & Klausner, supra note 26, at 1060 n.10 (2006) ("In most settlements [of suits against directors and officers], the issue of whether a payment is made on behalf of outside directors or by the company directly is avoided. The company and the D&O insurer fund a settlement, and the parties agree that the defendants do not acknowledge a violation.").

[57] See Andrea M. Gardner & Kevin M. Scott, Census of State and Local Law Enforcement Agencies, 2018—Statistical Tables, U.S. Department of Justice Bureau of Justice Statistics (Oct. 2022), https://bjs.ojp.gov/media/67846/download (reporting 17,541 law enforcement agencies with at least one full-time sworn officer).

rules, policies, and practices, police officers virtually never pay anything in settlements and judgments against them.[58]

Police officers have been insulated from the costs of civil rights litigation for at least half a century.[59] A study of police misconduct suits filed between 1970 and 1977 in Connecticut federal courts found that police officers did not have to contribute to settlements or judgments in more than 98% of the lawsuits filed against them.[60] A study of civil rights cases filed in 1980 and 1981 in the Central District of California found no evidence of officers paying for judgments against them.[61]

Today, police officers remain largely shielded from the financial costs of legal liability. When I studied payouts in police misconduct cases in forty-four large law enforcement agencies across the country between 2006 and 2011, I found that officers contributed to settlements and judgments in just .41% of the approximately 9,225 civil rights suits resolved in plaintiffs' favor, and paid just .02% of the more than $735 million awarded to plaintiffs in those cases.[62] Only two jurisdictions—New York City and Cleveland—confirmed that officers had contributed to settlements during that period. Just one officer—a New York City police officer who was off-duty when his dog attacked the plaintiff—satisfied a settlement in full.[63] In the other cases, officers made modest contributions—the median payment was $2,250[64]—to a larger settlement paid by the city. Even in New York and Cleveland, contributions were rare. Extrapolating from my study data, 0.3% of New York City police officers and 0.4% of Cleveland police

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[58] See Schwartz, supra note 1. Federal law enforcement are shielded from the costs of settlements and judgments against them as well. See James E. Pfander, Alexander A. Reinert & Joanna C. Schwartz, The Myth of Personal Liability: Who Pays When Bivens Claims Succeed, 72 Stan. L. Rev. 561 (2020) (finding that Federal Bureau of Prison officers did not contribute to settlements and judgments awarded in more than 95% of the successful *Bivens* cases against them).

[59] Police officers were likely shielded from the costs of settlements and judgments even longer than that. See Jay McMuller, Tells How City Wiggles Out of Paying Damages for Cops, Chicago Daily News (Mar. 6, 1959) (describing how the plaintiffs suing officers for misconduct would first file a lawsuit against the officer and then, after getting a judgment, file a second suit against the city to get it to pay the award).

[60] See Lant B. Davis, John H. Small & David Wohlberg, Suing the Police in Federal Court, 88 Yale L.J. 781, 810-12 (1979).

[61] See Theodore Eisenberg & Stewart Schwab, The Reality of Constitutional Tort Litigation, 72 Cornell L. Rev. 641, 686 (1987).

[62] See Schwartz, supra note 1, at 890.

[63] See id. at 926.

[64] See id. at 939.

officers would contribute to settlements during a twenty-year career.[65] I additionally tracked payouts in thirty-seven medium and small law enforcement agencies across the country and found that officers never contributed to settlements and judgments against them during the six-year study period.[66]

Although indemnification statutes, rules, and policies are written to exempt the worst actors from indemnification's protections, officers disciplined, fired, and/or sent to prison did not contribute to millions in settlements and judgments entered against them during this six-year study period.[67] Juries awarded more than $9.3 million in punitive damages to plaintiffs in twenty cases in the 2006-2011 study, but officers did not pay a penny of those awards.[68]

C. *Between Policy and Payout: Available Evidence About Indemnification Decisions*

Commentators have taken evidence that officers almost never pay anything toward settlements and judgments entered against them as proof that local governments virtually always agree to indemnify their officers and pay the entirety of awards,[69] Available evidence suggests, however, that local governments' indemnification decisionmaking is more contingent and complex.[70]

In many jurisdictions, it is taken as a foregone conclusion that officers will be indemnified and indemnification plays a minimal role in the litigation of civil rights cases.[71] In other jurisdictions, indemnification can be a hotly-contested issue. Some jurisdictions refuse to indemnify all of their officers as a matter of policy.[72] Other

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[65] See id. at 914.

[66] See id. at 890.

[67] See id. at 923-25.

[68] See id. at 917-18.

[69] See sources cited supra note 4.

[70] See sources cited supra note 6.

[71] See, e.g., Civil Rights Ecosystems, supra note 6, at 1576 ("According to plaintiffs' attorneys in Philadelphia, the city's attorneys sometimes threaten not to indemnify officers but actually refuse to indemnify rarely, 'and only in situations where officers have been criminally charged and removed from the force.' The City of Philadelphia estimates that it indemnifies 99% of officers who have settlements or judgments entered against them."); Emery & Maazel, supra note 50, at 587-88 (describing the near-certainty of officer indemnification in New York City).

[72] See Municipal Immunity, supra note 6, at 1228 ("Attorneys report that some places—including El Paso, Texas; Harris County, Texas; Memphis, Tennessee; and many places in

jurisdictions occasionally deny officers indemnification on the grounds that their conduct falls within one or more exceptions to the applicable indemnification policy.[73] A local government's decision to deny its officer indemnification can be announced at any stage of litigation, from just after a suit is filed until after a final judgment is entered in the case.[74] Some jurisdictions regularly threaten to deny their officers indemnification without making good on those threats.[75]

Even when officers are denied indemnification, they rarely suffer financial consequences. There are exceptions to this rule: I have periodically learned of cases in which plaintiffs sought to collect damages awards directly against unindemnified officers.[76] More often, though, it appears that plaintiffs, local governments, and officers act in ways that shield officers' bank accounts.[77] Plaintiffs may pursue claims against the municipality instead of or in addition to the unindemnified officer.[78] Plaintiffs may decide not to seek to collect an award against an unindemnified officer if the costs of enforcement would outstrip the award.[79] Officers may assign their right to seek indemnification to the plaintiff in exchange for an agreement not to pursue

Arkansas—have a policy of refusing to indemnify their officers, such that plaintiffs must have a colorable *Monell* claim in order to secure any relief.").

[73] See, e.g., infra notes 171-189 and accompanying text (describing an indemnification denial in Durham, North Carolina). See also Qualified Immunity and Federalism All the Way Down, supra note 6, at 332-35 (describing several cases in which officers were denied indemnification).

[74] See Civil Rights Ecosystems, supra note 6, at 1582-83 (describing one case in which the indemnification decision was made during litigation, in time for the plaintiff's attorney to amend the complaint to add a municipal liability claim); id. at 1569 n.139 (describing a case in which the decision to deny indemnification was made post-verdict).

[75] See Schwartz, supra note 1, at 931-36 (describing local governments' empty threats to deny officers indemnification).

[76] See Qualified Immunity and Federalism All the Way Down, supra note 6, at 334 (describing some of these cases). For additional cases, see infra Part II.C.3.

[77] See Qualified Immunity and Federalism All the Way Down, supra note 6, at 333-34.

[78] See Civil Rights Ecosystems, supra note 6, at 1582-83 (describing one case in which an officer was denied indemnification in time for the plaintiff's attorney to amend the complaint to add a municipal liability claim); Joanna Schwartz, Shielded: How the Police Became Untouchable, 197 (Viking: 2023) (describing a case in which the plaintiff won at trial against the City of Chicago after the named officer was denied indemnification for an assault committed while off-duty).

[79] See, e.g., Schwartz, supra note 1, at 928-29 (describing a case in which the city of Los Angeles did not indemnify a $300 punitive damages verdict that the plaintiff never sought to collect); Municipal Immunity, supra note 6, at 1228 n.211 (describing a case in which a plaintiff never sought to collect a $7500 settlement against an unindemnified officer).

relief against the officer directly.[80] A jurisdiction that has formally denied an officer indemnification may nevertheless pay to resolve a settlement or judgment against them.[81]

To add yet another layer of complexity to the relationship between indemnification and payment decisions, officers may contribute to settlements or judgments against them even when they are not formally denied indemnification. As described above, in my 2014 *Police Indemnification* study, I found thirty-seven cases—out of more than 9,225—in which I could confirm officers paid between $250 and $25,000 towards settlements and judgments against them.[82] Thirty-five of those cases were brought against New York City police officers, and in all but one of them, officers contributed to a larger settlement paid by city.[83] Yet New York City's indemnification statute does not contemplate this type of contribution; the statute provides that the city will either indemnify an employee for the entire amount of the settlement or judgment, or will deny indemnification altogether.[84] Moreover, lawyers who practice in New York City report that these types of contributions have been demanded by the New York City comptroller—who disburses settlements but is not officially tasked with deciding indemnification—as a modest financial sanction.[85]

Despite variation in indemnification practices and decisions, the bottom line remains the same: officers virtually never pay anything toward the settlements and judgments entered against them.[86] Nevertheless, open questions remain about when and under what circumstances local governments deny officers indemnification, the

[80] See Schwartz, supra note 1, at 929 (describing a case in which a Massachusetts state police officer was denied indemnification; the officer and the plaintiff entered into binding arbitration; and the officer assigned his right to seek indemnification to the plaintiff in exchange for release from the arbitration award).

[81] See id. at 919 (describing El Paso's policy of never indemnifying officers, but willingness to settle cases on its officers' behalf).

[82] See id. at 926-27.

[83] See id.

[84] N.Y. Gen. Mun. Law §50-k(3) (McKinney 2014).

[85] See Schwartz, supra note 1, at 928 (offering this possible explanation for officer contributions to settlements in New York City); see also Emery & Maazel, supra note 50, at 592-93 (explaining that New York City's Corporation Counsel decides whether an officer should be indemnified).

[86] See Schwartz, supra note 1, at 917.

impact of those indemnification denials on the litigation of civil rights cases, and how even unindemnified officers remain shielded from financial sanctions.[87]

II. Understanding Indemnification Decisionmaking in Constitutional Tort Cases

Gathering information about how governments make indemnification decisions—and how those decisions impact the litigation of civil rights cases—has proven extremely difficult. Although local governments across the country have confirmed that their police officers virtually never contributed to settlements and judgments against them, the data produced by jurisdictions offer few insights about how frequently or under what circumstances indemnification was denied, uncertain, or disputed. There is little direct evidence with which to understand government indemnification decisionmaking for several possible reasons: local government officials may not make an official indemnification decision until there is a final judgment in a plaintiff's favor; local government officials may not keep records of their indemnification decisions; and/or local government officials may choose to keep these decisions close to the vest.[88]

As a result, I do not have a comprehensive tally of how often or in which cases local governments denied or threatened to deny officers indemnification. I have, however, learned of dozens of cases across the country in which indemnification was contested, and my review of local government officials' statements in these cases offer at least circumstantial evidence of their practices, strategies, and motivations.[89] Interviews and correspondence with dozens of plaintiffs' attorneys and government officials offer

[87] For an earlier articulation of these questions, see Schwartz, supra note 1 at 917; see also supra note 5 and accompanying text.

[88] See supra note 49 and accompanying text (explaining that jurisdictions may have strategic reasons not to clarify their indemnification practices) and supra note 56 and accompanying text (explaining that some jurisdictions need not make formal indemnification decisions until a jury verdict). See also sources infra note 158 (citing cases in which courts refuse to decide an officer's entitlement to indemnity before a finding of liability); Schwartz, supra note 1, at 903 (reporting that "many [law enforcement agencies] reported that they did not keep information about litigation payments or indemnification decisions.").

[89] I learned of some of these cases through public records requests and related research that informed my first indemnification study. See generally Schwartz, supra note 1. Other cases were subsequently brought to my attention by plaintiffs' attorneys, court records, and news reports. See, e.g., Qualified Immunity and Federalism All the Way Down, supra note 6, at 333-34 (describing some of these cases).

additional insights about the ways in which indemnification denials and threatened denials influence litigation decisions and outcomes.[90]

This Part, drawing on voluminous anecdotal evidence, sets out a range of interests that appear to motivate local governments' decisions about whether to indemnify their officers; the ways in which indemnification uncertainty may affect the litigation of police misconduct cases; and the impact of indemnification denials on officers. Along the way, it describes several cases in which indemnification was contested or denied to illustrate these dynamics in action.

A. Local Governments' Indemnification Calculus

How does a local government decide whether to indemnify its officers? The prevailing wisdom is that local governments almost always decide to indemnify their officers because protecting officers' finances allows them to hire and retain a workforce willing to vigorously enforce the law.[91] By this logic, it would make sense for a local government to deny an officer indemnification only when the officer is sued for off-

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[90] In 2020, I reported findings from a survey of almost 100 plaintiffs' lawyers in five federal districts and in-depth interviews with thirty-five of them. See Joanna C. Schwartz, Qualified Immunity's Selection Effects, 114 Nw. U. L. Rev. 1101, 1114-19 (2020) (describing the methodology of that study). In both the surveys and the interviews I posed questions about the frequency of indemnification denials and threatened denials, and their impact on the litigation of civil rights cases. For this Article, I have interviewed several lawyers who represented clients in cases brought to my attention in which indemnification was contested. After review, my study was determined to meet the criteria for exemption from IRB review. In the discussion that follows, I cite to attorney interviews conducted for the 2020 study in the same way that those interviews were cited in that study; by reference to the district in which they practice, and a letter distinguishing attorneys from the same district (e.g., E.D. Pa. Attorney B). When I cite to interviews conducted for this Article, I refer to the attorneys by name, with their consent.

[91] See Nielson & Walker, supra note 4, at 268 ("The failure to indemnify (which, in effect, would lower an officer's salary) would make it harder to recruit, hire, and retain the best people. And it would discourage officers from making tough decisions to faithfully execute the law if those decisions could open them up to personal liability."); Ravenell & Brigandi, supra note 53, at 869-70 (explaining that "advanced knowledge that they will be indemnified in most circumstances reduces the likelihood that people will refuse to become police officers because of the fear of liability" and "should protect their ardor."). Note that this same rationale was supplied in support of state indemnification statutes. See supra note 37 and accompanying text.

the-job wrongdoing or has engaged such egregious misconduct that they should be punished by way of financial sanctions.[92]

Although the prevailing wisdom may explain some local governments' indemnification decisions, it most assuredly does not explain them all. If denying officers indemnification discourages them from vigorously enforcing the law, why would local governments adopt blanket policies of denying their officers indemnification?[93] If indemnification denials undermine workforce morale, why would local governments threaten to deny officers indemnification and then satisfy settlements or judgments against them?[94] If indemnification denials are intended to financially sanction the most egregious misconduct, why would a local government indemnify officers who have had punitive damages awarded against them, or have been disciplined, punished or imprisoned for their misdeeds?[95]

Available evidence suggests that local governments' indemnification decisions are guided not only by the extent of officers' culpability, but also by strategic, political, and financial concerns.

1. The Benefits of Denying Indemnification

Consider first why a local government might deny—or threaten to deny—an officer indemnification. Local governments appear to sometimes follow the prevailing wisdom, and deny officers indemnification as a financial sanction for egregious behavior.[96] Available evidence suggests that local governments deny officers indemnification for other reasons as well.

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[92] See Ravenell & Brigandi, supra note 53, at 868 ("Although the City [of Philadelphia] has a great deal of discretion regarding questions of police indemnification, the City traditionally only uses this discretion to deny indemnification when there is little question that the police official has engaged in criminal conduct."). Note that these types of exclusions for bad behavior were also contemplated by the drafters of state indemnification statutes. See supra note 38 and accompanying text.

[93] See supra note 72 and accompanying text.

[94] See supra note 73 and accompanying text.

[95] See supra note 68 and accompanying text.

[96] Such cases prototypically involve sexual abuse or rape by an officer. See, e.g., Whitson v. Hanna, No. 1:18-cv-2076, 2023 WL 2570224 (D. Colo. Mar. 6, 2023) (county declines to indemnify sheriff who sexually assaulted a developmentally disabled woman); Municipal Immunity, supra note 6, at 1227-28 (describing *Alfaro v. City of Houston*, where the city refused to indemnify an officer who raped four women while on duty); Nancy Leong, Municipal Failures, 108 Cornell L. Rev. 345 348 (describing *J.K.J. v. Polk County*, where the county refused to indemnify an officer who sexually assaulted two women at the jail for an $11.5

For example, denying an officer indemnification can have strategic litigation benefits for the government. It is well-known that plaintiffs tend not to try to collect against judgment-proof defendants,[97] and unindemnified police officer defendants are unlikely to have the resources to satisfy a significant settlement or judgment.[98] So, if a local government denies—or credibly threatens to deny—an officer indemnification, the plaintiff might abandon their case or accept a modest settlement. A plaintiff could, alternatively, pursue claims against other solvent defendants—including the municipality, another officer who *will* be indemnified, or a private party. But such claims may be an inadequate substitute: There will not always be a solvent defendant whose conduct merits suit, and municipal liability claims tend to be more expensive

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million judgment against him); Arend v. Paez, 12-cv-1270, 2019 WL 2726231 (D. Colo. July 1, 2019) (Denver declined to indemnify an officer who kidnapped and sexually assaulted a woman while on the job). For arguments that governments could be held liable for sexual assaulted by their officers through respondeat superior, the non-delegable doctrine, and/or the aided-by-agency theory, see John C.P. Goldberg & Benjamin C. Zipursky, Sherman v. Department of Public Safety: Institutional Responsibility for Sexual Assault, 16 J. Tort Law. 283 (2023) (describing these theories and their application to employer liability for police sexual assault).

[97] See Tom Baker, Blood Money, New Money, and the Moral Economy of Tort Law in Action, 35 Law & Soc'y Rev. 275, 275 (2001) ("As both scholars and practitioners report, personal injury lawyers rarely bring a case unless there is an insured defendant (or a solvent self-insured organization) on the other side."); Alphonse A. Gerhardstein, Making a Buck While Making a Difference, 21 Mich. J. Race & L. 251, 261 (2016) ("When you select defendants, make sure you are suing defendants that are either insured or have resources to pay a judgment. If the individual defendants were discharged and will not be indemnified or covered by the entity, then take care to ensure that you will be able to collect any award from them. Obtaining a judgment against a defendant who cannot pay will not solve the client's goal of receiving fair compensation."); Stephen G. Gilles, The Judgment-Proof Society, 63 Wash. & Lee L. Rev. 603, 605 (2006) (explaining that most plaintiffs and their lawyers will not pursue claims against judgment-proof defendants); Stephen C. Yeazell, Re-Financing Civil Litigation, 51 De Paul L. Rev. 183, 186 (2001) ("No one working on a contingent fee intentionally sues an insolvent defendant.").

[98] In May 2024, the median annual salary for law enforcement officers in the United States was $77,270. U.S. Bureau of Labor Statistics, Occupational Outlook Handbook, https://www.bls.gov/ooh/protective-service/police-and-detectives.htm#tab-1. Scarce available evidence suggests that officers infrequently purchase law enforcement liability insurance. See Bruce Praet, Should Cops Buy Liability Insurance? Police One (Sept. 25, 2020) (recommending that police officers not buy personal liability insurance because "the odds are pretty slim" than an officer "could face personal liability"); Deborah Ramirez, Marcus Wraight, Lauren Kilmister & Carly Perkins, Policing the Police: Could Mandatory Professional Liability Insurance for Officers Provide a New Accountability Model?, 45 Am. J. Crim. L. 407, 436-39 (2017) (proposing that officers be required to carry personal liability insurance, and describing the relative novelty of the idea).

and difficult to prove than claims against individual officers.[99] As a result, the plaintiff's municipal liability claims might fail (where claims against the individual officers would have succeeded), or the plaintiff may accept a reduced settlement for fear that the municipal liability claims will be dismissed by the court. In other words, by denying—or threatening to deny—an officer indemnification, a local government may dramatically reduce the value of a plaintiff's case.

Government officials have acknowledged using the threat of indemnification denials strategically against plaintiffs during settlement negotiations. In a presentation entitled "Police Misconduct: Defense Strategies: Damages and Attorneys' Fees," an attorney who represents police officers in Washington, D.C. observed that, "[i]n negotiations with plaintiff's counsel, it can be useful to point out that the employing municipality or insurance carrier is not necessarily obligated to pay punitive damages and a judgment against an individual officer may not be recoverable."[100] The risk manager for San Bernardino tacitly acknowledged withholding indemnification decisions to gain just this type of settlement leverage. As he told me, the county regularly sends its officers reservation-of-rights letters when they are sued, explaining that it plans to represent and indemnify them but reserves the right to reverse that decision at the conclusion of the case.[101] He further explained that, when officers invariably called, concerned, he would assure them that the reservation-of-rights letter was part of the normal process, that it benefitted both the officer and the department, and that the officer would be indemnified in the end.[102]

Government attorneys have also used the uncertainty of indemnification to gain tactical advantages during and after trial. In New York City, government attorneys have used the possibility that officers would be denied indemnification for punitive damages awards as basis to "'ask[] courts to give jury instructions implying that officers will have to pay,' 'ask courts to hold hearings on officers' ability to pay,' and 'ask[] officers on the witness stand about their salaries, numbers of children, and anything else that might convey to the jury the impression that the officers' personal finances are at play.'"[103] Yet New York City always satisfies both compensatory and

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[99] For discussion of the challenges of pleading and proving municipal liability claims, see Municipal Immunity, supra note 6, at 1213-26.

[100] Wayne C. Beyer, Assistant Attorney General, Office of the Attorney General for the District of Columbia, *Police Misconduct: Defense Strategies: Damages and Attorneys' Fees*, Georgetown University Law Center Continuing Legal Education, 2011 WL 2111844, at *17 (Mar. 24-25, 2011).

[101] See Schwartz, supra note 1, at 932.

[102] Id. at 932-33.

[103] Id. at 933.

punitive damages awards entered against the police officers it represents.[104] After trial, attorneys for Prince George's County, Maryland and the California Highway Patrol have used the possibility that their officers would be denied indemnification as a basis to ask courts to reduce the punitive damages awards entered against them, only to have the governments pay the entirety of the reduced awards.[105]

A second benefit of denying an officer indemnification is financial; the local government is relieved of the burden of satisfying the settlement or judgment on the officer's behalf. Several cases in which local governments have denied or threatened to deny their officers indemnification alleged very significant damages.[106] In others, local governments defended their officers throughout litigation, only denying them indemnification only after the jury entered six- and seven-figure verdicts against the officers.[107] The amount of financial exposure may well have influenced indemnification denials in these cases.

Finally, local governments may deny an officer indemnification as a means of punishing the officer for failing to take some action during the course of the litigation. In Los Angeles County, two sheriff's deputies were apparently denied indemnification

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[104] Id. at 933-4 (describing evidence of this practice). An attorney at Worth, Longworth & London, a defense firm that regularly represents New York City officers who have been denied representation by the City's Law Department, has written that "[i]n cases in Federal and New York State Court where the City has made a decision to represent an individually named defendant pursuant to GML 50-k(2), the City has never failed to indemnify its employees…irrespective of findings of liability resulting from intentional or reckless conduct, including the awarding of punitive damages." Defendant New York City Police Officer Juan Santiago's Memorandum of Law in Support of His Motion for an Evidentiary Hearing on the Issue of Indemnification and Opposition to the City of New York's Determination Not to Approve Indemnification, Ekukpe v. City of New York, 16-cv-5412, Document 122, at *5 (filed Aug. 28, 2018).

[105] Id. at 934-35.

[106] See, e.g., Shaila Dewan, Why a Police Shooting Victim's Family Won't Get a $100 Million Payout (Nov. 21, 2024) (describing Dallas's refusal to represent or indemnify Amber Guyger, who shot and killed Botham Jean in his apartment; the jury's verdict was $100 million); Gillispie v. Miami Township, Nos. 23-3999/4000/4001, 2025 WL 1276900, at *16 (6th Cir. May 2, 2025) (rejecting Miami Township's effort to deny indemnification to an officer in a wrongful conviction case that on the grounds that "the Township should not be saddled with the financial burden of paying $45 million to [the plaintiff] on behalf of [the defendant officer]").

[107] See infra notes 171-189 and accompanying text (describing Durham, North Carolina's denial of indemnification following a multi-million dollar verdict); infra notes 191-195 and accompanying text (describing Cleveland's indemnification denials following two multi-million dollar verdicts).

because they invoked the Fifth Amendment repeatedly during trial.[108] Durham, North Carolina reportedly threatened to deny a police officer indemnification if he refused to consent to a settlement.[109] New York City apparently denied a sergeant indemnification after he resisted the city's request that he contribute $1,000 to a settlement.[110]

2. The Benefits of Indemnification

Consider now how a local government might benefit by indemnifying its officers. As commentators and the drafters of state indemnification statutes have noted, when local governments indemnify their officers, the assurance of financial protection may encourage officers' retention and vigorous enforcement of the law.[111] Local government officials have also reported indemnifying officers—even when punitive damages were awarded against them—because officials believed the officers did nothing wrong.[112] Indemnification under either of these scenarios seems intended to protect valued officers from financial liability. But local government officials also appear to

[108] Schwartz, supra note 1, at 930.

[109] See Amended Complaint, Dowdy v. City of Durham, No. 23-cv-0133, ¶107 (M.D.N.C. Apr. 27, 2023) ("Dowdy was told by [the city's attorney] on multiple occasions, that he must consent to a settlement because if he refused to do so the City would decline to indemnify him.").

[110] Brief and Special Appendix for Defendant-Cross-Claimant-Appellant Sergeant Josh Ferrara, Ekukpe v. City of New York, 2019 WL 2914093 (2d Cir. July 3, 2019) (claiming that the city offered Sgt. Ferrara the opportunity to participate in a potential settlement if he contributed $1,000, but that when "[c]ounsel for Sgt. Ferrara requested that Sgt. Ferrara's contribution be reduced…the City chose to settle the case on behalf of the City and another officer" and deny Ferrara indemnification.").

[111] See supra notes 37, 69 and accompanying text. See also Lawrence Rosenthal, Legal Ethics as a Roadblock to Police Accountability, 82 Miss. L.J. 1, 17 (2022) (describing indemnification as "an efficient vehicle for minimizing the risk that their employees' exposure to liability will reduce their productivity by deterring conduct that may provoke litigation and inhibit the willingness of highly-qualified individuals to take these positions.").

[112] See Daniel Connolly, To Say That Officers Are Not Disciplined Is False, New York Law Journal (Mar. 15, 2019) (explaining that New York City represents and indemnifies officers who city officials believe did not violate law or policy, regardless of whether a jury awards punitive damages); Schwartz, supra note 1, at 922 (describing Columbus's and Oklahoma City's decisions to pay post-trial settlements on behalf of their officers, even though punitive damages were awarded and the cities was prohibited from indemnifying punitive damages awards; a Columbus official explained that, in their case, they entered the post-trial settlement because they believed the punitive damages award was unwarranted).

sometimes indemnify their officers—even when the government officials believe the officers engaged in wrongdoing—to reap other kinds of benefits.

For example, a local government may decide to indemnify an officer as a way of reducing or avoiding conflict with the officer or union representatives. An officer denied indemnification may be able to administratively appeal that denial or sue for denial of due process if the government has not followed the proper procedure in reaching its decision.[113] Defending against these challenges and appeals may not only cost the local government time and money, but may also prompt union pushback.[114] Given these costs, conflicts, and political consequences, a local government may conclude that it is less expensive and simpler to indemnify the officer even if they have arguably violated the terms of the indemnification agreement and/or were disciplined, punished, or criminally charged for their conduct.

A local government might be particularly inclined to indemnify an officer, even if there is basis to deny them indemnification, when efforts to discipline, terminate, or prosecute the officer have been unsuccessful. Even when a local government wishes to fire an officer, complex appeals processes may make it impossible to do so.[115] Criminally convicting an officer is equally—if not more—difficult, given the substance of the laws and juries' and judges' common deference to officers.[116] Denying indemnification to an officer who has defeated other efforts to sanction him may seem to government officials to be more trouble than it is worth.

Take, for example, the case brought by Clayton Tiffany against Nicholas Tartaglione, an officer from Briarcliff Manor, a village thirty miles north of

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[113] For descriptions of administrative and judicial review afforded officers when they are denied indemnification, see sources cited supra note 53.

[114] See, e.g., Libor Jany, City Attorney Decides Against Defending Ex-Cop in Federal Lawsuit, The Minnesota Star Tribune (Mar. 14, 2016) (reporting that the police union president criticized Minneapolis's decision to deny representation and indemnification to a former officer sued for kicking a handcuffed suspect, arguing that "it could have a chilling effect on officers who, without the city's legal backing, might become more passive for fear of being prosecuted or sued.").

[115] See Rachel Moran, Ending the Internal Affairs Farce, 64 Buff. L. Rev. 837 (2016) (describing multiple deficiencies of internal affairs investigations); Stephen Rushin, Police Union Contracts, 66 Duke L.J. 1191 (2017) (describing complex procedural protections for officers who departments seek to discipline or fire).

[116] See German Lopez, Police Officers Are Prosecuted for Murder in Less Than 2 Percent of Fatal Shootings, Vox (Apr. 2, 2021); Radley Balko, 'If You Don't Get At That Rot, You Just Get More Officers Like Josh Hastings,' Wash. Post (Nov. 2, 2018) (explaining that "[t]he trial of a police officer puts prosecutors in a perilous position. They rely on the police to investigate crimes, arrest suspects and provide evidence. If a prosecutor loses the respect and cooperation of the police department, it can make his or her job a lot more difficult.").

Manhattan. Tartaglione assaulted Tiffany on four separate occasions in 1999 and 2000.[117] After the fourth assault, the village fired Tartaglione and the local district attorney prosecuted him for perjury in another case.[118] Tartaglione was acquitted of the criminal charge after a bench trial and then sued the village and its officials twice; one case sought to get his job back and the other alleged his due process rights were violated when the village pursued false perjury charges.[119] After a four-year court battle, Tartaglione won reinstatement to the force and a $300,000 backpay award.[120] Shortly thereafter, the village's insurer paid $200,000 to settle Tiffany's claims against Tartaglione.[121] Although we do not know why the village decided to pay this settlement on Tartaglione's behalf, it may well have been to avoid yet another legal dispute—this time over indemnification—with Tartaglione.[122] In other words, although a local government may decide to indemnify an officer in order to retain them, the government may also decide to indemnify an officer they do not want to retain but cannot manage to discipline or fire.

A local government might also agree to indemnify an officer who has violated the terms of their indemnification policy as a means of securing another benefit from the officer. For example, a local government may agree to indemnify an officer in exchange for their agreement to resign or their agreement to cooperate in litigation against the jurisdiction and its officers.[123] In fact, when one officer was denied indemnification post-trial, he sued his employer, arguing that city officials "assured him that the City would protect him from an adverse verdict and fully defend him" as a way to "secure his cooperation" during the litigation.[124]

Finally, a local government may decide to indemnify an officer to secure benefits with the public. In cases that have garnered significant public attention, denying the

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[117] See Complaint, Tiffany v. Tartaglione, No. 7:00-cv-2283 (S.D.N.Y. Mar. 24, 2000).

[118] See Tartaglione v. Pugliese, No. 01-cv-9874, 2002 WL 31387255 (S.D.N.Y. Oct. 23, 2022).

[119] Marcela Rojas, Activist, Officer Reach Settlement, Journal News (Sept. 11, 2003).

[120] See id.

[121] See id.

[122] For discussion of this possibility, see Schwartz, supra note 78, at 189.

[123] Some attorneys described this possibility off the record. For one news report of similar apparent exchanges for financial benefits see Peter Talbot, Ex-Tacoma Police Chief Got Big Payout to Resign. City Leaders Won't Comment, The News Tribune (Apr. 13, 2025 1:09 PM) (reporting that the Tacoma police chief received almost $500,000 as part of an employment separation agreement, in exchange for the promise to resign, a prohibition of future employment with the city, and an agreement to cooperate with ongoing or future litigation for ten years).

[124] See infra note 181 and accompanying text.

officer indemnification—and leaving the plaintiff without the ability to recover against a solvent defendant—could be politically unpalatable.[125] Indeed, police officers have been indemnified for—and have not otherwise been required to contribute to—multimillion dollar settlements in the highest profile police misconduct cases in recent memory.[126]

3. Weighing Indemnification's Costs and Benefits

This description of the costs and benefits of indemnification is admittedly based in part on inference and supposition and may well be incomplete. Even so, it should be clear that local governments' indemnification calculus likely takes account of far more than the extent of an officer's culpability and the need to retain valued officers.

This discussion also makes clear that local governments' indemnification decisions may necessitate strategic, political, and financial tradeoffs. For example, denying an officer indemnification may benefit the local government in litigation, but inspire blowback from the officer or union. How might local government decisionmakers balance these competing interests?

Perhaps, in a local government's ideal world, it would threaten not to indemnify officers in ways that are credible to plaintiffs and their attorneys, while simultaneously assuring officers that their finances are not in jeopardy.[127] But achieving such a balance is easier said than done. If a local government regularly threatens not to indemnify but always pays settlements and judgments on its officers' behalf, officers and the union may be appeased but plaintiffs' attorneys will not take threatened indemnification denials seriously. On the other hand, if a local government follows through on its threats to deny officers indemnification, plaintiffs may be discouraged from filing cases but officers and the union may revolt.

Government officials will not weigh the costs and benefits of indemnification in a uniform way. Local governments' analyses will, instead, likely depend on the particular facts of a case, the amount of damages sought, and public attention and outcry about the underlying incident. In addition, local government officials will likely

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[125] Defense counsel for a New York City police officer made this argument when appealing the city's decision to deny indemnification. See infra note 152 and accompanying text.

[126] See A Look at Big Settlements in US Police Killings, AP News (Mar. 12, 2021) (describing the settlements in cases brought by the families of George Floyd, Laquan McDonald, Freddie Gray, Philando Castile, Tamir Rice, Akai Gurley, Michael Brown, and Eric Garner). One notable exception is the $100 million verdict against Amber Guyger, who killed Botham Jean in Dallas in 2018. See supra note 106.

[127] Perhaps government officials' efforts to play both sides of this coin explains their reluctance to share information about their indemnification policies and practices. See supra note 49.

assess the costs and benefits of indemnification in light of the jurisdiction's civil rights ecosystem, including the applicable indemnification rules and policies; the robustness of the plaintiffs' bar (including the willingness of plaintiffs' lawyers to pursue cases against unindemnified officers and/or the municipality); and the extent to which union officials and other law enforcement representatives demand indemnification of their officers.[128]

Compare, for example, the indemnification dynamics in two dramatically different civil rights ecosystems—El Paso and New York City. Because Texas law does not mandate officer indemnification, jurisdictions across the state have adopted a range of different policies.[129] El Paso has a policy of never indemnifying its officers for judgments against them,[130] and apparently encourages its officers not to buy insurance.[131] Moreover, Texas debtor law exempts a person's home, wages, and most personal property from being seized to satisfy a judgment.[132] El Paso officers are, thus, essentially judgment-proof. Moreover, El Paso's collective bargaining agreement requires the city to provide officers with private defense counsel when they are sued,

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[128] See Civil Rights Ecosystems, supra note 6, at 1599-1600.

[129] See Tex. Civ. Prac. & Rem. Code Ann § 102.002 (1979) authorizing local governments to indemnify their officers). See also supra note 47 (describing Houston's policy, which authorizes indemnification up to $100,000 per officer and $300,000 per incident); infra note 130 (describing El Paso's policy of never indemnifying officers); City of Austin Resolution 870409-02 (Apr. 9, 1987) (authorizing the city manager to indemnify its officers when sued) (on file with author); Telephone Interview with S.D. Tex Atty A (Apr. 25, 2017) (reporting that officials in Nueces County, Texas, threaten not to indemnify but often end up paying in the end); Telephone Interview with S.D. Tex. Attorney B (May 17, 2017) (reporting that Houston and Fort Worth have both threatened not to indemnify, but have ended up paying to resolve cases on behalf of their officers).

[130] See Answer, Barnes v. City of El Paso, No. 22-cv-0161, at ¶ 40 (W.D. Tex. May 5, 2022) (admitting that "[t]he City of El Paso does not require and does not have insurance or other indemnification for Constitutional and civil right violations of their employees including police officers.").

[131] See Amended Complaint, Barnes v. City of El Paso, No. 22-cv-0161, at ¶ 40 (W.D. Tex. May 5, 2022) ("It is the official policy, or unofficial custom of The City of El Paso that its police and other employees to [sic] not obtain such insurance or indemnification so that they remain 'judgment proof' in the event of litigation.").

[132] See Texas Property Code 42.001 (exempting "current wages" from "garnishment, attachment, execution or other seizure" by judgment creditors unless it is for court-ordered child support payments); Texas Property Code Chapter 41 (exempting real property that has been designated as a homestead from seizure by judgment creditors); Texas Property Code Chapter 42 (exempting physical property from seizure by judgment creditors valued at up to $50,000 for an individual and $100,000 for a family).

and does not cap their fees,[133] so lawyers appointed to represent El Paso officers "litigate the heck out of these cases."[134]

Plaintiffs can sue the city of El Paso instead of—or in addition to—pursuing claims against unindemnified officers. Municipal liability claims, commonly referred to as *Monell* claims for the Supreme Court decision that first recognized them, require a plaintiff to show an unconstitutional custom or policy that caused the constitutional violation.[135] *Monell* claims are tough to plead and prove anywhere and are particularly challenging in the Fifth Circuit given judges' interpretation of municipal liability doctrine and apparent sympathies for government defendants in civil rights cases.[136] The difficulty of proving a *Monell* claim is further heightened in Texas because state law allows law enforcement agencies not to turn over any records while an investigation is ongoing.[137] The challenges of proving a *Monell* claim against the City of El Paso are especially daunting because most El Paso officers did not wear body cameras until recently and because few lawsuits are filed challenging El Paso officers' conduct, limiting available evidence about officer misconduct.[138]

For all of these reasons, it should come as no surprise that plaintiffs' attorneys are hesitant to sue El Paso and its police officers.[139] One local civil rights attorney reports that he has to seriously consider, among other factors, the question of

[133] Articles of Agreement between City of El Paso, Texas and El Paso Municipal Police Officers' Association, Sept. 1, 2023 to August 31, 2027, at 25 (adopted Mar. 28, 2023).

[134] See Email from plaintiff's attorney Chris Benoit (Mar. 16, 2026, 2:12 PM).

[135] Monell v. Department of Social Services, 436 U.S. 658 (1978).

[136] See generally Municipal Immunity, supra note 6 (describing the challenges of pleading and proving municipal liability claims); id at 1230-31 (explaining that a grant of qualified immunity dooms a municipal liability claim for failure to train in the Fifth Circuit). For further discussion of the difficulty of pursuing municipal liability claims in the Fifth Circuit, see Civil Rights Ecosystems, supra note 6, at 1572 n.154.

[137] See Telephone Interview with plaintiff's attorney Chris Benoit (June 12, 2025) (notes on file with author).

[138] See id. In 2018, two specialized units of the El Paso police department began using body cameras. Fidel Moreno-Meza & Justin Kree, El Paso City Council Approve $6 Million in Funding for Body Worn Cameras, KFox 14 (Mar. 15, 2022 2:12 PM). In 2022, El Paso expanded funding for police body cameras, see id., and the department now employs hundreds of cameras. Tyaun Marshburn, El Paso City Council Votes to Buy Police Department 500 New Cameras, KVIA (Mar. 13, 2024 11:33 AM).

[139] See Amended Complaint, Barnes v. City of El Paso, No. 22-cv-0161, at ¶ 40 (W.D. Tex. May 5, 2022) (explaining that the combination of no indemnification, no insurance, and protective debtor laws "actively discourages litigants and attorneys from filing lawsuits because there is often no ability to recover just compensation for violations of constitutional rights.").

indemnification.[140] He commented that many others who have brought suit against the El Paso police have regrets once they realize that the City will pay endless defense fees for individual officers but will not indemnify the officers sued in the event of an actual judgment or settlement.[141]

Although common wisdom suggests that no one would agree to be a police officer in a jurisdiction with a policy of never indemnifying its officers, the El Paso city attorney reports that officers are confident they will not be held personally liable.[142] Officers' confidence appears well founded. In the years 2006–2011, El Paso paid $279,000 to resolve sixteen police misconduct cases against the city and its approximately 1,100 sworn officers.[143] El Paso officers did not pay a penny to resolve these cases, even though they were officially denied indemnification. It is El Paso's position that such settlements are not the same as indemnification, and make financial sense because it is less expensive to pay a modest settlement than to continue paying for the officer's representation.[144]

El Paso is not the only jurisdiction with a policy of never indemnifying its officers: Little Rock, Memphis, and a number of jurisdictions in Texas, Mississippi, and Oklahoma apparently do as well.[145] On paper, this type of policy would be attractive to any jurisdiction looking to reduce their legal liabilities. But a policy of never indemnifying officers would not be viable in civil rights ecosystems with state statutes or local policies mandating indemnification, a plaintiffs' bar willing to pursue claims against unindemnified officers, and/or union representatives eager to challenge indemnification denials.

New York City is one such place. Plaintiffs and their lawyers bring hundreds of cases against New York City police officers and the city every year, and the city pays tens of millions of dollars annually to resolve these cases.[146] Between 2006–2011, officers were required to contribute to settlements or judgments in just thirty-five cases, and paid just a few thousand dollars on average.[147] Although New York City

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140 See Benoit, supra note 134.

141 See id.

142 See Schwartz, supra note 1 at 932 (describing a 2012 conversation with the city's attorney). Emails to the city attorney and the El Paso police union in 2024 and 2025 went unanswered.

143 See Schwartz, supra note 1, at 964.

144 See Schwartz, supra note 1, at 919.

145 See supra note 72 and accompanying text.

146 See Schwartz, supra note 1, at 962 (reporting payments of more than $348 million between 2006-2011 in 6887 police misconduct cases).

147 See Schwartz, supra note 1, at 962.

does not make its indemnification decisions publicly available, police union attorney Mitchell Garber estimates that officers have been denied indemnification following a jury verdict in only three cases over the past twenty years: in one, the officer was off-duty during the event in question; in one, the officer was found "factually guilty" after a departmental disciplinary trial and refused to testify or otherwise participate in his defense; and in one, the officer resisted the city's request that he contribute $1,000 to the settlement of the case.[148]

When the city does threaten not to indemnify an officer, or attempts to use such a threat in litigation, plaintiff's attorneys and union officers representing the officer will push back.[149] As civil rights attorneys Richard Emery and Ilaan Maazel describe, "[b]asic political realities" make blanket indemnification denials impossible in New York City.[150]

> Police officers organize in very powerful unions, most notably the Patrolmen's Benevolent Association in New York, which in turn exert pressure on the mayor and the city's lawyer, the "Corporation Counsel," to represent and indemnify the officers. And the mayor, of course,

[148] The case in which an officer was denied indemnification after resisting contributing to a settlement is Ekukpe v. City of New York, described supra note 110. The other two cases are described in Ekukpe's motion for a hearing on the indemnification issue. See Defendant New York City Police Officer Juan Santiago's Memorandum of Law in Support of His Motion For An Evidentiary Hearing on the Issue of Indemnification and Opposition to the City of New York's Determination Not to Approve Indemnification, Ekukpe v. City of New York, No. 16-cv-5412, at 2-3 (S.D.N.Y. Aug. 28, 2018) (describing two cases in which officers were denied indemnification after trial).

[149] For an example of plaintiffs' attorneys' resistance to indemnification denials or threatened denials, see Schwartz, supra note 1, at 933-34 (describing a case against a New York City police officer in which plaintiff's counsel pushed for a jury instruction that New York City is authorized to indemnify its officers for punitive damages, citing evidence that the City had satisfied every punitive damages award entered against its officers over the past ten years). For an example of defense counsel's resistance to threatened indemnification denials, see Defendant New York City Police Officer Juan Santiago's Memorandum of Law in Support of His Motion For An Evidentiary Hearing on the Issue of Indemnification and Opposition to the City of New York's Determination Not to Approve Indemnification, Ekukpe v. City of New York, No. 16-cv-5412 (S.D.N.Y. Aug. 28, 2018) (challenging city's post-trial assertion that it would deny indemnification to its officers). For other evidence of the New York Police Department's unions' willingness to take aggressive action, see Larry Celona, Shawn Cohen & Bruce Golding, Arrests Plummet 66% with NYPD in Virtual Work Stoppage, N.Y. Post (Dec. 29, 2014) (describing a dramatic drop in arrests amidst disputes between the union and mayor).

[150] Emery & Maazel, supra note 50, at 588

> depends on his police force to preserve the low crime rate that remains the perceived crown jewel of this administration.[151]

In the view of union attorney Mitchell Garber, the pressure to indemnify officers comes not from union officials but from the press and public.[152] Regardless of whether the pressure to indemnify comes from the union, plaintiffs' counsel, the press and the public, or a combination of sources, the result is the same: New York City "regularly indemnifies police officers regardless of whether they acted intentionally, recklessly, or brutally; whether or not they violated federal or state law; or whether or not they violated the rules and regulations of the New York City Police Department ('NYPD')."[153] The same appears to be true in other jurisdictions with police forces and unions that vigorously oppose indemnification denials, a vibrant civil rights bar, and active community engagement against police misconduct.[154]

B. The Impact of Indemnification Uncertainty on Constitutional Tort Litigation

Regardless of a local government's reason for denying (or threatening to deny) an officer indemnification in a police misconduct case, indemnification uncertainty will invariably advantage the government and disadvantage the plaintiff. A local government's decision to deny or threaten to deny an officer indemnification shifts the balance of power in the government's favor at each stage of litigation.

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151 See id.; see also supra note 147.

152 Brief for Defendant-Cross-Claimant-Appellant P.O. Juan Santiago, Ekukpe v. Santiago, Nos. 19-769, 19-770, at *30 (July 3, 2019) (arguing that "indemnification decisions are often made for reasons of political expediency without regard to the facts"). See also supra note 125 and accompanying text.

153 Emery & Maazel, supra note 50, at 587-88. See also Brief for Defendant-Cross-Claimant-Appellant P.O. Juan Santiago, Ekukpe v. Santiago, Nos. 19-769, 19-770, at *32 (July 3, 2019) (describing several multi-million dollar settlements paid by New York City in cases that were "politically sensitive" and had "extensive press coverage").

154 See, e.g., E.D. Pa. Attorney C (explaining that Philadelphia "does not have to indemnify any municipal employee who is found to have engaged in willful misconduct, but as a matter of routine, they do because obviously because the FOP [Fraternal Order of Police] would be up in arms if every time there was a state tort there was judgment against a cop, and then the city said, 'See ya.'"); N.D. Ca. Attorney C (explaining that jurisdictions usually indemnify officers even when they aren't obligated to because "the public entities don't want to have a divisive relationship with their cops."). For a description of the civil rights ecosystems in Philadelphia and the Bay Area, see Schwartz, supra note 6.

1. At Filing

Imagine that a local government has a policy of not indemnifying its officers, or declares at the outset that it will not indemnify an officer in a particular case. What impact will that declared indemnification denial have on the litigation?

As previously mentioned, plaintiffs tend not to pursue cases against judgment-proof defendants, and police officers are typically judgment-proof.[155] So, if a local jurisdiction has a policy of never indemnifying its officers, or announces that it will not indemnify an officer at the outset of any given case, a plaintiff and their attorney have three suboptimal choices: 1) abandon the case; 2) sue the unindemnified officer; or 3) sue the municipality or another solvent defendant officer instead, or in addition to, the unindemnified officer.[156]

The ways in which a plaintiff and their attorney evaluate these options will, like local governments' indemnification decisions, turn on the facts of the case and the civil rights ecosystem. A plaintiff cannot know for sure whether a local government's threat not to deny its officer is serious—particularly in jurisdictions where final indemnification decisions are not made until the conclusion of the litigation,[157] and courts have regularly rejected plaintiffs' efforts to determine whether an officer will be indemnified or to demand indemnification before the officer's liability is established.[158] But the plaintiff can assess the likelihood that the jurisdiction will

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[155] See supra notes 97-98 and accompanying text. For an example of plaintiffs' attorneys' reluctance to pursue money from unindemnified officers in the civil rights context see, for example, E.D. Pa. Attorney A (describing a case in which Philadelphia declined to indemnify an officer in a shooting case because of other misconduct, and the attorney "was left in a position where I had a pretty good case against him on the police shooting, but it would've have been futile. I didn't want to take a verdict against him. I didn't want to take any damages against him. So I just, I'm just proceeding against the municipality and we'll see how that goes.").

[156] See, e.g., S.D. Tex. Attorney A (explaining that when a department threatens to deny indemnification to an officer "I always sue the entity").

[157] See supra notes 52-56 and accompanying text.

[158] See, e.g., Doe v. City of Chicago, 360 F.3d 667, 672 (7th Cir. 2004) (explaining that courts should rarely decide indemnity before liability); Jackson v. City of Cleveland, 925 F.3d 793, 807-08 (6th Cir. 2019) "[A]s a general matter, a claim for indemnification for damages that may be awarded on an underlying tort claim should not be adjudicated on the merits until the underlying claim is adjudicated."); Gillipsie v. City of Miami Township, No. 3:13-cv-416, 2020 WL 5629677, at *39 (S.D. Ohio Sept. 21, 2020) (dismissing plaintiff's indemnification claim against the city, explaining that "his indemnification claim is premature and, at this point, it is speculative whether the alleged harm that is the basis for the indemnification claim will ever come to pass."); Barnhouse v. City of Muncie, 499 F. Supp. 3d 578, 604 (S.D. Ind. 2020) (dismissing plaintiff's indemnification claim for lack of subject matter jurisdiction, reasoning that "[t]jhe indemnification claim is not yet ripe because liability has not been established, no

make good on its threat to deny the officer indemnification based on the outcomes of prior similar threats or the strength of the union's or officer's opposition.[159] As a plaintiff's attorney in Atlanta explains:

> The city attorney's office routinely uses [Atlanta's ordinance limiting indemnification to $2,000]—along with the threat that it will not indemnify its officers—as a negotiating tactic. We usually respond by telling them that they have a conflict of interest if that is the position they are going to take, and reminding them of all the cases we've had where they've paid far more, and asking them to provide the case number for any case where they refused to indemnify an officer. They never do and usually just move on to another argument.[160]

The plaintiff and their attorney will also consider the strength of a municipal liability claim, which could turn on available evidence, the relative friendliness or hostility of judges in the jurisdiction to such claims, and circuit interpretations of applicable § 1983 doctrines. The plaintiff and their attorney will additionally consider the likely size of a settlement or judgment—which will also depend on the civil rights ecosystem—to determine whether the added costs and risks of pursuing a *Monell* claim are worth the anticipated reward.

Whether an indemnification denial dooms a plaintiff's case may, thus, depend on the jurisdiction in which the case arose. In El Paso, the fact that officers are unindemnified discourages plaintiffs' lawyers from suing because municipal liability claims are considered extremely difficult to bring in the Fifth Circuit.[161] In contrast, lawyers in Chicago took a case against an unindemnified officer that no El Paso lawyer would likely accept, confident that they could prevail on the municipal liability

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judgment has been entered, and a settlement has not been reached, and furthermore, there are no allegations that the City of Muncie is refusing to indemnify the police officer defendants if they are found liable.").

[159] Lawyers report that some jurisdictions regularly threaten to deny officers indemnification during settlement negotiations, but rarely make good on those threats. See, e.g., S.D. Tex. Attorney A, supra note 129 (reporting that officials in Nueces County, Texas, threaten not to indemnify but often end up paying in the end, and hypothesizing that "they're maybe just using [the indemnification threat] as a mechanism to lower how much they have to pay."); Civil Rights Ecosystems, supra note 6, at 1568 (explaining that defense attorneys regularly threaten not to indemnify Philadelphia police officers, but very rarely deny indemnification).

[160] Email from Jeff Filipovits to author (May 6, 2026 8:35 AM). For further discussion of the conflict-of-interest issues implicated by the failure to indemnify, and ways in which plaintiffs' attorneys have used that conflict to gain clarity about governments' indemnification decisions, see infra notes 281-285 and accompanying text.

[161] See supra notes 139-141 and accompanying text.

claim—or at least overcome defendants' summary judgment motion—and secure a substantial settlement or judgment.[162]

2. During Litigation

Local governments' indemnification decisions may shift over time. As a result, a government could threaten a plaintiff that it will not indemnify its officer and then reassess in light of litigation decisions made by the plaintiff and rulings by the court. A plaintiff's calculations about how to respond to a threatened indemnification denial may also shift over time. While the local government stands to benefit from its ability to reconsider the costs and benefits of indemnifying over the course of a case, the uncertainty of indemnification is almost certainly a detriment to plaintiffs.

For example, if the local government threatens to deny an officer indemnification but the plaintiff considers the threat to be empty, they may file a case against the officer without a municipal liability claim. If, during discovery, the officer is fired or criminally prosecuted and it becomes more likely that the local government will, in fact, deny the officer indemnification, the plaintiff may need to amend their complaint to include the more complex and costly *Monell* claim.[163] Even if the *Monell* claim ultimately proves successful, the indemnification decision will have required the plaintiff to change their litigation strategy midstream and invest more in the case to pursue municipal liability.

There are multiple scenarios in which the government's ability to delay its final indemnification decision would disadvantage the plaintiff. Imagine the local government asserts that it will not indemnify its officer and the plaintiff proceeds anyway, naming both the unindemnified officer and the municipality. Imagine that the plaintiff's attorney, convinced that they have a strong *Monell* claim, invests thousands of dollars in time, depositions, and a retained expert who writes an extensive report detailing inadequacies in the department's policies and practices. Now imagine that the defendant officer and municipality both move for summary judgment: what are the plaintiff's options?

If the *Monell* claim is dismissed at summary judgment but the claim against the individual officer is allowed to proceed, the plaintiff has partially prevailed but is left

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[162] See, e.g., Shielded, supra note 78, at 195-209 (describing a case in which an officer was denied indemnification for assaulting a woman while off-duty and the plaintiff won a jury verdict against the municipality).

[163] One attorney described suing a Philadelphia officer in state court for a fatal shooting, and then learning that the officer had been arrested for unrelated conduct, tested positive for steroids, and was fired. "And I realized, 'Oh boy.' So I amended the complaint and added the Monell claim and they immediately removed." E.D. Pa. Attorney A.

in a dire position from a financial perspective. The plaintiff can go to trial against the officer, hoping she will win and the local government will ultimately indemnify the officer or agree to a post-trial settlement paid for by the government. The plaintiff can go to trial against the officer, hoping she will win and the dismissal of the *Monell* claim will be reversed on appeal. But the plaintiff may go to trial, win against the officer, and then be left with a judgment that the officer cannot—and the local government will not—pay. The plaintiff might, alternatively, accept a settlement offer (made by the jurisdiction to resolve the case against the officer) that will invariably be discounted to reflect the uncertainty and undesirability of the other three options.

Even if the court denies the summary judgment motion in its entirety, the local government is still left holding most of the cards. At that point, the plaintiff can accept an offer by the government to settle the case or the plaintiff can go to trial and risk that the *Monell* claim will fail at or after trial.

In the best of all possible worlds—in which the plaintiff wins at trial against the municipality—the plaintiff is left, as a financial matter, no better off than if the officer had been indemnified from the start. Indeed, the plaintiff is most likely worse off, because she had to bear the costs and risks of pleading and proving municipal liability to secure relief.

3. At and After Trial

Because indemnification is the right to have a judgment satisfied by an employer, a local government may not make a final indemnification decision until the very end of the case. Indeed, some jurisdictions explicitly condition indemnification on findings that can only be made at trial, including whether the officer acted maliciously or willfully, or whether punitive damages were awarded.[164]

Plaintiffs' attorneys can mitigate against a last-minute indemnification denial by shifting their trial strategy. For example, if applicable indemnification rules would not allow indemnification of punitive damages awards or compensatory damages awards for willful or malicious conduct, plaintiffs can voluntarily dismiss their punitive damages claims and abandon arguments that officers were acting willfully or maliciously. Such efforts may underplay the scope of the officers' wrongdoing or the extent of the plaintiff's harm, but the alternative—a post-trial indemnification denial—may well be worse.

If a local government defends their officers throughout discovery and trial, then announces after trial that they will deny the officer indemnification, the plaintiff's options are particularly slim. Under these circumstances, the plaintiff can try to negotiate a post-judgment settlement paid for by the government; regain some

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[164] See supra notes 53-54 and accompanying text.

strategic advantage by reviving dismissed claims against the municipality or another solvent defendant; or pursue a collection action against the unindemnified officer.

C. How Officers Respond to Indemnification Denials

Local governments might decide to deny an officer indemnification for multiple reasons: as a sanction for the wrongdoing that is the subject of the lawsuit; as a strategic maneuver to prompt plaintiffs to abandon their cases or settle at a discount; or as a punishment for inadequately participating in the defense of the case. The previous sections made clear that indemnification denials or threatened denials—regardless of their motivation and timing—disadvantage plaintiffs and benefit local governments. How, then, do indemnification denials and threatened denials impact officers?

1. Challenges to Indemnification Denials

How an officer responds to an indemnification denial will likely depend on the sincerity with which it is made. If the government telegraphs to the officer that it is simply threatening the indemnification denial to gain a strategic advantage in litigation against the plaintiff and will protect the officer's finances at the end of the day—as the risk manager apparently does in San Bernardino—the officer might not contest the decision.[165] But if a local government's threat not to indemnify is genuine, the officer will likely want to do everything possible to protect their assets. As an attorney who represents Memphis officers explained, when officers are sued and receive the conflict letter making clear they will not be indemnified, they begin worrying about their minivan and mortgage—even as the attorney assures the officer that no unindemnified Memphis officer has contributed to a settlement or judgment in thirty years.[166]

The options available to an officer when they have been denied indemnification vary depending on the civil rights ecosystem. In cities like El Paso, Memphis, and Little Rock, where officers have no right to indemnification, there is little that an officer can do, as a formal matter, to contest their indemnification denial.[167] Other jurisdictions have elaborate procedures, set out in union agreements or state or local

[165] See supra note 101-102 and accompanying text (describing San Bernardino's practice of officially withholding indemnification decisions while assuring deputies that their finances are not at risk).

[166] See Telephone Interview with Memphis defense attorney Betsy McKinney (August 22, 2025) (notes on file with author).

[167] See Municipal Immunity, supra note 6, at 1228; see also supra note 72.

laws, by which officers can seek administrative and judicial review of indemnification denials. For example, if Minneapolis decides not to indemnify an officer, the officer can request a hearing before an administrative law judge and a final decision by the city council that is then subject to judicial review.[168] Officers have used the language in indemnification statutes and policies to successfully challenge efforts by their employers to deny them indemnification.[169]

When an officer contests an indemnification decision, they often have a surprising ally: the plaintiff.[170] Because the plaintiff's chances of financial recovery are threatened by an indemnification denial, they have good reason to raise their own challenges to the local government's decision. This two-front war can result in a complex and protracted indemnification dispute between the government on the one hand and the plaintiff and officer on the other.

Consider, for example, the case of *Howard v. City of Durham*.[171] In 2016, Darryl Howard was released from prison after serving more than two decades for murders he did not commit.[172] A year after his release, Howard sued the City of Durham and Durham police officers involved in his prosecution, arguing that that they fabricated and suppressed evidence.[173] The trial court dismissed the claim against the city and all but one defendant, Darrell Dowdy, who had been the lead detective in the case.[174]

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[168] See City of Minneapolis v. Lehner, No. A16-0608, 2017 WL 24682, at *1-2 (Minn. Ct. App. Jan. 3, 2017) (describing the process of indemnification reviews).

[169] See Gillispie v. Miami Township, Nos. 23-3999/4000/4001, 2025 WL 1276900, at **9-12 (6th Cir. May 2, 2025) (affirming the district court's determination that the city was obligated to indemnify the defendant officer because they did not prove the defendant was acting in bad faith or outside the scope of his employment, as is required under Ohio law); Graham v. Sauk Prairie Police Com'n, 915 F.2d 1085, 1089 (7th Cir. 1990) (affirming district court's conclusion that Wisconsin's indemnification statute "does not absolve the villages and the policy commission from indemnifying [the defendant's] estate."); Oladeinde v. Birmingham, 118 F. Supp. 2d 1200, 1212 (N.D. Ala. 1999) (holding that the government was estopped from denying indemnification after representing the officer at trial).

[170] This is true in the private-law context as well. As Tom Baker has observed, plaintiffs and uninsured or underinsured defendants may join forces to pursue payment by the deepest-pocketed defendant. See Tom Baker, Transforming Punishment Into Compensation: In the Shadow of Punitive Damages, 1998 Wis. L. Rev. 211, 222.

[171] For an overview of the case's facts and the litigation, see Howard v. City of Durham, 68 F.4th 934 (4th Cir. 2023).

[172] See id.

[173] Complaint, Howard v. City of Durham, No. 1:17-cv-0477 (M.D.N.C. May 24, 2017).

[174] Howard v. City of Durham, 68 F.4th 934, 945 (4th Cir. 2023).

On December 1, 2021, after a nearly four-week trial, a jury found Dowdy liable and awarded Howard $6 million.[175]

After several closed-door meetings about the verdict, the city council announced that it would not indemnify Howard for the $6 million verdict or the $4 million in plaintiff's attorneys' fees accrued during the litigation.[176] The city contended that its indemnification denial was consistent with a city resolution that exempted officers' entitlement to defense and indemnification if they have "acted or failed to act because of actual fraud, corruption, or actual malice."[177] It is, apparently, the only instance in which Durham has ever denied an officer indemnification.[178]

Officer Dowdy sought a stay of any execution of the judgment, citing financial hardship.[179] Dowdy then sued the City of Durham. As Dowdy alleged in his complaint, city officials had been aware of the evidence in the case from the start, had assured Dowdy that they would provide him with defense and indemnification, and had vigorously disputed the plaintiff's claims throughout the case.[180] In Dowdy's view, he had been used by the city "as a pawn."[181]

> On the one hand, in order to secure his cooperation, they have assured him that the City would protect him from an adverse verdict and fully defend him in the case brought by Howard. After the adverse jury verdict, the City now takes the position with Howard's attorneys and Captain Dowdy that the City is under no obligation to pay.[182]

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[175] See id.

[176] Thomasi McDonald, How Durham Council is Skirting $6 million Payment to Wrongfully Convicted Man, Indy Week (June 1, 2022). For the amount of attorneys' fees owed Howard's attorneys, see Virginia Bridges, Former Durham Officer Claims City Abandoned Him, After Defending Him for Years, The News & Observer (June 2, 2023).

[177] Thomasi McDonald, How Durham Council is Skirting $6 million Payment to Wrongfully Convicted Man, Indy Week (June 1, 2022).

[178] See Amended Complaint, Dowdy v. City of Durham, No. 23-cv-0133, at ¶79 (M.D.N.C. Apr. 27, 2023).

[179] McDonald, supra note 174.

[180] See Amended Complaint, Dowdy v. City of Durham, No. 23-cv-0133, at ¶ 48 (M.D.N.C. Apr. 27, 2023).

[181] See id.

[182] Id. at ¶ 64.

Dowdy sought damages against Durham for breach of its promise to indemnify and violation of his due process rights for failing to follow the terms of the applicable city resolution governing indemnification.[183]

Howard was allowed to intervene in Dowdy's case against Durham, over Durham's opposition.[184] Meanwhile, Howard appealed the district court's dismissal of the claims against the city and two other officers. In March 2023, the Fourth Circuit reversed the dismissal of the claims against the two officers and remanded their case back to the district court for trial.[185] More than a year later, as trial was approaching, Howard settled his case against the two officers, with Durham paying a total of $7.75 million[186]–a substantial amount, to be sure, although less than the approximately $10 million owed, with attorneys' fees, after trial. Moreover, Howard's attorneys' reasonable fees would have been substantially higher at the time of the 2024 settlement than they were at the conclusion of the 2021 trial, given the work needed to appeal the trial court's decision, intervene in Dowdy's case, and prepare for a second trial against the two reinstated officers.[187]

Although Dowdy's indemnification denial was not officially reversed, his finances remained protected. Two months after the $7.75 million settlement with the two officers, paid for by Durham, Howard filed a satisfaction of the $6 million judgment against Dowdy, reporting that "said judgment has been fully paid."[188] Dowdy even came out ahead, as a financial matter: Durham paid $350,000 to settle Dowdy's suit against the city.[189]

Other cases have traveled a similar path when indemnification has been denied, with the plaintiff joining forces with the officer to dispute his indemnification denial, and the government forced to wage a two-front war.[190] Cleveland tried to avoid this

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[183] Id. at ¶ 79.

[184] See Brief in Support of Motion to Intervene as Plaintiff, Dowdy v. City of Durham, No. 1:23-cv-0133 (M.D.N.C. May 9, 2023).

[185] Howard v. City of Durham, 68 F.4th 934 (4th Cir. 2023).

[186] Virginia Bridges, Durham Shifts Course, Pays Darryl Howard Millions for Wrongful Conviction, Prison Time, The Herald (May 30, 2024).

[187] See email from Anna Benvenutti Hoffmann to author (Sept. 2, 2025) (on file with author) (estimating that plaintiffs' counsel in *Howard* spent approximately 800 hours litigating indemnification and other issues post-verdict).

[188] See Satisfaction of Judgment, Howard v. City of Durham, No. 1:17-cv-477 (M.D.N.C. July 25, 2024).

[189] Virginia Bridges, Durham Shifts Course, Pays Darryl Howard Millions for Wrongful Conviction, Prison Time, The Herald (May 30, 2024).

[190] For some examples, see infra notes 200-201 and accompanying text.

type of drawn-out dispute in a devilishly clever way: by denying officers indemnification in two cases with multi-million dollar verdicts, then paying for lawyers to file for bankruptcy on the officers' behalf.[191] In what only makes sense as a quid pro quo, the officers did not contest their indemnification denial or include the right to indemnification in their bankruptcy petitions.[192] This arrangement was an apparent effort to avoid conflict between the city's and the officers' interests: the indemnification denial would spare the city—and the bankruptcy petition would spare the officers—from having to pay the multi-million dollar verdicts.

One of the plaintiffs sued Cleveland and its attorneys, asserting claims for indemnification, tortious interference with the enforcement of a judgment, and other claims; the case made its way to the Ohio Supreme Court, which held that only the officer, not the plaintiff, had the right to challenge a denial of indemnification.[193] After years of litigation between the plaintiffs and the city about its obligations to indemnify the officers, Cleveland settled both cases for millions (but at a steep discount), with the officers paying nothing.[194] Cleveland was criticized strenuously in the local and national media for what was perceived as a deeply cynical effort to dodge liability, and has not tried this maneuver since.[195] No other jurisdiction has, thus far, experimented with this approach.

2. No-Cost Resolutions

If an officer is denied indemnification and cannot get the indemnification denial reversed, and the plaintiff nevertheless pursues a case against the unindemnified officer, there are several ways the officer's personal finances might still remain protected. First, the plaintiff could lose: the officer could be granted qualified immunity at a motion to dismiss or summary judgment; the defendant could win at trial; or the judge could overturn the plaintiff's verdict. This collection of defendant-friendly outcomes occur far more often than do plaintiffs' verdicts in police misconduct

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[191] Kyle Swenson, How Cleveland's Trying to Get Out of Paying $18.7 Million in Judgments Against Two Cleveland Police Officers, Cleveland Scene (Jan. 13, 2016).

[192] See id.

[193] See Ayers v. Cleveland, 160 Ohio St.3d 288 (2020).

[194] See John Caniglia, Cleveland Agrees to Pay $4.85 Million to Wrongfully Convicted Man Who Spent 11 Years in Prison, Cleveland.com (Dec. 1, 2020); Eric Heisig, Cleveland Agrees to Pay $3.7 Million to Family of Euclid Man Killed By Off-Duty Officer in 2012, Cleveland.com (Sept. 25, 2018).

[195] See, e.g., Radley Balko, Cleveland's Vile, Embarrassing Scheme to Avoid Paying Victims of Police Abuse, Wash. Post (Jan. 20, 2016); Swenson, supra note 191.

cases.[196]

Second, the local government could negotiate a global settlement that resolves the claims against the officer.[197] All of the cases resolved against unindemnified El Paso police officers between 2006–2011 took one of these two paths—dismissal or a global settlement paid for by the government.[198] The same is apparently true of every case resolved against unindemnified Memphis police officers over the past thirty years.[199]

Third, the officer could agree to assign their right to seek indemnification to the plaintiff's lawyer in exchange for a promise not to try to collect the award against the officer personally. If the plaintiff assigned the right to indemnification is successful, they would recover from the government.[200] If the plaintiff assigned the right to indemnification is unsuccessful, the plaintiff would recover nothing.[201] Either way, the officer's finances are protected.

Finally, if a plaintiff secures a judgment against an unindemnified officer, the plaintiff may never collect on the claim. Plaintiffs sometimes abandon efforts to collect on smaller claims, presumably concluding a small judgment is not worth the cost of collecting.[202] Plaintiffs may also abandon efforts to collect on larger claims if there is no chance that the officer will be able to satisfy the judgment because, for example, the officer is in prison.[203]

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[196] See How Qualified Immunity Fails, supra note 6, at 46 tbl.12.

[197] See, e.g., supra notes 188, 194 (describing global settlements—paid by the municipalities—of officers denied indemnification in Durham and Cleveland).

[198] See supra notes 143-144 and accompanying text.

[199] See Telephone Interview with McKinney, supra note 166.

[200] For example, in *Maimaron v. Oxner*, the Massachusetts state police refused to indemnify its officer, Oxner, who assaulted a man, Maimaron, while off duty; Maimaron was awarded $400,000 in damages and attorneys' fees against Oxner in binding arbitration; Oxner assigned his right to seek indemnification to Maimaron in exchange for release from the indemnification award; Maimaron sued the Commonwealth of Massachusetts; and the case settled for $580,000, paid for by the state. See Schwartz, supra note 1, at 929 (describing the case).

[201] Another permutation is that the plaintiff can agree, after the verdict, to forgive the officer's debt, in exchange for the officer's agreement to assign to the plaintiff any amount he receives following his claim for indemnification. See, e.g., Keenan v. City of Philadelphia, 936 A.2d 566, 567-68 (Pa. Sup. Ct. 2007).

[202] See supra note 79.

[203] Take, for example, the case of *Alfaro v. City of Houston*, in which an officer, denied indemnification, had raped several women while on the job; the judge entered a $3.6 million default judgment against the officer. Municipal Immunity, supra note 6, at 1228-29. The officer will be in prison until at least 2042. See Jayme Fraser, Ex-HPD Officer Sentenced to Life in

3. When Officers Pay

Despite these many ways in which unindemnified officers can avoid personal financial liability, there are instances in which an officer is denied indemnification, the officer cannot reverse the indemnification denial, the plaintiff pursues a case against the unindemnified officer, the plaintiff secures a judgment, the government is unwilling to resolve the case on the officer's behalf, and the plaintiff seeks to collect money directly from the officer. This prospect was anticipated by Tom Baker, who found that plaintiffs' attorneys are generally reluctant to pursue "blood money" from the bank accounts of uninsured defendants in tort cases, but are more likely to do so when the defendant has breached social norms that result in serious injury.[204] As one Chicago plaintiff's attorney explained: "It really has an intrinsic value that goes above and beyond the dollar amount, having the police officer writing a check out of his own account. There's a feeling of justice there for the client, and that's important. It's also an extra psychological piece to help make the client satisfied."[205] In addition to several dozen cases in which officers have made pre-negotiated payments toward settlements,[206] I have learned of a handful of cases in which plaintiffs' attorneys garnished wages, put liens on property, and otherwise pursued collections against officers denied indemnification.[207]

What a plaintiff can actually recover from an unindemnified officer is a separate question. It may take years to recover from unindemnified officers even if they have

Rape, Houston Chronicle (Oct. 8, 2012); Telephone Interview with plaintiff's attorney Benjamin Hall (Dec. 10, 2021) (notes on file with author).

[204] See Baker, supra note 97, at 296-301.

[205] Steve Mills, City Usually Pays When a Police Misconduct Suit Is Settled—But Some Defendants Want Cops Punished, Chi. Trib. (Apr. 15, 2012).

[206] See, e.g., Schwartz, supra note 1, at 978-81.

[207] See, e.g., infra notes 296-300 (describing collection efforts in Goldring v. Henry, a malicious prosecution case against an Atlanta police officer); Email from Caleb Mason to author (June 4, 2026) (describing a case, Holmes v. Harris, in which a Los Angeles county deputy was denied indemnification for a $1.5 million punitive damages award, and lawyers for the plaintiff have obtained the defendant's house, one of her cars, and 25% of her monthly paycheck); Email from Neil Henricsen to author (Aug. 7, 2025) (describing a case in which the Jacksonville Sheriff's Office declined to indemnify three officers for punitive damages awards--$10,000 against one and $1,500 each against two others—and the officers paid in full after the plaintiff pursued collection proceedings); Email from James S. Muller to author (May 19, 2026 1:23 PM) (describing a case in which Los Angeles County declined to indemnify a former captain for a $75,000 punitive damages award; after putting a lien on the former-captain's real estate, he paid the money owed).

substantial assets.[208] But officers do not tend to have resources sufficient to satisfy large settlements and judgments entered against them.[209] Officers have been able to erase or limit their financial obligations through the protections of debtors' laws, reduced settlements that take account of the officer's limited assets, and bankruptcy law, which discharges debts arising from civil rights lawsuit judgments so long as the officer's conduct was not found to be willful and malicious.[210]

The case brought by the family of 15-year-old Bobby Moore, who was killed in 2012 by Little Rock police officer Josh Hastings, illustrates the twists and turns that could lead to an officer being held personally financially responsible, and the types of limits that can be placed on that responsibility. Attorney Mike Laux agreed to represent Moore's mother, Sylvia Perkins, in her case against Hastings and Little Rock. Although Laux knew that Little Rock had a policy of not indemnifying its officers, and Hastings had been fired and criminally charged, Laux believed that this would be just the rare type of case in which he could prove municipal liability.[211]

Officer Hastings had only been employed by the Little Rock police department for five years, but had used force at least forty-one times and had accumulated dozens of misconduct complaints, more than thirty of which were sustained.[212] Hastings had lied on his employment application; denying that he had ever participated in a hate group when he had actually attended a meeting of the Ku Klux Klan.[213] There was copious evidence that the Little Rock police department did a terrible job of supervising and investigating its officers.[214] Laux pulled together all of this evidence during discovery and opposed Little Rock's summary judgment motion with an expert report and dozens of exhibits.[215] The district court nevertheless granted the city's

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[208] See Email from Caleb Mason, supra note 207.

[209] See supra note 98 and accompanying text.

[210] See Gilles, supra note 97, at 623-62 (describing various federal and state protections); Nicole Langston, Discharge Discrimination, 111 Cal. L. Rev. 1131, 1136-38 (2023) (describing bankruptcy provisions that allow individuals to discharge debt stemming from civil rights violations so long as their conduct was not willful or malicious, and several examples of officers who have discharged civil rights judgments in excessive force cases).

[211] See Telephone Interview with plaintiff's attorney Mike Laux (Aug. 12, 2024) (transcript on file with author). Hastings was criminally charged twice—both times, the juries deadlocked—and the prosecutor dropped all charges against him a few weeks before a third trial was set to begin. See Balko, supra note 116.

[212] See id.

[213] See id.

[214] See id.

[215] See Interview with Mike Laux, supra note 211.

summary judgment motion.[216] Laux expected that he would win a reversal on appeal.[217] But before he could appeal the dismissal of the municipal liability claim, he needed first to try the case against the officer. [218] He did, and won a $415,000 judgment against Officer Hastings following an eight-day trial.[219] The court additionally awarded Laux $382,586 in attorneys' fees.[220]

Laux expected that the court of appeals would reverse the dismissal of his claim against Little Rock, and that the case could then proceed against Little Rock—or that he could negotiate a favorable settlement with Little Rock to resolve the judgment against Hastings and the open claims against the city.[221] But the court of appeals affirmed the district court's dismissal of the *Monell* claim.[222]

The city remained steadfast in its denial of indemnification, and refused to pay a penny of the nearly $800,000 awarded to Sylvia Perkins and her attorney.[223] When Laux attempted to execute on the judgment against Hastings, Hastings filed for bankruptcy.[224] Ultimately, Laux and Hastings's attorney negotiated for Hastings to pay Perkins a total of $12,500.[225] This case counts among the rare exceptions when an officer was denied indemnification and was required to pay from his own bank account to satisfy a judgment entered against him. But it was the plaintiff who bore the worst financial brunt of that indemnification denial. Perkins and her attorney received just 1.5% of what they was awarded, while Hastings paid just 1.5% of what he owed.

III. IMPLICATIONS

This Article has opened the black box of police officer indemnification to reveal a complex assortment of government interests that may factor into indemnification decisions; strategic advantages to government defendants (and disadvantages to plaintiffs) of indemnification uncertainty; and the governments' and plaintiffs'

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[216] See Perkins v. Hastings, No. 4:15-cv-00310, 2017 WL 5759976 (E.D. Ark. Jan. 27, 2017).

[217] See Interview with Mike Laux, supra note 211.

[218] See id.

[219] See Perkins v. Hastings, 915 F.3d 512 (8th Cir. 2019).

[220] See id.

[221] See Interview with Mike Laux, supra note 211.

[222] See Perkins v. Hastings, 915 F.3d 512 (8th Cir. 2019).

[223] See Interview with Mike Laux, supra note 211.

[224] See id.

[225] See id.; see also Final Order, In re: Joshua Ryan Hastings, No. 4:18-bk-11333 (E.D. Ark. Sept. 20, 2020).

interests that often combine to protect officers' finances even when they are officially denied indemnification. Kenneth Abraham and Catherine Sharkey have argued that "[t]he glaring gap in tort theory is its failure to take adequate account of liability insurance."[226] Arguably, the—or at least, *a*—glaring gap in § 1983 law is its failure to take adequate account of indemnification. The fact that officers rarely pay for settlements and judgments entered against them undermines various assumptions undergirding qualified immunity, municipal liability, and the prohibition of punitive damages against municipalities.[227] But indemnification threats and denials also have significant implications for § 1983 practice, theory, and law, including the dynamics of § 1983 litigation; the extent to which § 1983 achieves its compensation and deterrence goals; and common recommendations for improving our system of constitutional tort remediation.

A. For Descriptions of § 1983 Litigation

Indemnification plays a minimal role in prevailing descriptions of constitutional tort litigation. Rather, indemnification is often taken as a given—a de facto *respondeat superior liability* by which the government's finances are seamlessly substituted for the officer's finances at some point during litigation.[228] In some jurisdictions, this appears to be a mostly accurate description of indemnification's role. Government officials in these jurisdictions may threaten to deny officers indemnification, or may require officers to contribute a nominal amount to a settlement, but there is little risk that an officer will be denied indemnification altogether.[229] In other jurisdictions—including jurisdictions that always deny officers indemnification, or more regularly deny or credibly threaten to deny officers indemnification—indemnification does not function like de facto *respondeat superior* liability at all.

For local governments, indemnification uncertainty is more strategically advantageous than de facto *respondeat superior* liability. Because the local government does not have to make a formal indemnification decision until the end of litigation, it can use the threat that it will deny indemnification to discourage a plaintiff from filing a lawsuit; to force a plaintiff to take on a more complicated, expensive, and risky case against the municipality; to settle a case for less than it is

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[226] Kenneth S. Abraham & Catherine M. Sharkey, The Glaring Gap in Tort Theory, 133 Yale L.J. 2165, 2165 (2023).

[227] See Schwartz, supra note 1, at 937-60 (describing these implications).

[228] See sources cited supra note 4.

[229] See Civil Rights Ecosystems, supra note 6, at 1568 (describing near-certainty of indemnification in Philadelphia); supra note 104 (describing indemnification of NYPD officers represented by the city);

worth; or to convince a judge to reduce a jury's verdict after trial. At each step along the way, the government can reassess whether to indemnify in light of decisions made by the plaintiff, rulings by the court, and pushback by the union. And even the local government's official indemnification decision is not the last word: Local governments have formally declined to indemnify officers and then paid settlements or judgments on their behalf.[230]

The aspects of indemnification uncertainty that benefit local governments disadvantage plaintiffs. If a plaintiff and their lawyer believe that an officer will be denied indemnification, they are often left with three unappealing options: abandon their case; sue an unindemnified (and, thus, likely, judgment-proof) officer; or pursue a case against the municipality in addition to or instead of the unindemnified officer, knowing that municipal liability claims are particularly complicated, expensive, and difficult to win. Moreover, plaintiffs and their attorneys must make these consequential decisions in moments of great uncertainty: before they know whether the local government will actually deny indemnification; before they know what evidence will support their municipal liability claim; and before they know whether the presiding judge or jury will find their municipal liability allegations meritorious. Civil rights litigation is costly and risky even when the plaintiff can be assured that the defendant officer will be indemnified. By introducing the possibility that an officer will be denied indemnification, the local government further increases the costs and risks to plaintiffs of pursuing civil rights claims.

Although actual and threatened indemnification denials disadvantage plaintiffs and advantage local governments, they have a less direct impact on individual officers. Surely, officers do not want to be personally sued, and would be reasonably concerned if their employer denied or threatened to deny them indemnification.[231] But generous indemnification provisions, political pressures on local governments to protect their officers, and plaintiffs' reluctance to pursue claims against judgment-proof defendants mean that officers—even officers denied indemnification—rarely pay settlements and judgments entered against them. In other words, officers in most cases ultimately enjoy a de facto *respondeat superior* liability, even when they are officially denied indemnification.

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[230] See, e.g., supra notes 143-144 (describing El Paso's satisfaction of settlements against its officers, despite an official policy of not indemnifying its officers); supra notes 191-195 and accompanying text (describing Cleveland denials of indemnification and subsequent payment of multi-million dollar settlements in two cases).

[231] See supra note 166 and accompanying text; see also infra notes 241-242 (describing how threatened indemnification denials might deter officers even if they ultimately pay nothing).

B. *For § 1983's Compensation and Deterrence Goals*

Section 1983 suits have long been described as a mechanism to compensate people when their rights are violated and deter officers from engaging in misconduct.[232] Although lawsuits' compensatory power is relatively straightforward, the manners in which lawsuits might deter misbehavior are far more complex and contested.[233] One (of many) ways lawsuits might deter is through imposition of financial sanctions on the wrongdoer. I have previously argued that although widespread indemnification facilitates § 1983's compensation goals by ensuring that plaintiffs can recover from a deep pocket, it undermines § 1983's deterrence goals by insulating officers from financial penalties.[234] How should the types of indemnification denials and threatened

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[232] This is an assumption often repeated by the Supreme Court. See, e.g., Wyatt v. Cole, 504 U.S. 158, 161 (1992) ("The purpose of §1983 is to deter state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if such deterrence fails.") (citation omitted). Commentators echo the view that Section 1983 is intended to compensate and deter. See, e.g., Richard J. Fallon, Jr., Bidding Farewell to Constitutional Torts, 107 Cal. L. Rev. 933, 969-70 (2019) (explaining that constitutional remedies are intended to "provide compensation to the victims of official misconduct…afford a mechanism for holding wrongdoers individually accountable to those whom they have injured," and, "help maintain a rule-of-law regime in which officials do not stray systematically or routinely outside of constitutional bounds."). Tort law is recognized to serve other purposes as well, including corrective justice, civil recourse, and retribution. Tom Baker has recently considered the impact of insurance on these varied objectives of tort law, and the effects of indemnification on each of these objectives should be considered in future work. Tom Baker, What is Insurance for Tort Law? Va. L. Rev. (forthcoming 2026).

[233] For mechanisms by which lawsuits might deter future misconduct, see e.g., Alexandra Lahav, In Praise of Litigation 56-84 (2017) (describing several ways in which lawsuits may deter misconduct, including through the disclosure of information); Gary T. Schwartz, Reality in the Economic Analysis of Tort Law: Does Tort Law Really Deter?, 42 UCLA L. Rev. 377, 378-79 (1994) (arguing that tort law provides a "significant amount of deterrence," though less than "economists' formulae tend to predict," and offering several examples of lawsuits' influence in a variety of settings); Schwartz, supra note 1, at 953 (describing non-financial ways in which lawsuits might deter police officer behavior, including negative publicity, the experience of sitting for depositions and trial, or negative employment ramifications). For an overview of skeptics' arguments that lawsuits do not meaningfully or reliably deter, see Schwartz, *supra*, at 381-87. For the argument that lawsuits against governments are especially unlikely to deter in ways presumed by economists, see Darryl J. Levinson, Making Government Pay: Markets, Politics, and the Allocation of Constitutional Costs, 67 U. Chi. L. Rev. 345 (2000). For a more optimistic view of lawsuits' deterrent effects on governments and particularly on individual officers, see Myriam E. Gilles, In Defense of Making Government Pay: The Deterrent Effect of Constitutional Tort Remedies, 35 Ga. L. Rev. 845 (2001); Joanna C. Schwartz, The Tenacious Power of Constitutional Torts, __ Stan. Civ. R. Civ. Lib. L. Rev. __ (2026).

[234] See Schwartz, supra note 1, at 952-53.

denials described in this Article influence our understanding of § 1983 lawsuits' powers of compensation and deterrence?

The compensatory power of civil rights lawsuits is unquestionably compromised when indemnification is uncertain or unavailable. A case may never be brought because no attorney is willing to bear the financial risk of pursuing a potentially judgment-proof defendant or pivoting to a costly pursuit against the municipality. When such cases are brought, a threatened indemnification denial may cause the case to be settled at a steep discount. And when cases are successfully brought against unindemnified officers, plaintiffs may recover nothing or pennies on the dollar of what they are owed.[235]

Now consider the types of places and cases where § 1983's compensatory power is limited because indemnification is uncertain. In places that deny or threaten to deny indemnification to the worst actors, it may be that the most egregious cases—cases that will result in multi-million-dollar verdicts, cases where officers engaged in willful or malicious conduct, and cases against officers who have been convicted of crimes and sent to prison—are the most vulnerable to indemnification denials. In such jurisdictions, the plaintiffs most likely to recover compensation are those who have suffered some, but not too much, harm: cases alleging minimal wrongdoing will result in no compensation because judges and juries will deny liability, and cases alleging maximal wrongdoing will result in no compensation because officers will be denied indemnification. In places that deny or threaten to deny indemnification for reasons unrelated to the officer's actions that gave rise to the suit—as a punishment for the officer for not testifying at trial, for example, or because the jurisdiction has a blanket policy of never indemnifying its officers—the compensatory power of § 1983 depends on factors having nothing to do with the severity of the plaintiff's harms or the officer's misconduct.

We have long known that Chief Justice Marshall's assertion in *Marbury v. Madison*—"every right, when withheld, must have a remedy"—is subject to a multitude of caveats and qualifications.[236] Plaintiffs whose rights have been violated will not be compensated if the court grants the officers qualified immunity and dismisses any municipal liability claim, or if the plaintiffs cannot find a lawyer or plead a plausible complaint.[237] Moreover, plaintiffs may be undercompensated for

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[235] See, e.g., supra notes 211-227 (describing a case in which an unindemnified officer ultimately agreed to pay just 1.5% of the judgment entered against him).

[236] Marbury v. Madison, 5 U.S. (1 Cranch) 137, 147 (1803).

[237] For the various challenges of pleading and proving constitutional tort cases, see generally Shielded, supra note 78.

violations of their rights for any number of reasons.[238] Some decry any discrepancy between right and remedy; others believe such a gap prevents the costs of enforcing constitutional rights from growing too high and predict courts would shrink the scope of constitutional protections without one.[239] But even those who see value in maintaining some gap between right and remedy would likely struggle to justify the contours of the particular gap created by indemnification denials and uncertainty. What theory of constitutional tort remedies can justify a system that denies compensation to people whose rights were violated simply because they were subjected to particularly egregious misconduct; because their rights were violated by officers who did not participate in the defense of their cases to their employers' satisfaction; or because their rights were violated in a jurisdiction that uses the threat of indemnification denials strategically or denies indemnification to all of its officers (having concluded that the benefits outweigh the costs of doing so)?

One might assume that officers denied indemnification would necessarily suffer financial sanctions—increasing lawsuits' deterrent effects—but the dynamics of indemnification decisionmaking suggest this is not necessarily so. When indemnification uncertainty leads a plaintiff to sue the local government instead of the officer, that officer is spared whatever deterrent power the suit against him might have had. When an indemnification denial comes with a sub rosa assurance that the

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[238] See Jack M. Beermann, Municipal Responsibility for Constitutional Torts, 48 DePaul L. Rev. 627, 667 (1999) ("Indemnification is a poor substitute for vicarious liability because . . . to a jury it may still appear that any damages may be paid out of the employee's own pocket."); Joanna C. Schwartz, Qualified Immunity's Selection Effects, 114 Nw. U. L. Rev. 1101, 1134 (2020) (describing lawyers' concerns that plaintiffs will not be compelling to a jury if they are not "likeable," "credible," and "articulate," if they were arrested in connection with incident, or if they have a criminal record).

[239] See, e.g., Fallon, *supra* note 232 at 938 ("[I]f damages were automatically available for every search and seizure that a court deemed 'unreasonable' under the Fourth Amendment—regardless of any legally plausible or good faith belief of the police officer who conducted it that it was lawful under the circumstances—then we could expect a narrowing of operative standards of constitutional 'reasonableness.' Otherwise the social costs of Fourth Amendment rights would grow intolerably high."); John C. Jeffries, Jr., The Liability Rule for Constitutional Torts, 99 Va. L. Rev. 207, 248 (2013) ("[Without qualified immunity,] every extension of constitutional rights, whether revolutionary or evolutionary, would trigger money damages. In some circumstances, that prospect might not matter. In others, it surely would. The impact of inhibiting constitutional innovation in this way is impossible to quantify, but I think it would prove deleterious."); Darryl J. Levinson, Rights Essentialism and Remedial Equilibration, 99 Colum. L. Rev. 857, 914-15 (1999) (imagining that, if Congress expanded Section 1983 liability and eliminated qualified immunity, there "would be a wholesale rewriting of constitutional rights" and "while it is impossible to predict just how various rights would be transfigured, drastically increasing the cost of rights would surely result in some curtailment").

officer's finances will remain protected, the deterrent power of the suit will presumably be comparable to a case in which the officer was indemnified. The same is likely true when an officer employed by a jurisdiction that never indemnifies its officers is sued, but learns from his attorney that no officer from that jurisdiction has contributed to a settlement or judgment in thirty years.[240]

To be sure, the possibility that an officer might be denied indemnification could itself carry a deterrent power even if the officer ultimately pays nothing. When an officer is sued and the jurisdiction credibly threatens not to indemnify them, the prospect of losing their car or house may deter misconduct even if the officer ultimately pays nothing to resolve the case.[241] Even when an officer is employed by a jurisdiction that virtually always indemnifies their officers, the officer's (irrational) fear that they will be denied indemnification may deter misconduct.[242] But to the extent that lawsuits deter through the actual imposition of financial sanctions, indemnification denials and threatened denials tend to reduce § 1983's compensatory power without increasing § 1983's deterrent power.

C. For the Law and Practice of § 1983

The assumption of near-universal indemnification has informed various arguments about § 1983 doctrine and practice, including that officers should more regularly be held personally responsible for settlements and judgments, that municipal liability claims are unnecessary to secure compensation, that qualified immunity doctrine does not shield officers from financial liability, and that local governments' indemnification practices reflect a reliance on qualified immunity doctrine that should not be disturbed by the Supreme Court. How should evidence of indemnification's role in civil rights litigation inform these arguments about the law and practice of § 1983?

These findings certainly call into question the argument that officers should be denied indemnification more often so that officers will feel the financial sting of settlements and judgments entered against them. Plaintiffs' and their lawyers' justified reluctance to spend time and money litigating against judgment-proof officers means that plaintiffs are likely to abandon cases against unindemnified officers, or pursue claims against different, solvent defendants. Accordingly, denying

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[240] See Telephone Interview with McKinney, supra note 166.

[241] See, e.g., supra notes 191-195, 171-189 and accompanying text (describing extended battles over indemnification in Cleveland and Durham of the type that would conceivably influence officer behavior although the officers did not ultimately pay to resolve the cases).

[242] See Baker, supra note 232, at nn.100-102.

officers indemnification will not necessarily cause those officers to feel a financial sting and may, further, leave the plaintiff without remedy.

These findings also call into question the notion that plaintiffs need not file municipal liability claims when their sole goal is to assure compensation.[243] This may be true in parts of the country where indemnification is virtually certain (and in cases where qualified immunity is not an issue). But in jurisdictions and cases in which indemnification is uncertain, plaintiffs do need to rely on municipal liability claims to assure relief.[244]

Evidence that officers virtually never pay anything in settlements and judgments against them has been used for cross purposes in debates about qualified immunity doctrine. Some have argued that this evidence undermines a key justification for qualified immunity doctrine; that it is needed to shield officers from financial liability when they have not violated clearly established law.[245] Another argument, offered by Aaron Nielson and Christopher Walker, is that states' near-universal indemnification of officers reflects such strong reliance on the protections of qualified immunity that the Supreme Court should not disturb the controversial doctrine.[246]

Available evidence about indemnification practices reaffirm that most officers are, indeed, protected from the costs of litigation. Regardless of whether an officer is indemnified as an official matter, they almost never pay. The infrequency with which officers personally contribute to settlements and judgments against them continues to undermine a driving rationale for qualified immunity doctrine.[247]

Available evidence does, however, undermine the reliance-based stare decisis argument offered by Nielson and Walker. Nielson and Walker argue that states' reliance on qualified immunity—evidenced by the near-universal indemnification of officers—strengthens the stare decisis power of the doctrine.[248] Yet available evidence makes clear that officers' protection from liability comes not from local governments' decisions to always indemnify their officers for the entirety of settlements and judgments entered against them, but instead from the complex ways in which local government officials apply their discretion and plaintiffs and officers respond.[249]

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[243] See, e.g., Hamilton, supra note 4, at 737–39.

[244] See Municipal Immunity, supra note 6, at 1227-29.

[245] See, e.g., Schwartz, supra note 1, at 938-43.

[246] See generally Nielson & Walker, supra note 4.

[247] See Schwartz, supra note 1, at 938-43.

[248] See supra note 246 and accompanying text.

[249] See Qualified Immunity and Federalism All the Way Down, supra note 6, at 335-36. Note, also, that I do not believe eliminating qualified immunity will actually result in a dramatic

States' indemnification provisions are not as reliant on qualified immunity doctrine as Nielson and Walker argue.

This evidence suggests a final insight about current qualified immunity debates. Defenders of qualified immunity doctrine argue that the doctrine is the only shield protecting officers from bankruptcy when they make reasonable mistakes. As I have previously argued, it is indemnification statutes, not qualified immunity, that protect most officers from financial liability.[250] But exceptions to this rule, in which officers' personal finances are threatened, should be understood not as the result of inadequate legal protections for officers, but as the result of decisions by those officers' employers not to indemnify them. It is local governments' decisions to deny officers indemnification—not the prospect of limiting qualified immunity—that should be the target of unions', officers', and law enforcement advocates' scorn.

IV. RECOMMENDATIONS

Section 1983 suits are intended to both compensate and deter. [251] In jurisdictions in which indemnification is near-certain, the compensatory goal is roughly met, but officers are not deterred by those financial outlays.[252] This Article makes clear, however, that Section 1983's deterrence goals would not be better served by eliminating indemnification. Instead, in jurisdictions that refuse to indemnify their officers, or selectively deny or threaten to deny their officers indemnification, the costs and risks of seeking relief skyrocket for plaintiffs while officers' resources remain largely protected.

I have previously suggested a package of four reforms that could better achieve Section 1983's compensatory and deterrence goals.[253] First, municipalities should be vicariously liable for constitutional violations caused by their officers while acting in

increase in liability. For further discussion of the basis for this conclusion, see Joanna C. Schwartz, After Qualified Immunity, 120 Colum. L. Rev. 309 (2020).

[250] See Police Indemnification, supra note 1, at 938-43.

[251] See, e.g., Restivo v. Hessemann, 846 F.3d 547, 585 (2d Cir. 2017) (describing the paired goals of compensation and deterrence, and citing cases); Valenzuela v. City of Anaheim, 6 F.4th 1098, 1102 (9th Cir. 2021) (describing § 1983's compensatory and deterrence goals); Dobson v. Camden, 705 F.2d 759, 764-65 (5th Cir. 1983) (same).

[252] See supra notes 237-238 and accompanying text (explaining why Section1983's compensatory goal is only roughly met even when indemnification is a near-certainty).

[253] For further elaboration of these four recommendations and how they might be achieved, see Municipal Immunity, supra note 6, at 1235-43.

the course and scope of their employment.[254] Second, financial or disciplinary penalties should be reliably imposed on officers who engage in wrongdoing to punish and deter. Third, the money to pay settlements and judgments should come directly from the budgets of the officers' employers to encourage caretaking.[255] Fourth, plaintiffs should be able to continue to bring *Monell*-type claims against local governments for unconstitutional customs or policies (including the failure to gather and analyze information from lawsuits against them)[256] in addition to vicarious liability claims. With these four reforms in place, plaintiffs who could prove their rights are violated would be compensated, officers would be sanctioned for their wrongdoing, indemnification threats or denials could not be used strategically to discourage people from vindicating their rights, and local government agencies would have incentives to train and supervise officers in ways that discourage future misconduct.[257]

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[254] Alternative, or in addition, local governments could be held liable for their officers' actions under the nondelegable duty doctrine and the "aided by agency" theory. See Goldberg & Zipursky, supra note 96.

[255] Whether imposing these financial costs on law enforcement agencies will be sufficient to encourage caretaking remains to be seen. For skepticism on this front, see W. Kip Viscusi & Scott Jeffrey, Damages to Deter Police Shootings, 2021 U. Ill. L. Rev. 741, 797 (arguing that damages awards in police shooting cases will not adequately deter government misconduct because "[s]tandard wrongful death awards almost invariably fall short of the requisite economic costs of these deaths" and arguing that the "[a]pplication of the [significantly higher] value of a statistical life could…set the price for expected deaths that municipalities can prevent through more effective screening, training, and monitoring of the police."); Helen E. White, Making Black Lives Matter: Properly Valuing the Rights of the Marginalized in Constitutional Torts, 128 Yale L.J. 1742 (2019) (arguing that Black lives are undervalued in constitutional tort cases because courts use race-based actuarial tables to determine how much a plaintiff should be compensated).

[256] For a description of this municipal liability theory, see Joanna C. Schwartz, Monell's Untapped Potential,125 Colum. L. Rev. 925 (2005).

[257] Accord Fallon, supra note 125, at 979 (observing that "adoption of a formal system of entity liability should not have a huge impact on government outlays" but should nevertheless have "welcome effects" including municipal liability in places that do not indemnify officers, more certain compensation for plaintiffs, and clarity to voters and jurors about "where financial responsibility lies."); Katherine Mims Crocker, Qualified Immunity, Sovereign Immunity, and Systemic Reform, 71 Duke L.J. 1701, 1744 (date) (arguing that Congress should mandate entity liability for municipal, state, federal governments and observing that "[w]ith governments paying up front, the perceptions of everyone in the system—from unrepresented plaintiffs to Supreme Court Justices—would better fit the reality of which parties ultimately absorb defense-side costs…and would help match doctrine with experience, reduce the incentives for defense counsel to hide the ball in ethically dubious ways, and allow all

Obviously, that is not the world in which we live. Congress or the Supreme Court could—but have yet to—replace or supplement *Monell* with vicarious liability for local governments whose officers violate the Constitution.[258] There are, however, indications that some state and local governments are interested in adjusting their laws and practices to better compensate people whose constitutional rights have been violated and deter misconduct by officers.[259] So, this Part offers several recommendations that could be adopted by state and local legislators to advance these goals, and recommendations that could be followed by local government officials charged with making indemnification decisions. This Part also suggests strategies that may be used by plaintiffs to limit the damaging effects of indemnification uncertainty on their cases unless or until such reforms are adopted.

A. For State and Local Legislators

Although laws passed by state and local legislatures in the 1970s and 1980s vary significantly in the types of conduct covered and excluded from protection,[260] the legislatures presumably shared the expectation that governments would indemnify their officers (so plaintiffs would be compensated by those governments) when officers acted within the scope of the indemnification laws' terms, and governments would deny officers indemnification (so that plaintiffs would be compensated by officers) when they did not. Instead, plaintiffs go uncompensated or undercompensated when local governments deny or threaten to deny officers indemnification, and decisions by local government officials and plaintiffs combine to protect the finances of officers regardless of the depths of their misconduct.

Assume that state and local legislatures want indemnification systems in which officers suffer financial sanctions when they engage in wrongdoing, and indemnification threats and denials cannot be used to prevent deserving plaintiffs

participants to make and implement strategic decisions with a more accurate understanding of the dynamics at play.").

[258] See Municipal Immunity, supra note 6, at 1240-41.

[259] For a discussion of state legislation that allows suits against federal officers for violations of federal constitutional rights, see Anya Bidwell, State Efforts to Allow Lawsuits Against Federal Officials Gain Speed, State Court Report (Apr. 6, 2026). For a description of legislation in Colorado and New Mexico that created the right to sue for state constitutional violations without the protections of qualified immunity, along with other reforms, see Joanna C. Schwartz, Constitutional Recalibration: Lessons from New Mexico, 54 N.M. L. Rev. 345 (2024). For discussion of a package of reforms state and local officials could enact, see Alexander Reinert, Joanna C. Schwartz, James E. Pfander, New Federalism and Civil Rights Enforcement, 116 Nw. U. L. Rev. 737, 750 (2021).

[260] See Part I.A.

from seeking or securing relief. How might state and local legislative bodies adjust current indemnification laws to achieve these goals?

One option would be to institute rules mandating officer indemnification, but allowing jurisdictions to require officers to contribute to settlements or judgments if they have engaged in wrongdoing.[261] In 2020, Colorado passed a statute with this type of provision, requiring indemnification but allowing local governments to demand that officers make a modest contribution—of 5% of the total payment or up to $25,000—if they acted in bad faith.[262] Although time will tell whether and how often Colorado jurisdictions require officer contributions, this legislative provision allows plaintiffs to be compensated when they prevail without fully insulating officers from the costs of their misconduct.

Another option would be for state or local legislatures to require officers to carry liability insurance. States often require drivers to have car or motorcycle insurance, employers to have workers' compensation insurance, and medical, legal, real estate, and construction professionals to have liability insurance.[263] In some industries, employees' assets are protected by both insurance and indemnification.[264] In contrast, police officers are not required to carry personal liability insurance and typically do not do so.[265] In jurisdictions that do not indemnify their officers as a matter of policy—like Memphis, El Paso, and Little Rock—officers are given guns and badges and the constitutional authority to use deadly force but are essentially judgment-proof.

[261] Christopher Slobogin has made a similar suggestion—proposing that officers be financially sanctioned when they violate the Fourth Amendment (or the agency be financially sanctioned if the officer was found to have acted in good faith—as an alternative to the exclusionary rule. See Christopher Slobogin, Rehabilitating Criminal Justice: Innovations in Policing, Adjudication, and Sentencing 50-52 (2025). Slobogin's proposal is, however, explicitly independent of any civil damages action that could be brought by the plaintiff; instead, it would be sought by a state agency and would go to the victim or the state. Id.

[262] See Colo. Rev. Stat. §§ 13-21-131(2)(b), 13-21-131(3), 13-21-131(4)(a) (2021).

[263] For an overview of various types of mandated insurance across the country, see Mark Rosanes, What Insurance is Required by Law in the United States? Insurance Business (July 23, 2024), https://www.insurancebusinessmag.com/us/guides/what-insurance-is-required-by-law-in-the-us-498440.aspx. See also Jeffrey W. Stempel, The Insurance Policy as Social Instrument and Social Institution, 51 Wm. & Mary L. Rev. 1489, 1499-1501 (2010) (describing various types of insurance coverage commonly mandated by state law, banks, businesses, and schools).

[264] See Black et al., supra note 26.

[265] See Ramirez et al., supra note 98, at 436; Praet, supra note 98. See also Amended Complaint, Barnes v. City of El Paso, supra note 131 (alleging that "[i]t is the official policy, or unofficial custom of The City of El Paso that its police and other employees do not obtain such insurance or indemnification so that they remain 'judgment proof' in the event of litigation.").

Mandated insurance of police would achieve the same benefits as mandated insurance in other industries; it would ensure that when people are harmed by police, there will be adequate resources to make them whole.

Mandated police liability insurance could also create a financial sanction—through increased premiums or reduced coverage—for officers who engage in misconduct.[266] In 2016, Minneapolis attempted to put an initiative on its ballot to require officers to have liability insurance; the proposal was that the city would pay the base premium and officers would be responsible for paying any upward adjustments to their insurance rates caused by their behavior.[267] The Minneapolis police union ultimately prevented this initiative from being placed on the ballot, but this effort offers a useful blueprint for other jurisdictions considering such an approach.[268]

Finally, legislatures could mandate joint and several liability between officers and their employers. This approach would allow the officer and the department to resolve who was responsible for the harms at issue, and divide payment obligations to reflect that responsibility. Because joint and several liability allows the prevailing plaintiff to recover from any responsible defendant, and for the defendants to resolve contribution amongst themselves, it would not sacrifice plaintiff compensation for officer deterrence.[269] In 2021, New York City passed a law with this type of provision, making individual officers liable for Fourth Amendment violations (without the protections of qualified immunity) and providing that "[t]he employer of a covered individual…is liable, based upon the conduct of such covered individual."[270]

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[266] For further discussion of the benefits of mandated officer liability insurance, see id; Deborah Ramirez & Tamar Pinto, Policing the Police: A Roadmap to Police Accountability Using Professional Liability Insurance, 73 Rutgers L. Rev. 307 (2021).

[267] See Ramirez et al., supra note 98, at 438 (describing the Minneapolis ballot initiative).

[268] Deborah Ramirez and Tamar Pinto have suggested, in the alternative, that local governments require officers to pay the first $25,000 of any settlement or judgment entered against them, and that that personal financial liability will prompt officers to purchase insurance. See Ramirez & Pinto, supra note 266, at 337-38.

[269] Comparative Negligence Manual, the Nature of Comparative Negligence, § 1.25 Joint and Several Liability (Jan. 2026) ("The joint and several liability doctrine…allows a nonnegligent plaintiff to recover the full amount of the damages from the tortiously caused injury from any one or any combination of the defendants who tortiously contributed to the injury. It has been said that joint and several liability shifts the chore of seeking contribution to the person who perpetrated the harm rather than its innocent recipient.").

[270] See Jay Schweikert, Employer Liability Is Not an Adequate Solution to Qualified Immunity, Cato Institute (Apr. 28, 2021) (quoting the text of the New York City law).

Even if legislatures do not want to expand local government responsibility for settlements and judgments in cases where officers have violated the terms of the applicable indemnification agreement, they could improve the current system by making their indemnification provisions more straightforward and transparent. Colorado law, which mandates indemnification unless an officer has been criminally convicted, offers one bright-line rule.[271] The benefit of a bright line, whatever that line may be, is that it can prevent government attorneys from using the statutes strategically and allow plaintiffs to better assess the risks and benefits of going forward. A statutory requirement that the local government decide whether to indemnify at the outset of the case is another way of creating clarity and certainty for both plaintiffs and officers.[272]

B. For Indemnification Decisionmakers

Local government officials who decide whether to indemnify their officers in individual cases could also adjust their decisionmaking calculus. Local officials are likely uninterested in making their decision to indemnify officers more transparent to plaintiffs, especially as indemnification uncertainty strengthens their bargaining position in litigation. But there are several reasons that local governments might benefit from making indemnification more certain for officers.

In addition to the obvious political costs of threatening to deny officers indemnification, indemnification uncertainty carries financial costs for local governments. Investigative reports have documented the hefty sums paid to private attorneys who defend police officers in civil rights cases in various cities.[273] Local governments may even pay unindemnified officers' attorneys' fees—including fees spent contesting the officers' indemnification denials.[274] It may ultimately be more

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[271] Colo. Rev. Stat. § 13-21-131(4)(a) (2021).

[272] See supra note 51 and accompanying text.

[273] See Chuck Goudie & Barb Markoff, Chicago Pays $40 Million Annually to Private Firms, Same as Entire Law Department Budget, ABC7 (Feb. 23, 2023).

[274] El Paso and Memphis both have policies of never indemnifying their officers, yet pay substantial sums to defend them in court. Robert Moore, El Paso Taxpayers Spend More Than $1.7 Million to Defend Police in Four Deadly Force Lawsuits, El Paso Matters (July 28, 2020); Lucas Finton, Memphis Has Spent Nearly $3M Fighting Tyré Nichols Lawsuit with No Clear End, Memphis Commercial Appeal (Apr. 28, 2026). Cleveland paid for the bankruptcy attorneys hired to represent officers they declined to indemnify, then paid to settle the cases on the officers' behalf. See supra notes 191-195. In *Howard*, described supra notes 171-189 and accompanying text, the City of Durham paid for Dowdy's outside counsel after declining to indemnify him. See Intervenor-Plaintiff's Complaint, Dowdy v. City of Durham, 1:23-cv-0133 (Sept. 5, 2023).

cost-effective for local governments to indemnify officers, represent them in-house (instead of providing them with private counsel), and avoid costly fights about whether the officers will be indemnified. Assuring officers that they will be indemnified may also encourage officers to be more forthcoming with counsel about facts underlying the case, which could be useful both to craft an effective legal defense and to learn about areas of policy and personnel concern that could be relayed to police officials.[275]

Local governments could also decide to indemnify their officers, but impose financial sanctions on those who have violated law or policy. This is the apparent approach adopted by New York City's comptroller's office.[276] Other cities have also required officers to contribute modest sums in isolated cases.[277] Requiring contributions in this manner replicates the strategy employed by the Colorado statute but, importantly, can be adopted by local government officials who make indemnification decisions without a formal change in union rules or law. Such financial contributions are an underappreciated tool for local government officials to sanction their officers, and may be especially useful when union-negotiated procedural protections have made it impossible to discipline or fire them.[278]

C. For Plaintiffs

Plaintiffs and their attorneys cannot directly change state or local law, or local governments' indemnification decisions. Nevertheless, there are various ways in which plaintiffs can reduce indemnification uncertainty and discourage that uncertainty from being used against them.

When a jurisdiction threatens to deny its officer indemnification, the plaintiff can employ various methods to get more certainty, sooner, about the government's indemnification decision in their case. Throughout litigation—in pleadings, depositions, and requests for admission—the plaintiff can seek statements by the

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[275] Accord Hamilton, supra note 4, at 731 (observing that "a commitment by the local government to indemnify the individual defendants certainly offers a way for the defendants to maintain a united front against the plaintiff").

[276] See supra notes 82-85 and accompanying text.

[277] See Schwartz, supra note 1 at 912 (describing two officer contributions in Cleveland); Mills, supra note 204 (describing officer contributions in Chicago cases).

[278] For descriptions of these types of union-negotiated procedural protections, see, for example, Kevin M. Keenan & Samuel Walker, An Impediment to Police Accountability? An Analysis of Statutory Law Enforcement Officers' Bills of Rights, 14 B.U. Pub. Int. L.J. 185 (2005); Stephen Rushin, Police Union Contracts, 66 Duke L.J. 1191 (2017).

government about whether it will indemnify its officers in the case at hand.[279] Alternatively, the plaintiff can seek statements that the officer's conduct falls within the bounds of their indemnification obligations, and later use those statements to contest any indemnification denial. To take a simple example, California officers must be indemnified if they were acting within the course and scope of their employment.[280] In pleadings and discovery, California government employers should be asked to acknowledge that the officers was acting within the course and scope.

The plaintiff can also get clarity about the government's indemnification position in cases in which the plaintiff has sued both the officer and the municipality, the government has not committed to indemnify the officer, and one attorney represents both defendants. In such cases, the plaintiff can argue that the same attorney cannot represent both the officer and department while the indemnification decision is pending because of a conflict of interest.[281] There is a potential conflict whenever an

[279] For one example of requests for admission used in this manner, see Defendants' Responses to Plaintiffs' First Set of Requests for Admissions, Second Set of Interrogatories and Requests for Production of Documents, Lou v. Lopinto, No. 2:21-cv-0080 at 3 (E.D. La. Jan. 14, 2021) (attached as Exhibit A to Memorandum in Support of Plaintiffs' Motion to Determine Conflict-Free Representation, Lou v. Lopinto, No. 21-cv-0080 (E.D. La. Jan. 14, 2021) (filed Feb. 17, 2022)) ("Request No. 9: The Jefferson Parish Sheriff's Office will fully indemnify all defendants sued in their individual capacity against any and all claims or judgments for compensatory damages against the Individual Defendants in this Case. Response to Request No. 9: Admitted."). For one example of interrogatories used for these same ends, see Defendants' Supplemental Responses to Plaintiff's Second Set of Interrogatories, Gyasi v. City of New York, No. 05-cv-9453 (S.D.N.Y. Nov. 27, 2006) ("Interrogatory No. 5: Identify any case in the past 10 years in which the NYC Law Department has represented a NYPD police officer and punitive damages have been assessed against the officer, and the City of New York has failed to indemnify the officer for punitive damages. Response to Interrogatory No. 5:…[D]efendants state that, upon information and belief, here are no cases responsive to this request…Interrogatory No. 7: Identify any case during the past 10 years in which the NYC Law Department has represented a NYPD police officer and compensatory damages have been assessed against the officer, and the City of New York has failed to indemnify the officer for the compensatory damages. Response to Interrogatory No. 7:…[D]efendants state that, upon information and belief, there are no cases responsive to this request.").

[280] Cal. Gov't Code §825(a).

[281] Courts have held that plaintiffs have standing to bring such disqualification motions. See, e.g., Kevlik v. Goldstein, 724 F.2d 844, 848 (1st Cir. 1984) (joining the Fourth and Fifth Circuits in concluding that a disqualification motion can be sought by opposing counsel); Robinson v. New York, No. 08-cv-0908, 2010 WL 2775850, at *1 n.4 (W.D.N.Y. July 14, 2010) (plaintiff had standing to seek defense counsel's disqualification); Hempstead Video, Inc. v. Inc. Vill. of Valley Stream, 409 F.3d 127, 132 (2d Cir. 2005) ("The authority of federal courts to disqualify attorneys derives from their inherent power to preserve the integrity of the adversary process") (citation omitted).

officer and municipality are both named as defendants in a § 1983 action.[282] As the Second Circuit has explained:

> A municipality may avoid liability by showing that the employee was not acting within the scope of his official duties, because his unofficial actions would not be pursuant to municipal policy. The employee, by contrast, may partially or completely avoid liability by showing that he was acting within the scope of his official duties. If he can show that his actions were pursuant to an official policy, he can at least shift part of his liability to the municipality. If he is successful in asserting a good faith immunity defense, the municipality may be wholly liable because it cannot assert the good faith immunity of its employees as a defense to a section 1983 action.[283]

This conflict is exacerbated if the municipality is withholding its indemnification decision until the conclusion of the case, and has the authority to deny indemnification to officers who have acted in bad faith, maliciously, willfully, or outside the course and scope of their employment.[284] Under such circumstances, the plaintiff can argue that the attorney should be disqualified from representing the officer unless the municipality agrees to indemnify the officer, or agrees the officer was acting in good faith and within the course and scope of their employment during the times relevant to the case.[285] The latter admission should also foreclose a future denial of

[282] See, e.g., Hamilton, supra note 4, at 743-44; Dina Mishra, Note, When the Interests of Municipalities and Their Officials Diverge: Municipal Dual Representation and Conflicts of Interest in §1983 Litigation, 119 Yale L.J. 86, 88-90 (2009); Rosenthal, supra note 111, at 34-36; Nicole G. Tell, Note, Representing Police Officers and Municipalities: A Conflict of Interest for a Municipal Attorney in a §1983 Police Misconduct Suit, 65 Fordham L. Rev. 2825, 2840-41 (1997).

[283] Dunton v. Suffolk Cnty., State of N.Y., 729 F.2d 903, 907 (2d Cir.), amended on other grounds, 748 F.2d 69 (2d Cir. 1984). See also Carrero v. Farrelly, 280 F. Supp. 3d 774, 776-77 (D. Md. 2017) (collecting cases describing this conflict).

[284] See Higgins v. Town of Southampton, 613 F. Supp. 2d 327 329 (E.D.N.Y. 2009) (finding a conflict of interest, necessitating separate representation, when the town's asserted the employee acted in bad faith and was not entitled to indemnification).

[285] See, e.g., Coggins v. County of Nassau, 615 F. Supp. 2d 11, 33 (E.D.N.Y. 2009) (finding no conflict of interest between the defendant officer and the county because the county's indemnification board had concluded it was financially responsible for any verdict or judgment against the defendant officers); Lieberman v. City of Rochester, 681 F. Supp. 2d 418, 427 (W.D.N.Y. 2010) (finding disqualification inappropriate because the city affirmed the officers were acting within the scope of their employment and agreed to indemnify the officers for compensatory and punitive damages).

indemnification on these grounds. At least one court has held that a municipality is estopped from denying an officer indemnification after representing them at trial.[286]

Plaintiffs can additionally use a viable *Monell* claim as a negotiating tool to assure indemnification. Chicago, for example, sometimes commits to satisfy any judgment against their officers in exchange for the plaintiff's agreement to bifurcate discovery on their *Monell* claim.[287] This type of agreement will be unappealing to plaintiffs committed to pursuing their municipal liability claims, particularly if they are unconcerned that the defendant officer will be denied indemnification. But this type of agreement may prove an attractive compromise to plaintiffs in cases where indemnification is less certain and the *Monell* claim has been included to increase the likelihood of a solvent defendant.

In places and cases where local governments withhold their indemnification decisions until after trial, a plaintiff can argue that the fact and terms of indemnification are admissible to challenge the officers' credibility. Courts have generally refused to admit evidence of officer indemnification (unless the defendant has opened the door by erroneously suggesting that the officer will be personally responsible for the judgment).[288] In refusing to admit evidence of indemnification, some courts have reasoned that the fact of indemnification would prejudice the local government, whose deep pockets might inspire juries to overcompensate plaintiffs.[289] Other courts have held that Federal Rule of Evidence 411—which provides that evidence of insurance is not admissible to show negligence—applies to indemnification

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[286] See Oladeinde v. City of Birmingham, 118 F. Supp. 2d 1200 (N.D. Ala. 1999).

[287] See, e.g., Williams v. City of Chicago, 315 F. Supp. 3d 1060, 1080 (N.D. Ill. 2018). See also Hamilton, supra note 4, at 732-33 (arguing that the threat of a successful *Monell* claim "may also be used to put pressure on a reluctant local government to solve the indemnification issue early and thereby to avoid the *Monell* trial.").

[288] See, e.g., Pryor v. Corrigan, 124 F.4th 475, 498 (7th Cir. 2024) ("[A]ny evidence or argument about indemnification is barred at trial as irrelevant and highly prejudicial under Federal Rules of Evidence 401 and 403. The only exception is when defendants raise an officer's inability to pay damages; then, a plaintiff may introduce evidence of indemnification."); Larez v. Holcomb, 16 F.3d 1513, 1518 (9th Cir. 1994) ("It has long been the rule in our courts that evidence of insurance or other indemnification is not admissible on the issue of damages, and, should any such information reach the ears of the jurors, the court should issue a curative instruction."); Vargas v. Lopez, No. 23-cv-02490, 2025 WL 2944765 (N.D. Cal. Oct. 16, 2025) (ruling that evidence of indemnification is not relevant and likely prejudicial, but that "evidence of indemnification may be introduced to impeach Defendants should they elicit testimony or argument falsely suggesting that they will personally be liable for paying any judgment or that payment of such a judgment will cause financial strain.") (citation omitted).

[289] See *Pryor*, 124 F.4th at 498;

agreements.[290] But, regardless of whether a jurisdiction applies Rule 411 to evidence of indemnification, plaintiffs should be able to argue that the local government's pending decision about whether to indemnify the officer may bias officers' testimony.[291]

Officers seeking to assure their indemnification may refrain from testifying about gaps in training and supervision, a toxic police culture, or other facts that would strengthen the plaintiff's *Monell* claim or unfavorably portray the municipality. Anecdotal evidence suggests that officers would have good reason to believe their trial testimony may determine whether they are indemnified: One officer described in this Article was allegedly promised indemnification in exchange for cooperating with the defense's trial strategy[292] and others were allegedly denied indemnification for asserting their Fifth Amendment rights.[293] Indeed, many jurisdictions explicitly condition an officer's indemnification on his cooperation with the defense of his case.[294] Evidence of the terms of such an indemnification agreement, and what the defendant officer understands this cooperation to require, should be relevant to a jury's assessment of the officer's credibility and bias so long as a final indemnification decision has not been made. The prospect of such information being admitted at trial may lead a local government to finalize their indemnification decision before trial.

In jurisdictions that refuse to indemnify any of their officers as a matter of policy, plaintiffs' options are more limited. Often, the only hope in such places is to gather evidence to support both the individual liability and *Monell* claims, defeat defendants' summary judgment motions, and negotiate a global settlement paid by the government. Another option is to pressure the local government to begin indemnifying

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[290] See Goldenson v. Steffens, No. 2:10-cv-0040, 2014 WL 3105033, at *7 (D. Maine July 4, 2014) (collecting cases demonstrating courts' split on whether FRE 411 applies to evidence of indemnification).

[291] Federal Rule of Evidence 411 allows admission of insurance information as relevant to a witness's "bias or prejudice," or to prove "agency, ownership, or control." See also Lawson v. Trowbridge, 153 F.3d 368, 380 (7th Cir. 1998) (citing another case in support of the proposition that "evidence may be admitted over a collateral source objection if introduced for purposes of impeaching a witness' credibility."); In re Hanford Nuclear Reservation Litig., 534 F.3d 986, 1014 (9th Cir. 2028) ("Evidence of indemnification is generally inadmissible but may be used to show prejudice or bias of a witness"); Fuery v. City of Chicago, 2015 WL 13682033 (N.D. Ill. Nov. 30, 2015) (suggesting that evidence of indemnification could be admitted to show bias, but concluded that the plaintiffs had failed "to elaborate what bias this evidence will establish" and allowing plaintiffs to "re-raise their argument with more particularity at trial.").

[292] See supra note 182 and accompanying text.

[293] See supra note 108 and accompanying text.

[294] See supra note 55 (describing some of these statutory provisions).

its officers. This may be a campaign that plaintiffs' counsel and officers' associations or unions can collectively pursue.[295]

Plaintiffs do have one way of pressing officers to demand indemnification in places like El Paso, Memphis, and Little Rock—by more regularly suing unindemnified officers and seeking to collect against them individually. In Atlanta, a jury awarded Ju'Zema Goldring $1.5 million in her suit against Officer Vladimir Henry, an Atlanta police officer who falsely arrested and maliciously prosecuted her.[296] Although Officer Henry remained employed by the Atlanta police department, and was represented at trial by attorneys employed by the City of Atlanta, the city—which has an indemnification cap of $2,000—did not initially agree to pay the judgment against him.[297] As Henry appealed the verdict, Goldring's attorneys began collection efforts:

> We garnished his wages and bank account, did post judgment discovery, (and got a contempt order for his failing to respond adequately to it), and filed a separate lawsuit against him and his wife because they transferred his interest in their house to her after the judgment. This ultimately resulted in a pre-appeal $1,375,000 settlement…[M]y understanding is this was the first time in a long time that someone put the city in that position.[298]

Although Goldring garnished a total of $9,744.51 from Henry's wages in the course of her post-judgment collection efforts,[299] the $1.375 million settlement was paid entirely by the city.[300]

Some attorneys may resist pursuing "blood money" because they do not want to put the officer in financial jeopardy, because it is costly and complicated to pursue a

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[295] In April 2025, William Most, a civil rights attorney in New Orleans, wrote the Police Association of New Orleans, the Fraternal Order of Police, the New Orleans Black Organization of Police, and the National Organization of Black Law Enforcement Executives with just this sort of message. Letter from William Most to Leaders (Apr. 23, 2025). The letter explains that "[m]any NOPD officers may believe that if they are sued for their actions as an officer, the City will fully defend them and fully indemnify them if the case is lost. **That is not so**." Id. (emphasis in original). The letter then describes several limitations and exclusions in the city's obligations to represent and indemnify officers, and concludes: "This letter does not express an opinion about whether these rules are good or bad. But we think that NOPD officers should at least know what the City will and will not do for them.").

[296] Joyce Lupiani & Zac Summers, Lawyers of Transgender Woman Awarded $1.5 Million Verdict Call for Change, Atlanta News First (Feb. 21, 2022).

[297] See id.

[298] See Email from Jeff Filipovits to author (May 6, 2026 8:35 AM).

[299] See Email from Jeff Filipovits to author (May 7, 2026 11:32 AM).

[300] See Email from Jeff Filipovits to author (May 6, 2026 12:32 PM).

judgment against a defendant with limited assets, or because any recovery may be outstripped by the costs of executing on the judgment. For all of these reasons, a plaintiff and their lawyer may conclude that it makes no financial sense to pursue officers' personal finances in any given case. Nevertheless, if plaintiffs and their attorneys do sue officers and execute on judgments against them, officers and union officials in those jurisdictions may begin forcefully agitating for indemnification. In other words, accepting the financial risks associated with pursuing collection against unindemnified officers in a few cases may lead to more certain indemnification—and, thus, more certain compensation—in the future.[301]

CONCLUSION

Although police officers rarely pay anything towards settlements and judgments entered against them, this Article demonstrates that indemnification decisions are more nuanced, complex, and uncertain—and officers are denied indemnification more often—than payout data suggest. When local governments deny or threaten to deny indemnification, for any number of reasons, they gain significant strategic advantages in litigation against plaintiffs, while officers' finances often remain untouched.

Evidence of the way this facet of civil rights litigation functions on the ground should inform policy, practice, and strategy moving forward. State and local legislatures can adjust their laws in ways that assure compensation for those harmed by unconstitutional policing, while ensuring that officers who engage in serious misconduct are not wholly insulated from consequences for their actions. Such a system could be achieved with statutes that require indemnification but authorize contributions from officers found to have violated policy, liability insurance, or joint and several liability between officers and their employers. At a minimum, the process

[301] Consider, for example, what transpired when the City of Atlanta threatened not to indemnify another officer following the resolution of the *Goldring* case, described supra. In *Sylvester v. Barnett*—a case in which the plaintiff was wrongfully accused of killing his parents and jailed for fifteen months based on a warrant that lacked arguable probable cause—Sylvester's lawyer (who had also represented Goldring) wrote Officer Barnett's attorney (employed by the City of Atlanta Department of Law) to demand that a $3 million settlement be communicated to Officer Barnett; accuse the attorney of "operating under a fundamental conflict of interest" because of the City's indemnification restrictions (a conflict observed by the judge in Goldring's case); and make clear that any judgment would be collected directly from the officer if it was not satisfied by the city. See Letter from Zack Greenamyre to Staci J. Miller, City of Atlanta Department of Law (Apr. 2, 2024). Five months later, the City of Atlanta approved a $1.5 million settlement in *Sylvester* with the officer paying nothing. See Phenix S. Halley, An Atlanta Man Was Wrongfully Accused of Killing His Parents…And He Just Got Payback, The Root (Sept. 17, 2024) (describing the $1.5 million settlement); email from Zack Greenamyre to author (May 7, 2026) (confirming that the Officer Barnett did not contribute to the settlement).

by which indemnification decisions are made should be transparent, predictable, and announced early, limiting government gamesmanship. Until such steps are taken, it will be left to plaintiffs in jurisdictions that regularly threaten to deny their officers indemnification to seek out creative ways to prevent indemnification uncertainty from undermining the compensatory and deterrence goals of § 1983.