No. 23-3119

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

S.A.A.,

Plaintiff-Appellant,

v.

SAMANTHA GEISLER, Maple Grove Police Officer,

Defendant-Appellee.

On Appeal from the United States District Court for the District of Minnesota (Case No. 0:21-cv-02071-PJS)

BRIEF FOR APPELLANT

Andrew T. Tutt
Patrick Dorsey
Jack Hoover
ARNOLD & PORTER
KAYE SCHOLER LLP
601 Massachusetts Avenue, NW
Washington, DC 20001-3743
(202) 942-5000

Joseph A. Greenaway, Jr.
Lisa Cordara
ARNOLD & PORTER
KAYE SCHOLER LLP
250 West 55th Street
New York, NY 10019-9710
(212) 836-8000
joseph.greenaway@arnoldporter.com

Nicholas Sweeney
BRAZIL LAW GROUP
1622 W. Lake Street
Minneapolis, MN 55408
(612) 874-6109
nsweeney@djbrazil-law.com

Brooke D'Amore Bradley
ARNOLD & PORTER
KAYE SCHOLER LLP
Three Embarcadero Center, 10th Floor
San Francisco, CA 94111-4024
(415) 471-3100

January 12, 2024

SUMMARY OF THE CASE AND REQUEST FOR ORAL ARGUMENT

This Circuit stands alone in demanding a clear statement to plead individual-capacity claims under 42 U.S.C. § 1983. In this case, notice is not an issue. All pleadings confirm this was an individual-capacity claim. Neither the Eleventh Amendment nor Rule 9(a) is a basis to require the clear-statement rule. The Court should set aside the rule or permit S.A.A. to amend her complaint on remand.

During execution of a routine warrant, Plaintiff-Appellant S.A.A., who was 38 weeks pregnant, alleges that Officer Samantha Geisler told her to put her hands behind her back, threw her onto her knees on the concrete driveway, and punched her in the back, slamming her belly on the ground. S.A.A. experienced severe pain and that night went into labor. She was later taken to the hospital under custody of police and spent many hours shackled to the hospital bed during active labor. Throughout her encounter with police, she complied with officers' instructions. She was never charged with a crime.

S.A.A. sued Geisler and other officials under § 1983. The district court found the evidence of excessive force sufficient to survive summary judgment, but it nonetheless held S.A.A.'s complaint insufficient because it did not recite the "magic words" necessary to state an individual-capacity claim in the Eighth Circuit.

Appellant respectfully requests a 15-minute oral argument to assist the Court with its consideration of this important issue.

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STATEMENT OF JURISDICTION

The district court had subject-matter jurisdiction over this dispute under 28 U.S.C. § 1331 and issued final judgment on August 29, 2023. App.949; R.Doc.125. Appellant filed a timely notice of appeal on September 18, 2023. App.974; R.Doc.131. This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF ISSUES

Must a complaint filed against an official under 42 U.S.C. § 1983 be construed as an official-capacity claim when it fails to expressly plead claims in the official's individual capacity, or must courts instead determine capacity by evaluating the course of proceedings?

Apposite Authorities: *Brandon v. Holt*, 469 U.S. 464 (1985); *Kentucky v. Graham*, 473 U.S. 159 (1985); *Nix v. Norman*, 879 F.2d 429 (8th Cir. 1989); *Egerdahl v. Hibbing Cmty. Coll.*, 72 F.3d 615 (8th Cir. 1995).

LEGAL BACKGROUND

Section 1983 provides a cause of action for damages against "[e]very person who, under color of" law "subjects, or causes to be subjected, any [person] to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws." 42 U.S.C. § 1983 Actions under § 1983 must be against "person[s]." *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 65 (1989). The Supreme Court has held that "person[s]" for purposes of § 1983 include government officials and

municipalities, but do not include the States. *See id.*; *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 690 (1978).

A suit against a municipality may be brought by suing an agent of the municipality in her "official capacity." Where a plaintiff brings an "official-capacity suit[]" the lawsuit represents "only another way of pleading an action against an entity of which an officer is an agent." *Monell*, 436 U.S. at 690 n.55. "[A] judgment against a public servant 'in his official capacity'" thus "imposes liability on the entity that he represents." *Brandon v. Holt*, 469 U.S. 464, 471 (1985).[1] Municipalities are liable under § 1983 only when "official policy [is] the moving force of the constitutional violation." *Monell*, 436 U.S. at 694.

A § 1983 suit may also be brought against a government official herself. Such a suit is initiated by suing the government official in her "individual" or "personal" capacity. An individual- or personal-capacity suit "seek[s] to impose personal liability upon a government official for actions [s]he takes under color of state law." *Kentucky v. Graham*, 473 U.S. 159, 165 (1985). "[T]o establish *personal* liability in a § 1983 action, it is enough to show that the official, acting under color of state law, caused the deprivation of a federal right." *Id.* at 166. Officials sued in their

[1] "The Eleventh Amendment bars a suit against state officials when the state is the real, substantial party in interest." *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 101 (1984).

individual capacities may, however, be entitled to qualified immunity. *See Pearson v. Callahan*, 555 U.S. 223, 231 (2009).

The characterization of the lawsuit against a government official—as an official-capacity suit, personal-capacity suit, or both—can be consequential. The character of a § 1983 suit can dictate the elements of the cause of action, the defenses available to the defendant, and the remedies available to a plaintiff under § 1983. A plaintiff may recover damages against a municipal official sued in her individual capacity, but may only recover damages against an official sued in her official capacity by proving existence of a harmful municipal policy or custom. So too may a state official sued in her personal capacity face liability, but the same official sued in her official capacity will benefit from the state's Eleventh Amendment immunity.

This Circuit now applies a clear-statement rule to assess whether a §1983 suit pleads personal-capacity claims. *See Egerdahl v. Hibbing Cmty. Coll.*, 72 F.3d 615, 619 (8th Cir. 1995). In establishing the clear-statement rule for personal capacity, *Egerdahl* construed *Nix v. Norman*, 879 F.2d 429 (8th Cir. 1989), as "requir[ing] that a plaintiff's complaint contain a clear statement of her wish to sue defendants in their personal capacities." *Egerdahl*, 72 F. 3d at 620.

Nix v. Norman itself assessed capacity differently. *Nix* determined that the complaint pled only official-capacity claims after weighing aspects of the proceedings, including damages sought, notice given to the defendant, and the

substance of the allegations. *Nix*, 879 F.2d at 430-31. After determining capacity, the *Nix* Court evaluated the plaintiff's argument that express capacity pleading was unnecessary in light of Fed. R. Civ. P. 9(a), which provides that a pleading need not allege capacity "except when required to show that the court has jurisdiction." *Id.* The *Nix* Court opined that, because "[t]he Eleventh Amendment presents a jurisdictional limit on federal courts in civil rights cases against states and their employees," Rule 9(a) "appears to *require* [the defendant] to make a capacity stipulation in the complaint." *Id.*

That observation is the basis for the *Egerdahl* clear-statement rule. *See* 72 F.3d at 620. Subsequent cases imposing the clear-statement rule—including the district court in this case, *see* Add.5[2]; App.937; R.Doc.124, at 5—rely on *Egerdahl*'s interpretation of *Nix*. *See, e.g.*, *Johnson v. Outboard Marine Corp*, 172 F. 3d 531 (8th Cir. 1999); *Baker v. Chisom*, 501 F.3d 920, 924 (8th Cir. 2007). In a more recent statement of this Circuit's § 1983 pleading requirements, however, the panel did not apply the clear-statement rule. Instead, it characterized the *Nix* analysis of the Eleventh Amendment as a "judicially created rule" and remanded to the district court to facilitate an amended complaint. *Wealot v. Brooks*, 865 F.3d 1119, 1123 n.4 (8th Cir. 2017).

[2] "Add.##" refers to Appellant's Addendum. "App.##" refers to the Joint Appendix.

STATEMENT OF THE CASE

A. Factual Background

This case concerns events that took place on January 7-9, 2020. Add.2-3; App.934-35; R.Doc.124, at 2-3. At that time, Plaintiff "S.A.A." was a 26-year-old Muslim woman who was 38-weeks pregnant.[3] App.155; R.Doc.61, at 3. She resided in Dayton, Minnesota with her husband and her brother-in-law. App.155-56; R.Doc.61, at 3-4; App.330; R.Doc.99-12, at 5.

At about 4:20 P.M. on January 7, 2020, Dayton Police Sergeant Greg Burstad and four Maple Grove police officers (including Appellee Officer Samantha Geisler) arrived at the home S.A.A. shared with her husband and brother-in-law to execute a search warrant for a snowblower that police suspected Plaintiff's husband and her brother-in-law had stolen from the local Menards home improvement store. Add.2; App.934; R.Doc.124, at 2; App.754; R.Doc.111, at 2.

The lone officer visible to Plaintiff's husband, the one at the door, was in plain clothes. App.824-25; R.Doc.112-14, at 37-38; App.342; R.Doc.99-12, at 17. An officer knocked on the front door. Add.2; App.934; R.Doc.124, at 2. S.A.A. and her husband did not know who was pounding on their front door, or why, so they reacted in fear—which culminated in S.A.A.'s husband firing gunshots out of their

[3] Due to safety and privacy concerns, Plaintiff-Appellant has proceeded by her initials S.A.A.

home. *Id*. None of the officers were injured. *Id*. After a 911 operator convinced S.A.A.'s husband that the people at his door were police officers, S.A.A. and her husband complied with the officers' instructions to exit their home. *Id*.

As they exited the home, S.A.A.'s husband told the officers of his wife's pregnancy. Add.2; App.934; R.Doc.124, at 2. But, S.A.A. alleges, when she followed the officers' instructions and walked outside toward Officer Geisler, Geisler proceeded to use excessive force against her. *Id*. Geisler told S.A.A. to put her hands behind her back. *Id*. S.A.A. alleges that after she complied, Geisler violently threw her down onto her knees on the cold concrete driveway. App.157; R.Doc.61, at 5. Officer Geisler then punched S.A.A. in the back, slamming her pregnant belly down on the ground. *Id.*; App.518-19; R.Doc.99-14, at 7-8. S.A.A. let out an audible cry of pain when this happened and told Officer Geisler, "I'm pregnant."[4] App.807; R.Doc.112-14, at 20; Add.2; App.934; R.Doc.124, at 2. S.A.A. heard another officer, (Officer Schonning) tell Geisler "[w]e can't do that. She's pregnant." App.521; R.Doc.99-14, at 10. Geisler then lifted S.A.A. off the ground by her arm. *Id*. Geisler uncuffed S.A.A. and recuffed her in the front. *Id*. As a result of Officer Geisler's actions, S.A.A.'s knees were bleeding, her belly had

[4] The events surrounding S.A.A.'s arrest were captured through two real-time recordings: an officer's dash cam recording audio through a lapel microphone (R.Doc.99-3), as well as a neighbor's Ring door camera (R.Doc.99-2). The district court transferred these audiovisual recordings to this Court at Appellant's request. Neither camera captured a video recording of the moment of arrest.

a red mark, and she immediately experienced severe back pain. App.157; R.Doc.61, at 5.

As a result of the shooting that preceded S.A.A.'s arrest, Deputies from the Hennepin County Sheriff's office arrived at the scene. *Id*. S.A.A. was arrested and placed into a Hennepin County Sheriff's vehicle for three hours before she was transferred to the Maple Grove Police Department. App.157-58; R.Doc.61, at 5-6. At no time during this ordeal did S.A.A. resist any officer, nor did she refuse to comply with any commands. App.158; R.Doc.61, at 6. S.A.A. was arrested under Felony First Degree Assault as a suspect in the shooting (however, she was never charged and was released 36 hours later). App.158; R.Doc.61, at 6; App.560; R.Doc.99-14, at 49.

At 11:00 P.M. on January 7, 2020, S.A.A. was transferred from the Maple Grove Police Department to the Hennepin County Jail. App.157-58; R.Doc.61, at 5-6. Overnight and into the following day, S.A.A. began to experience labor symptoms. Add.3; App.935; R.Doc.124, at 3. The night of January 7, 2020, through the early morning of January 8, 2020, was horrific for S.A.A. App.158; R.Doc.61, at 6. She did not sleep and suffered severe back and labor pains. *Id.*

At 7:00 A.M. on January 8, 2020, S.A.A. asked to see a doctor because she was in labor. *Id*. S.A.A. was seen by former Defendant Hennepin County Jail

Doctor Sally Zanotto. *Id.* Zanotto touched S.A.A. on the belly and told her "she was just stressed." *Id.* Zanotto only saw S.A.A. for five minutes. *Id.*

S.A.A. spent the rest of January 8, 2020, in severe labor pain and only slept one hour that night. *Id.* She woke up at 5:00 A.M on January 9, 2020, and was experiencing severe pain when her water broke. *Id.*

S.A.A. told Hennepin County Jail nurse Kimberlee Makhloufi that her water had broken and she was giving birth. *Id.* Makhloufi did not believe her and forced S.A.A. to show Makhloufi her soiled pad. It was only then that Makhloufi instructed the Hennepin County Sheriff's Deputies to call an ambulance. *Id.*

At approximately 5:30 A.M., on January 9, 2020, S.A.A. was placed on a stretcher and wheeled to an ambulance for transport to Hennepin County Medical Center. *Id.* Former Defendant Sheriff's Deputies Sabrina DeMars, Kenneth Hall, David Lewandowski, and Kendric Tjia accompanied S.A.A. and paramedics in the ambulance. App.159; R.Doc.61, at 7.

S.A.A. was shackled for many hours during active labor. Before the ambulance ride began, one of DeMars, Hall, Lewandowski, or Tjia shackled S.A.A.'s left leg to the ambulance gurney, knowing that S.A.A. was 38-weeks pregnant and that she was in active labor. *Id.* During the ambulance ride, S.A.A. was in severe physical discomfort. *Id.* The shackles prevented her from alleviating the intense pain of labor because she could not lie on her side. *Id.* She verbalized

that she was experiencing extreme pain. *Id.* Notwithstanding S.A.A.'s screams of pain, Defendant Deputies refused to remove her shackles. *Id.* S.A.A. arrived at Hennepin County Medical Center at approximately 5:45 A.M. *Id.*

S.A.A. remained shackled to the ambulance bed while she was transported from the ambulance to a delivery room. *Id.* One of Hall, Lewandowski, or Tjia guarded the door to the delivery room while DeMars stayed in the delivery room with S.A.A. *Id.* Because the officers refused to remove the handcuffs, hospital staff were forced to provide medical care, such as checking S.A.A.'s vital signs and monitoring her dilation levels, while S.A.A. was restrained. App.159-60; R.Doc.61, at 7-8. At one point during labor, S.A.A. asked to use the bathroom. App.160; R.Doc.61, at 8. S.A.A. was suffering severe pain. *Id*. One of Hall, Lewandowski or Tjia removed the shackles from the hospital bed and shackled both of S.A.A.'s legs together. *Id.* S.A.A. was forced to go to the bathroom with both of her legs shackled together. *Id.* S.A.A. returned from the bathroom and one of Hall, Lewandowski or Tjia shackled her left leg to the hospital bed. *Id.*

At 10:25 A.M., on January 9, 2020, S.A.A.'s 36-hour hold expired.[5] One of Hall, Lewandowski or Tjia removed S.A.A.'s shackles and left her alone in the

[5] Arrestees in Minnesota must be arraigned or released within 36 hours of arrest. *State v. Waddell*, 655 N.W.2d 803, 810 (Minn. 2003) (citing Minn. R. Crim. P. 4.02, subd.5(1)).

delivery room. *Id*. Later that evening she gave birth to a boy. *Id*.; Add.3; App.935; R.Doc.124, at 3.

B. District Court Proceedings

S.A.A. filed this lawsuit against Officer Geisler and three unnamed Hennepin County Sheriff's Deputies on September 20, 2021. App.12; R.Doc.1. S.A.A. filed a First Amended Complaint the next day that made non-substantive technical corrections. App.31; R.Doc.5. Officer Geisler answered on November 19, 2021. R.Doc.8.

A month later, the parties stipulated to the filing of Second Amended Complaint which S.A.A. filed on December 22, 2021. App.50; R.Doc.14. That Complaint named the Hennepin County Jail doctor, but the three Hennepin County Sheriff's Deputies who shackled S.A.A. while she was in labor during the ambulance ride and at the hospital remained unnamed. App.50-51; R.Doc.14, at 1-2.

The Court entered a Scheduling Order on January 4, 2022. App.70; R.Doc.26, at 1. That Order provided that document discovery should be substantially complete by June 1, 2022 (about six months later) and that all fact discovery including depositions should be completed by August 1, 2022 (about eight months later). App.72; R.Doc.26, at 3. The Order also set a deadline of May 2, 2022 (about five months later) for any party to seek to amend or supplement the pleadings or to add any parties. App.71; R.Doc.26, at 2.

On May 2, 2022, S.A.A. moved for an extension of time to amend the complaint because Hennepin County still had not provided the discovery necessary for S.A.A. "to identify" the three unnamed Hennepin County Deputies "John Joe 1, John Joe 2, and Jane Doe." App.116; R.Doc.42, at 1. As S.A.A. explained in the motion, "[o]nce Plaintiff learns the identity of these unknown parties, Plaintiff will move to amend her pleadings."[6] *Id*. Ten days later, on May 12, while still awaiting a ruling on the extension of time motion, S.A.A. moved to file a Third Amended Complaint that named the unnamed Hennepin County Deputies. R.Doc.51; *see also* App.137-38; R.Doc.53, at 1-2 ("Plaintiff sued individual Hennepin County Sheriff's Deputies as John Joe 1, John Joe 2, and John Doe. Plaintiff has now identified these individuals through discovery. Plaintiff now moves to amend her Complaint to name these individuals."). The motion was necessary, S.A.A. explained, because the Defendants would not stipulate to the filing of the amended complaint. *See* App.139; R.Doc.53, at 3.

[6] Trial counsel realized only on the amendment deadline that Hennepin County had not yet produced critical discovery necessary to substitute the John Does. Worried that failing to meet the deadline to amend would prejudice his client, trial counsel contacted opposing counsel but filed a motion for extension of time without waiting to obtain opposing counsel's consent or request a hearing date, as required by local rules. Opposing counsel then filed an opposition. Shortly thereafter, without obtaining an extension of time, trial counsel submitted a motion to file the Third Amended Complaint.

On May 27, 2022, the Magistrate Judge held a hearing on the extension motion and the motion to file the Third Amended Complaint and granted both motions. App.173; R.Doc.62.[7] Defendant Officer Geisler answered the Third Amended Complaint on June 9, 2022. App.176; R.Doc.76.

A few months later, after the close of discovery, S.A.A. settled with the County and the County Defendants. On October 10, 2022 and December 14, 2022, S.A.A. stipulated to the dismissal of her claims against the Hennepin County Sheriff's Deputies and Hennepin County, respectively. *See* R.Doc.90 (stipulating to dismissal of deputies); R.Doc.94 (stipulating to dismissal of Hennepin County).

On March 27, 2023, Officer Geisler moved for summary judgment. R.Doc.96. For the first time in the entire course of the litigation, 18 months after the lawsuit was filed, Officer Geisler raised the argument that S.A.A.'s complaint was deficient because it failed to explicitly state that the suit was against Officer Geisler in her individual capacity. App.283-88; R.Doc.98, at 12-17. At no point prior to that motion, at any time or in any form, had Officer Geisler indicated any belief that the lawsuit was against her in her official capacity only. In response to Officer Geisler's motion, S.A.A. filed an opposition and moved to file a Fourth Amended

[7] On June 6, 2022, S.A.A. voluntarily dismissed the Hennepin County Jail Doctor Sally Zanotto from the suit.

Complaint clarifying that the suit was filed against Officer Geisler in her individual capacity. App.664; R.Doc.105; App.753; R.Doc.111.

On April 18, 2023, the magistrate judge held a motions hearing to consider S.A.A.'s motion to file a Fourth Amended Complaint. App.842; R.Doc.115. The magistrate judge denied the motion, Add.17; App.842; R.Doc.113, and S.A.A. filed objections with the district judge, App.868; R.Doc.117.

On June 9, 2023, the district court held a hearing to consider Geisler's motion for summary judgment. At the hearing, Geisler's counsel conceded that if the facts S.A.A. pleaded are true, her excessive force claim succeeds. App.952; R.Doc.127, at 3. The district court concluded that S.A.A.'s evidence was sufficient to survive summary judgment, observing that "[t]here's a conflict here, and we'll have to try it." App.956; R.Doc.127, at 7.

The district court then considered Geisler's argument regarding the capacity of the claims, recognizing that if it was "writing on a blank slate," it "would agree with the course of proceedings approach." App.965; R.Doc.127, at 16. The court could not "recognize any prejudice" to Geisler, given that she "defended this case … to be prepared to meet an individual capacity claim." *Id.* Geisler's counsel, too, conceded that she would not have litigated the case any differently had S.A.A.'s complaint specifically pleaded individual-capacity claims. App.957-58; R.Doc.127, at 8-9. The court asserted that "judges generally don't like kicking people out of

court on technicalities," but that "we have to obey the rules of the Eighth Circuit island." App.965; R.Doc.127, at 16. "If you want to bring an individual capacity claim," the court continued, "you've got to use the magic words. You didn't use the magic words." App.965-66; R.Doc.127, at 16-17.

The district court then granted the motion for summary judgment and denied the motion for leave to file a Fourth Amended Complaint. Add.15; App.947; R.Doc.124, at 15. Applying binding Eighth Circuit precedent, the district court held that the Third Amended Complaint failed to state an individual-capacity claim against Officer Geisler because it did not specifically state that the suit was brought against Officer Geisler in her individual capacity. Add.5-8; App.937-940; R.Doc.124, at 5-8. The court noted in a footnote that, had the complaint stated individual-capacity claims, the court would have "den[ied] in part Geisler's motion for summary judgment for the reasons stated on the record during the June 9, 2023 hearing." Add.14; App.946; R.Doc.124, at 14 n.3. "In particular, the Court would find … [t]here are genuine [disputes] of material fact that preclude summary judgment as to" whether Officer Geisler used constitutionally excessive force during the "couple of minutes" when she caused S.A.A. to collapse in agony onto her pregnant belly in the driveway of her home. *Id.*

The district court also denied the motion for leave to amend. Add.8-14; App.940-46; R.Doc.124 at 8-14. The court noted that the motion was denied by the

magistrate judge and that ordinarily review of a magistrate judge's determination is "extremely deferential." Add.8; App.940; R.Doc.124, at 8. The district court explained that the motion was "(very) late" because it was filed nearly 11 months after the deadline for amended pleadings set in the initial scheduling order. Add.10; App.942; R.Doc.124, at 10. The district court found that S.A.A. had failed to establish either diligence or good cause for the filing of the late amended complaint. Add.10-12; App.942-44; R.Doc.124, at 10-12. That S.A.A.'s deficient complaint was the result of attorney oversight was of no moment, the district court found, because S.A.A.'s attorney should have known of the Eighth Circuit's clear-statement rule, and any failures by S.A.A.'s attorney were chargeable against S.A.A. because her attorney was acting as her agent. Add.10-14; App.942-46; R.Doc.124, at 10-14.

SUMMARY OF ARGUMENT

For decades, this Court has stood alone among federal courts of appeals, barring scores of otherwise viable civil rights claims—like this one—based on a technical pleading requirement demanding that plaintiffs, to sue an official in her individual capacity, must explicitly state in the caption of a 42 U.S.C. § 1983 complaint that the suit is against the official in her "personal capacity." This Court should abandon its requirement that plaintiffs bringing lawsuits under § 1983 recite "magic words" to state individual-capacity claims. The Court should instead adopt

the "course of proceedings" test, which the Supreme Court used in *Brandon v. Holt*, 469 U.S. 464 (1985), and *Kentucky v. Graham*, 473 U.S. 159 (1985).

A district court in any other federal circuit would find that S.A.A.'s complaint pled personal-capacity claims. The complaint sought punitive and compensatory damages for injuries arising from Geisler's individual actions, and subsequent filings, rulings, and admissions further clarified the individual-capacity nature of the claims. Geisler raised a qualified-immunity defense and admitted that she would not have litigated this lawsuit any differently had the complaint contained additional magic words. In every other federal court of appeals, these factors would establish beyond peradventure that Geisler was sued in her individual capacity.

The Court's clear-statement rule finds no basis in our law and creates an improper heightened pleading requirement for § 1983 filings. Federal Rule of Civil Procedure 9(a) does not demand "magic words," and it concerns an entity's capacity to be sued as defined by state law, not the capacity in which claims are pled. Neither does the Eleventh Amendment require a clear statement, particularly where—as here—the defendant is a municipal employee.

This Court should overrule its precedent requiring clear statement of individual-capacity claims and join its sister circuits in employing the "course of proceedings" test. In the alternative, the Court should remand with instructions to permit S.A.A. to file her Fourth Amended Complaint.

STANDARD OF REVIEW

This Court reviews "motions for summary judgment de novo, applying the same summary judgment standard as the district court, and considering whether the district court properly followed the substantive law." *Midwest Oilseeds, Inc. v. Limagrain Genetics Corp.*, 387 F.3d 705, 710–11 (8th Cir. 2004). "Courts must grant summary judgment if 'the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'" *Richardson v. Omaha Sch. Dist.*, 957 F.3d 869, 876 (8th Cir. 2020) (quoting Fed. R. Civ. P. 56(a)).

The Court reviews "the denial of leave to amend a complaint under an abuse of discretion standard." *Crest Const. II, Inc. v. Doe*, 660 F.3d 346, 359 (8th Cir. 2011).

ARGUMENT

I. THIS COURT SHOULD OVERRULE *NIX V. NORMAN* AND ITS PROGENY

A. Every Other Circuit Uses the Course of Proceedings Rule Rather than This Circuit's Clear-Statement Rule

The Eighth Circuit's clear-statement rule stands at odds with Supreme Court guidance and the reasoned decisions of every other court of appeals. In any other federal circuit, and all states that have considered the issue but one, S.A.A.'s complaint would be construed as asserting individual-capacity claims against Geisler. Federal courts have not only found consensus on use of the "course of

proceedings" test, but they also broadly agree on the factors that weigh most heavily in determining the capacity in which claims are asserted. The most important factors include defendants' assertions of qualified immunity or Eleventh Amendment immunity; plaintiffs' pursuit of punitive and compensatory damages; plaintiffs' focus on individual actions versus a policy or custom; and capacity assertions in other filings in the case. Applying the common factors to this case, it is evident that S.A.A. pled a claim against Geisler in her individual capacity. This Court should follow Supreme Court precedent and adopt the "course of proceedings" test, which will further uniform treatment of civil rights lawsuits.

1. The "Course of Proceedings" Test Governs § 1983 Capacity Claims

When a "complaint [does] not clearly specify whether officials are sued personally, in their official capacity, or both", the Supreme Court has counseled that "[t]he course of proceedings … will indicate the nature of the liability sought to be imposed." *Kentucky v. Graham*, 473 U.S. 159, 167 n.14 (1985). Every other court of appeals evaluates the circumstances of the lawsuit and weighs factors such as whether the defendant raised qualified immunity or the plaintiff sought punitive and compensatory damages.

The Eighth Circuit's clear-statement rule is inconsistent with the Supreme Court's reasoning in *Brandon v. Holt*, 469 U.S. 464 (1985). There, the plaintiffs brought a § 1983 complaint seeking damages against a police officer and his

municipal supervisor. *Id.* at 467-68. The plaintiffs filed their complaint before the Court announced *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658 (1978), and the complaint therefore "did not expressly allege" the capacity in which the plaintiffs sued the supervisor. *Brandon*, 469 U.S. at 469. The Supreme Court evaluated whether the supervisor "was sued in his official capacity or [was] individually liable, but shielded by qualified immunity." *Id.* at 465. The Court looked to subsequent events in the case, including the plaintiffs' motion for summary judgment stating that the supervisor was "sued in his official capacity," the statements of plaintiffs' counsel, and the supervisor's arguments premised on an official-capacity claim. *Id.* at 469-70. The Court also noted that when the original supervisor left office, the incoming supervisor was automatically substituted as a party. *Id.* at 470-71. "The course of proceedings" therefore made it "abundantly clear that the action against [the supervisor] was in his official capacity and only in that capacity." *Id.* at 469.

The Eighth Circuit's clear-statement rule is incompatible with the Supreme Court's fact-intensive analysis in *Brandon*. Had the Supreme Court anticipated a clear-statement rule, the Court would have used one in *Brandon*. The Eighth Circuit's rule is also inconsistent with the Supreme Court's opinion in *Kentucky v. Graham*. The plaintiff there prevailed against Kentucky state troopers in their individual capacities, and the Court considered whether the Commonwealth of

Kentucky could be liable for attorney's fees under 42 U.S.C. § 1988 despite dismissal under Eleventh Amendment immunity. 473 U.S. at 161-63. The Court concluded that because "a personal-capacity action is a victory against the individual defendant" and not "the entity that employs him," it cannot lead to "fee liability upon the governmental entity." *Id.* at 167-68. In examining the distinction between individual and official-capacity suits, the Court explained:

> In many cases, the complaint will not clearly specify whether officials are sued personally, in their official capacity, or both. "The course of proceedings" in such cases typically will indicate the nature of the liability sought to be imposed.

Id. at 167 n.14 (quoting *Brandon*, 464 U.S. at 469). This Court's clear-statement rule is incompatible with the Supreme Court's instructions in *Kentucky v. Graham*, which calls for case-by-case analysis.

The Eighth Circuit's rule also conflicts with the Supreme Court's admonition that courts look beyond the face of the complaint when interpreting § 1983 filings. The Court has repeatedly explained, for example, that in official-capacity suits "[t]he real party in interest is the government entity, not the named official." *Lewis v. Clarke*, 581 U.S. 155, 162 (2017); *see also Hafer v. Melo*, 502 U.S. 21, 25 (1991). Thus, it is "well established that even though a State is not named a party to the action, the suit may nonetheless be barred by the Eleventh Amendment." *Edelman v. Jordan*, 415 U.S. 651, 663 (1974). Imposition of a strict, immutable pleading

standard swims against this prevailing current of jurisprudence favoring deeper analysis of the complaint.

Every court of appeals other than the Eighth Circuit follows the Supreme Court's guidance in *Brandon* and *Graham*, examining the full course of proceedings to determine the capacity in which a § 1983 claim is pled.[8] This split has been acknowledged by the Supreme Court and is widely recognized among federal courts of appeals.[9] *See Hafer*, 502 U.S. at 24 n.* (comparing circuits' practices); *Powell v. Alexander*, 391 F.3d 1, 22 (1st Cir. 2004) (rejecting the Eighth Circuit's position and asserting that "the other circuits have, with virtual unanimity, adopted the 'course of proceedings' test as the better approach"); *Moore v. City of Harriman*, 272 F.3d 769,

[8] *See, e.g.*, *Powell v. Alexander*, 391 F.3d 1, 22-23 (1st Cir. 2004); *Yorktown Med. Lab'y, Inc. v. Perales*, 948 F.2d 84, 88-89 (2d Cir. 1991); *Melo v. Hafer*, 912 F.2d 628, 635-37 (3d Cir. 1990); *Biggs v. Meadows*, 66 F.3d 56, 60-61 (4th Cir. 1995); *Robinson v. Hunt Cnty.*, 921 F.3d 440, 446 (5th Cir. 2019); *Moore v. City of Harriman*, 272 F.3d 769, 772 (6th Cir. 2001) (en banc); *Miller v. Smith*, 220 F.3d 491, 494 (7th Cir. 2000); *Larez v. City of Los Angeles*, 946 F.2d 630, 640 (9th Cir. 1991); *Pride v. Does*, 997 F.2d 712, 715 (10th Cir. 1993); *Lundgren v. McDaniel*, 814 F.2d 600, 603-04 (11th Cir. 1987); *Atchinson v. District of Columbia*, 73 F.3d 418, 425 (D.C. Cir. 1996).

[9] The Eighth Circuit's position also stands at odds with at least eight state courts of last resort. *See Harmon v. Cradduck*, 286 P.3d 643, 651 n.22 (Okla. 2012); *Boyer-Gladden v. Hill*, 224 P.3d 21, 28 (Wyo. 2010); *East Mississippi State Hosp. v. Callens*, 892 So.2d 800, 810-12 (Miss. 2004); *Prentzel v. State, Dept. of Pub. Safety*, 53 P.3d 587, 594 (Alaska 2002); *State v. Nieto*, 993 P.2d 493, 509 (Colo. 2000); *Okwa v. Harper*, 757 A.2d 118, 136-37 (Md. 2000); *Orozco v. Day*, 934 P.2d 1009, 1013-14 (Mont. 1997); *Doe v. Calumet City*, 641 N.E.2d 498, 511 (Ill. 1994). Only Nebraska follows the Eighth Circuit's position. *See Holmstedt v. York Cnty. Jail Supervisor*, 745 N.W.2d 317, 323-24 (Neb. 2008).

773 (6th Cir. 2001) (en banc) (noting that "the vast majority of our sister circuits apply the 'course of proceedings' test"); *Biggs v. Meadows*, 66 F.3d 56, 60 (4th Cir. 1995) (finding "the majority view to be more persuasive"); *Yorktown Med. Lab'y, Inc. v. Perales*, 948 F.2d 84, 89 n.5 (2d Cir. 1991); *Melo v. Hafer*, 912 F.2d 628, 636 n.7 (3d Cir. 1990); *Daskalea v. D.C.*, 227 F.3d 433, 448 (D.C. Cir. 2000).

Members of this Court have also recognized the divergence of authority. *See Wealot v. Brooks*, 865 F.3d 1119, 1123 n.4 (8th Cir. 2017) ("The rule is different in other circuits."); *Baker v. Chisom*, 501 F.3d 920, 927 (8th Cir. 2007) (Gruender, J., concurring in part and dissenting in part) ("The overwhelming majority of our sister circuits uniformly take a different approach to capacity-pleading issues.").

The reasoning deployed in other circuits is incompatible with the Eighth Circuit's rule. Two clear examples of the course of proceedings rule include *Pride v. Does*, 997 F.2d 712 (10th Cir. 1993), and *Yorktown Med.*, 948 F.2d 84. The plaintiff in *Pride v. Does*, for instance, sued a state police officer for excessive force but did not specify in the pleadings "that he [was] suing [the officer] in her individual capacity." 997 F.2d at 715. Citing *Graham*, the Tenth Circuit looked to four aspects of the "course of proceedings." *Id.* First, the court observed that the plaintiff sought punitive damages, "which are not available against the state." *Id.* The defendant officer also raised qualified immunity—a defense available only to individuals. *Id.* Additionally, no other official was substituted when she left her position, as would

occur in a suit against a governmental entity. *Id.* at 716. Finally, the government did not raise Eleventh Amendment immunity on behalf of all defendants. *Id.* at 716. The court thus found it "clear from both the pleadings and the course of litigation that" the defendant was sued in her individual capacity. *Id.* at 715.

In *Yorktown Med.*, the Second Circuit cited *Graham* for the conclusion that rather than demanding "express pleading," courts should "look to the totality of the complaint as well as the course of proceedings to determine" whether a plaintiff brought an individual-capacity claim. 948 F.2d at 88-89. The court commented that "[w]e have traveled too far in the direction of modern pleading to return to the rigid pleading rules of the past." *Id.* at 88. The Second Circuit then observed that the plaintiff sought punitive damages and the defendants claimed qualified immunity, indicating individual-capacity claims. *Id.* at 89.

Indeed, two courts of appeals previously aligned with the Eighth Circuit's rule and have since reversed course. The Sixth Circuit initially adopted the Eighth Circuit's clear-statement rule expressly, dismissing § 1983 complaints that do not clearly plead individual-capacity claims against officials. *See Wells v. Brown*, 891 F.2d 591, 592 (6th Cir. 1989); *see also Hardin v. Straub*, 954 F.2d 1193, 1199 (6th Cir. 1992) (reaffirming *Wells*). Sitting en banc in 2001, the Sixth Circuit later disavowed any "per se rule requiring § 1983 plaintiffs to affirmatively plead 'individual capacity' in the complaint." *Moore*, 272 F.3d at 772. The court asserted

that "[w]hen a § 1983 plaintiff fails to affirmatively plead capacity in the complaint, we then look to the course of proceedings to determine whether" a defendant is on notice of individual liability. *Id.* at 773. The court determined that the complaint for excessive force pled individual-capacity claims because it referred to the officers as "individual defendants," the plaintiff sought compensatory and punitive damages, and the plaintiff's opposition to the defendants' motion to dismiss clarified that the defendants were sued in their "individual capacities." *Id.* at 773-74.

The Seventh Circuit similarly abandoned the Eighth Circuit's position. In *Kolar v. Sangamon County of State of Ill.*, 756 F.2d 564 (7th Cir. 1985), an opinion written by Judge Cummings, the Seventh Circuit adopted a presumption that § 1983 complaints target defendants in their official capacities, overcome by an "express[] state[ment] in the complaint," of an individual-capacity claim, *id.* at 568-69; *see also Yeksigian v. Nappi*, 900 F.2d 101, 104 (7th Cir. 1990) (applying the *Kolar* presumption where a complaint did not specify individual capacity).

In a subsequent opinion authored by Judge Cummings, the Seventh Circuit clarified that § 1983 complaints should not be placed "in the chokehold of restrictive, overly technical pleading requirements." *Hill v. Shelander*, 924 F.2d 1370, 1373 (7th Cir. 1991). The court concluded that the *Hill* complaint "read in its entirety" showed an individual-capacity suit because it sought punitive damages and discussed individual conduct rather than policy or custom. *Id.* at 1374; *see also*

Miller v. Smith, 220 F.3d 491, 494 (7th Cir. 2000) (commenting that *Hill* "rejected" "the presumption from *Kolar*" and "spelled out a new regime").

Federal courts of appeals agree not only that the course of proceedings governs characterization of the complaint, but they also broadly agree on the proper factors to consider. The primary concern among courts applying the majority rule is "whether § 1983 defendants have received notice of the plaintiff's intent to hold them personally liable." *Moore*, 272 F.3d at 772; *see also Young Apartments, Inc. v. Town of Jupiter, FL*, 529 F.3d 1027, 1047 (11th Cir. 2008); *Melo*, 912 F.2d at 637. Indeed, as discussed in the Legal Background and *infra* I.B.1, *Nix v. Norman*'s reasoning also appears motivated by concerns over "notice" to the defendant "that he was being sued in his individual capacity." 879 F.2d at 431.

Qualified-Immunity Defense. Nearly every other federal court of appeals has held that an official's assertion of qualified immunity demonstrates that the pleading put her on notice of an individual-capacity suit.[10] Qualified immunity is "unavailable in official capacity suits," *Rodriguez v. Phillips*, 66 F.3d 470, 482 (2d Cir. 1995), and plainly demonstrates that the defendant understood the lawsuit to

[10] *See, e.g.*, *Powell*, 391 F.3d at 22-23 (1st Cir.); *Shabazz v. Coughlin*, 852 F.2d 697, 700 (2d Cir. 1988); *Melo*, 912 F.2d at 636 (3d Cir.); *Biggs*, 66 F.3d at 61 (4th Cir.); *Rodgers v. Banks*, 344 F.3d 587, 594 (6th Cir. 2003); *Hadi v. Horn*, 830 F.2d 779, 783 (7th Cir. 1987); *Larez*, 946 F.2d at 640 (9th Cir.); *Pride*, 997 F.2d at 715-16 (10th Cir.); *Lundgren*, 814 F.2d at 604 (11th Cir.); *Daskalea*, 227 F.3d at 449 (D.C. Cir.).

target him in his personal capacity. *See also Graham*, 473 U.S. at 166-67 (classifying qualified immunity as a "personal immunity defense"). In *Lundgren v. McDaniel*, 814 F.2d 600 (11th Cir. 1987), for example, the Eleventh Circuit found the defendants' assertions of qualified immunity dispositive of the capacity question, noting that the defense is "available only in a personal capacity lawsuit, not in an official capacity action." *Id.* at 604. The officials were therefore sued in their individual capacities, and the Eleventh Amendment did not bar damages. *Id.*

Punitive Damages. Other federal courts of appeals similarly agree that a plaintiff's demand for punitive damages indicates an individual-capacity lawsuit.[11] Punitive damages are not available in suits against municipalities or official-capacity suits, "but are available in a suit against an official personally." *Graham*, 473 U.S. at 167 n.13; *see also Biggs*, 66 F.3d at 61. The plaintiff in *Yorktown*, for instance, sought punitive damages. 948 F.2d at 89. The Second Circuit reasoned that because those remedies "are only available in individual capacity suits," claims for punitive damages "attest to defendants' notice of individual capacity claims." *Id.*

Compensatory Damages. Similar to punitive damages, in suits where the employer has immunity from compensatory damages, many federal courts of

[11] *See, e.g.*, *Powell*, 391 F.3d at 22 (1st Cir.); *Rodriguez*, 66 F.3d at 482 (2d Cir.); *Gregory v. Chehi*, 843 F.2d 111, 119-120 (3d Cir. 1988); *Biggs*, 66 F.3d at 61 (4th Cir.); *Moore*, 272 F.3d at 773 (6th Cir.); *Wynn v. Southward*, 251 F.3d 588, 592 (7th Cir. 2001); *Larez*, 946 F.2d at 640-41 (9th Cir.); *Pride*, 997 F.2d at 715 (10th Cir.); *Colvin v. McDougall*, 62 F.3d 1316, 1318-19 (11th Cir. 1995).

appeals consider whether a § 1983 plaintiff seeks compensatory damages against individuals.[12] In *Miller v. Smith*, for example, the plaintiff sued Indiana state police officers but failed to specifically plead capacity. 220 F.3d at 492-93. The Seventh Circuit reasoned, in part, that the plaintiff's claim for compensatory damages indicated an individual-capacity lawsuit, asking, "Why in the world would [the plaintiff] have bothered to sue the state troopers for damages in their official capacities when such a suit would run headlong into the 11th Amendment?" *Id.* at 494.

Eleventh Amendment. Courts also consider whether a defendant state official raises an Eleventh Amendment immunity defense.[13] Because the Eleventh Amendment does not bar liability against municipal entities, *Monell*, 436 U.S. at 690 n.55, this common factor can only provide clarity in lawsuits implicating state entities. And as the Eleventh Amendment generally bars damages actions against state officials sued in their official capacities, *Graham*, 473 U.S. at 169, a defendant's failure to raise the defense represents acknowledgement of an individual-capacity suit. In *Wilson v. Blankenship*, for example, the Eleventh Circuit

[12] *See, e.g.*, *Powell*, 391 F.3d at 22 (1st Cir.); *Melo*, 912 F.2d at 636 (3d Cir.); *Biggs*, 66 F.3d at 61 (4th Cir.); *Moore*, 272 F.3d at 773 (6th Cir.); *Miller*, 220 F.3d at 494 (7th Cir.).

[13] *See, e.g.*, *Shabazz*, 852 F.2d at 700 (2d Cir.); *Hadi*, 830 F.2d at 783 (7th Cir.); *Pride*, 997 F.2d at 716 (10th Cir.); *Jackson v. Georgia Dep't of Transp.*, 16 F.3d 1573, 1575-76 (11th Cir. 1994).

observed that "none of the defendants pled Eleventh Amendment sovereign immunity," instead pleading "qualified immunity," demonstrating an individual-capacity suit. 163 F.3d 1284, 1287 n.5 (11th Cir. 1998).

Policy or Customs. Courts are likely to construe a complaint based on the actions of individual officials, rather than a municipality's policies or customs, as an individual-capacity suit.[14] A complaint alleging injury from a policy or custom is "an official-capacity action" in which the "governmental entity is liable under § 1983" as the "'moving force' behind the deprivation" of a federal right. *Graham*, 473 U.S. at 166 (citation omitted). In *Biggs v. Meadows*, for instance, a prisoner sued officials for failing to properly provide medication. 66 F.3d at 58-59. The Fourth Circuit observed that the complaint's "allegations focus on [the defendants'] actions toward [the plaintiff] and do not necessarily implicate an official policy or custom," and this factor weighed toward an individual-capacity pleading. *Id*. at 61.

Subsequent Filings. Filings, rulings, and admissions following the complaint also indicate whether a defendant is on notice of individual-capacity claims.[15] In *Larez v. City of Los Angeles*, the Ninth Circuit determined that an official was sued

[14] *See, e.g.*, *Biggs*, 66 F.3d at 61 (4th Cir.); *Conner v. Reinhard*, 847 F.2d 384, 394, n.8 (7th Cir. 1988); *Hill*, 924 F.2d at 1374 (7th Cir.); *Miller*, 220 F.3d at 494 (7th Cir.); *Wynn*, 251 F.3d at 592 (7th Cir.).

[15] *See, e.g.*, *Moore*, 272 F.3d at 772 (6th Cir.); *Shockley v. Jones*, 823 F.2d 1068, 1071 (7th Cir. 1987); *Larez*, 946 F.2d at 640 (9th Cir.); *Daskalea*, 227 F.3d at 448-49 (D.C. Cir.).

in his individual capacity in part because "plaintiffs' counsel expressly noted that [the defendant] was sued in his individual capacity in plaintiffs' response to the motion to dismiss." 946 F.2d 630, 640 (9th Cir. 1991). In contrast, in *Daskalea*, the D.C. Circuit held that a complaint pled solely official-capacity claims where the plaintiff never rebutted the defense's repeated assertions that the defendants were sued solely in their official capacities. 227 F.3d at 448-49.

This Court should join its sister circuits in evaluating unclear § 1983 pleadings under the holistic "course of proceedings" test. While district courts should consider a range of circumstances, the most important factors include: (1) whether the defendant raises qualified immunity; (2) whether the plaintiff seeks punitive damages; (3) whether the plaintiff seeks compensatory damages against individuals; (4) whether a state official raises the Eleventh Amendment; (5) whether the plaintiff complains of a municipal entity's policy or custom; and (6) whether subsequent filings clarify the plaintiff's intentions.

2. S.A.A.'s Complaint Undeniably Pleads Individual-Capacity Claims

The factors federal courts most commonly consider indicate that S.A.A. sued Officer Geisler in her individual capacity, not her official capacity. Additional circumstances here also indicate an individual-capacity suit, including the structure of the causes of action, omission of Geisler's employer from the pleading, and questioning during Geisler's deposition. This Court should therefore reverse the

lower court's order with instructions to evaluate S.A.A.'s claims against Geisler in her individual capacity.

First, all officials in this case, including Geisler, raised qualified immunity in response to S.A.A.'s claims. This demonstrates that the officials knew S.A.A. sued them in their individual capacities, as qualified immunity is only available in response to individual-capacity claims. *Graham*, 473 U.S. at 166-67. Geisler raised qualified immunity as an affirmative defense in her answer. App.184; R.Doc.76, at 9. She also devoted an entire section of her summary judgment motion to the doctrine, arguing that "Officer Geisler is entitled to qualified immunity." App.289-99; R.Doc.98, at 18-28; *see also* App.918-21; R.Doc.120, at 17-20 (raising qualified immunity in summary judgment reply). So too did other defendant officials raise qualified immunity in response to S.A.A.'s claims. *See, e.g.*, App.111-13; R.Doc.38, at 16-18 (Zanotto Answer); App.269; R.Doc.85, at 9 (Hall, Demars, Lewandowski, Tjia Answer). The district court also recognized that qualified immunity was available to the individual defendants. App.197; R.Doc.78, at 12. The court and all individual officials recognized that S.A.A. sued the officers in their individual capacities.[16]

[16] In at least one circuit, the qualified-immunity defense alone would be dispositive. *See, e.g.*, *Lundgren*, 814 F.2d at 604 (11th Cir.). In nine other federal courts of appeals, Geisler's assertion of a qualified-immunity defense would strongly indicate that S.A.A.'s complaint pleads individual-capacity claims. *See supra* note 10.

Second, S.A.A.'s complaint demands "[p]unitive damages against Defendant Officers in an amount to be determined at trial." App.171; R.Doc.61, at 19. Punitive damages are only available against officials sued in their personal capacities. *See Graham*, 473 U.S. at 167 n.13. Geisler was therefore on notice that S.A.A. pursued a personal-capacity claim against her.

Third, S.A.A. seeks "[c]ompensatory damages against all Defendants in an amount to be determined at trial." App.171; R.Doc.61, at 19. As other circuits have recognized, this is an indication of an individual-capacity claim. *See, e.g.*, *Moore*, 272 F.3d at 773; *Powell*, 391 F.3d at 22; *Biggs*, 66 F.3d at 61.

Fourth, defendants' failure to raise the Eleventh Amendment points in neither direction, as municipal officials and entities are not entitled to the defense in any case. *Monell*, 436 U.S. at 690 n.55.

Fifth, the complaint cites injuries caused by an individual municipal officer's actions rather than any policy or custom attributable to the City of Maple Grove. S.A.A. describes Geisler's use of excessive force, recounting that "*Geisler* violently threw Plaintiff down" and "slammed Plaintiff's pregnant belly down onto the driveway." App.157 (emphasis added); R.Doc.61, at 5. S.A.A. states that "Officer *Geisler* then handcuffed Plaintiff in the front of her body." *Id*. (emphasis added). S.A.A.'s causes of action also seek to hold Geisler liable for her own actions. "Defendant *Geisler* falsely arrested, unreasonably seized, falsely imprisoned, and

detained Plaintiff." App.167 (emphasis added); R.Doc.61, at 15. "*Geisler's* use of force against Plaintiff was excessive." App.168 (emphasis added); R.Doc.61, at 16. "Defendant *Officers* engaged in extreme and outrageous conduct in applying restraints to Plaintiffs arms and legs notwithstanding the fact of her pregnancy." App.171 (emphasis added); R.Doc.61, at 19. Although S.A.A. raises the officers' failure to abide by state law prohibiting the shackling of pregnant women, App.161-64; R.Doc.61, at 9-12, nowhere in the complaint does S.A.A. cite a municipal policy or custom as the "moving force" behind her injuries that might trigger liability under *Monell*. The focus on individual actions rather than a policy or custom points toward individual-capacity claims against Geisler. *Biggs*, 66 F.3d at 61.

Sixth, subsequent filings and events in the case demonstrate that S.A.A. brought individual-capacity claims against Geisler. In her first substantive filing in this case, S.A.A. asserted that "Plaintiff's Claim against Geisler was in her individual capacity." App.765; R.Doc.111, at 13. S.A.A. asserted that "Defendant Geisler understood from the beginning of the proceedings that [the] claims were in her individual capacity." *Id.* Geisler's counsel also conceded at the district court's summary judgment hearing that her defensive strategy would not have been prejudiced if the district court interpreted S.A.A.'s complaint to plead individual capacity claims. App.957-58; R.Doc.127, at 8-9. Proceedings relating to other defendants, such as Dr. Sally Zanotto, also considered qualified immunity, which

could only rebut individual-capacity claims against the officials. App.194-201; R.Doc.78, at 9-16. Finally, Geisler's deposition should have placed her on notice of individual-capacity claims, as the questions focused primarily on her own injurious conduct and not that of the City of Maple Grove. App.481-91; R.Doc.99-13, at 27-37. These subsequent proceedings indicate that Geisler was on notice that she was sued in her individual capacity. *See Larez*, 946 F.2d at 640.

Finally, the record demonstrates additional indicia of individual-capacity claims. S.A.A. sued both Hennepin County Jail staff and Hennepin County itself. App.153; R.Doc.61, at 1. Yet she did not sue Geisler's employer, the City of Maple Grove. *Id.* Omission of the municipal entity from the lawsuit is a strong inference that S.A.A. sued Geisler individually, and not in her official capacity.

The otherwise clear structure of the claims and demands also indicates that Geisler was sued individually. The first cause of action, for example, was brought only "Against All Defendant Hennepin County Deputies," App.164; R.Doc.61, at 12, and the fifth cause of action specifically added "Hennepin County," App.169; R.Doc.61, at 17. The third and fourth causes of action, in contrast, were brought solely "Against Defendant Geisler." App.167-68; R.Doc.61, at 15-16. This indicates that where S.A.A. sued government entities, she did so explicitly. Because

the third and fourth causes of action sued "Defendant Geisler," and not the City of Maple Grove, it is clear that Geisler was sued in her individual capacity.[17]

The federal courts of appeals broadly agree on the factors district courts should consider when evaluating the capacity in which claims are pled. Any other court of appeals would examine the facts of this case and determine that S.A.A. sued Geisler in her individual capacity.

B. The Eighth Circuit's Clear-Statement Rule Finds No Support in Our Law for Its Application

Today's clear-statement rule is the result of doctrinal accretion, not deliberate analysis. It grew from a misinterpretation of *Nix v. Norman*'s holding on § 1983 pleading standards and Fed. R. Civ. P. 9(a). Compounding the error, *Nix* itself improperly extrapolated Rule 9(a), which does not impose a clear-statement rule for § 1983 claims. The clear-statement rule also stands at odds with the Eleventh Amendment and modern pleading standards. Indeed, this Court has since heavily qualified its position and undermined its foundation. It should now conclusively reject application of a clear-statement rule to personal-capacity § 1983 suits.

[17] Were there any confusion or lack of clarity, Geisler could have addressed it by simply asking Plaintiff's counsel whether this is an individual-capacity suit.

1. Today's Clear-Statement Rule Arose from an Incomplete Analysis of Caselaw and Rule 9(a)

The foundational case in this Circuit on § 1983 pleading, *Nix v. Norman*, assessed capacity using a course of proceedings analysis, yet subsequent cases have held, without examination, that *Nix* requires a clear-statement rule. Namely, *Egerdahl v. Hibbing Cmty. Coll.*, in apparent reliance on dicta and ignoring the thrust of Nix's analysis, noted without citation that "*Nix* requires" a complaint to contain clear statement of individual capacity. 72 F.3d at 620. Magnifying this error, subsequent cases in this circuit have imposed a clear-statement rule based largely on *Egerdahl*'s characterization of *Nix*. Indeed, the district court in this case found itself bound by this line of cases: "The Eighth Circuit has held—many times, and very clearly" that a clear-statement rule applies. Add.5; App.937; R.Doc.124, at 5 (citing, *inter alia*, *Nix* and *Egerdahl*).

A review of the chronology of the clear-statement rule in this Circuit reveals it to be an underexamined magnification of a 1989 opinion that employed a different method of assessing capacity. *Nix v. Norman* reviewed the district court's denial of a § 1983 plaintiff's attempt to amend her official-capacity suit to an individual-capacity suit. *Nix*, 879 F.2d at 431. Laura Nix filed a § 1983 suit seeking an injunction and damages for improper termination from defendants Arkansas, the Arkansas Commission on Law Enforcement Standards and Training, and Nix's supervisor. *Id.* at 429. After the district court dismissed on Eleventh Amendment

immunity grounds, it declined to allow Nix to proceed with an individual-capacity claim under § 1983. *Id.* at 430.

The *Nix* panel upheld the district court's determination—but it did so using a course of proceedings analysis, not the clear-statement rule that was later attributed to the case. In reviewing the capacity determination, *Nix* considered a range of evidence of what the Plaintiff "*sought* to recover" and whether she was "sufficiently clear to give [defendant] *notice* that he was being sued in his individual capacity." 879 F.2d at 431 (emphases added). Finding no answer "[o]n [the complaint's] face," the Court turned to examine the nature of its allegations. *Id.* The complaint "appear[ed] to indicate" that the defendant's alleged firing of the plaintiff was "made pursuant to authority delegated to him by the Commission and the State," and the Court noted that these are the sorts of allegations "typically involve[d]" in official-capacity suits. *Id.* Having considered the face of the complaint and the gravamen of the allegations, the court then assessed the plaintiff's own intent. Namely, the plaintiff's "complaint and her brief on appeal indicate that [plaintiff] *believes*" that defendant's "decision to fire her was made pursuant to [State] authority." *Id.* (emphasis added). Nor did the plaintiff provide the defendant with "requisite clarity" that she sought damages from him directly. *Id.*

In short, the *Nix* Court assessed the capacity of the suit by reference to the face of the complaint, the substance of its allegations, the plaintiff's intent as

reflected in subsequent proceedings, and the measure of notice given to the defendant. This is a paradigmatic course of proceedings analysis.

Only then—having already concluded that the complaint did not establish personal capacity—did the *Nix* Court address the plaintiff's argument "that an express averment in the complaint as to [the supervisor's] capacity was unnecessary" under Rule 9(a). 879 F.2d at 431. Fed. R. Civ. P. 9(a) indicates that a pleading need not allege capacity "except when required to show that the court has jurisdiction."

Nix evaluated this 9(a) argument only briefly and in dicta. "The Eleventh Amendment presents a jurisdictional limit on federal courts in civil rights cases against states and their employees. That being the case, Rule 9(a) appears to *require* [the plaintiff] to make a capacity stipulation in the complaint." 879 F.2d at 431 (citations omitted). The Court did not further examine the issue, which was unnecessary to the holding because the course of proceedings had settled the capacity issue. (And, as discussed *infra*, this reading of Rule 9(a) is incorrect.).

Even after *Nix*, this Court continued to adopt a flexible pleading standard. In *DeYoung v. Patten*, the Court decided a § 1983 claim on other grounds but nevertheless noted that the complaint "was not sufficiently clear to give [defendants] *notice*" of an individual-capacity suit. 898 F.2d 628, 635 (8th Cir. 1990) (emphasis added), *overruled on other grounds by Forbes v. Arkansas Educ. Television Commc'n Network Found.*, 22 F.3d 1423 (8th Cir. 1994) (en banc). Because the

complaint did not specify capacity, "*we would be inclined* to construe the complaint as stating only an official capacity claim." *Id*. (citing *Nix*, 879 F.2d at 432-33 & n.3) (emphasis added). The *DeYoung* Court's dicta, coming just one year after *Nix*, did not interpret *Nix* to settle the required pleading standard. It offered interpretive guidance, not a clear-statement rule.

In 1995, however, a panel of this Court transformed *Nix* and *DeYoung* into a clear-statement rule. In affirming dismissal of a § 1983 suit, *Egerdahl* claimed without explanation that "[i]n *Nix v. Norman* we held that a plaintiff who wishes to sue a state official in his personal capacity *must* so specify in her complaint." 72 F.3d at 619 (emphasis added). And *Egerdahl* cited *DeYoung* for the proposition that "if a plaintiff's complaint is silent about the capacity in which she is suing the defendant, we interpret the complaint as including only official-capacity claims." *Id*.

Several oversights mar this analysis. First, *Egerdahl* significantly overstated *Nix*: it ignored the fact that *Nix* assessed capacity with a course of proceedings test and that *Nix*'s reference to a capacity pleading requirement appeared in dicta. (The Court is of course free to adopt dicta in a later ruling, but *Egerdahl* purports to cite *Nix*'s holding.). Second, *Nix* also overstated *DeYoung*, which offered an "inclin[ation]" for reading a complaint, not a clear-statement rule. 898 F.2d at 635. Third, *Egerdahl* did not assess or even reference the Rule 9(a) considerations

underpinning its *Nix* reference. Had it done so, as described *infra*, it should have concluded that that Rule 9(a) does not require clear statement of personal capacity.

The gaps in this analysis have been magnified by time. Many subsequent opinions imposing the clear-statement rule do so in reliance on *Egerdahl*'s conclusion that the Court adheres to a clear-statement rule. *See, e.g.*, *Murphy v. Arkansas*, 127 F.3d 750, 754 (8th Cir. 1997); *Artis v. Francis Howell N. Band Booster Ass'n, Inc.*, 161 F.3d 1178, 1182 (8th Cir. 1998); *Andrus ex rel. Andrus v. Arkansas*, 197 F.3d 953, 955 (8th Cir. 1999); *Johnson*, 172 F .3d at 535; *Baker*, 501 F.3d at 924.

2. Fed. R. Civ. P. 9(a) Does Not Require a Clear-Statement Rule

Rule 9(a), which underpins the *Nix* dicta on the clear-statement rule, provides no basis for the district court's holding or this Court's rule. The Eleventh Amendment does not constrain federal courts' jurisdiction in a manner implicating Rule 9(a). The Rule additionally asks whether an entity has capacity to be sued, not in which capacity the suit is brought. Geisler clearly has the capacity to be sued in court. Finally, under the plain text of Rule 9(a), Geisler forfeited the capacity issue by failing to raise it through a specific denial in her answer.

Eleventh Amendment Immunity. Not only did *Egerdahl* transmute *Nix*'s Rule 9(a) analysis from dicta to clear-statement rule without acknowledging the scope of *Nix*'s course of proceedings approach, but the *Nix* analysis of Rule 9(a) was

wrong in the first instance. Rule 9(a) then stated that "it is not necessary to aver the capacity of the party to sue or be sued … *except* to the extent required to show the jurisdiction of the Court." 879 F. 2d at 821 (citing Fed. R. Civ. P. 9(a)). *Nix* imposed a clear-statement rule for § 1983 capacity on the premise that "the Eleventh Amendment presents a *jurisdictional* limit on federal courts in civil rights cases against states and their employees," such as § 1983 claims. 879 F.2d at 431 (emphasis added). But that premise is mistaken: the Eleventh Amendment concerns immunity, not jurisdiction.

"Eleventh Amendment immunity is not truly a limit on the subject matter jurisdiction of federal courts, but a block on the exercise of that jurisdiction." *Biggs*, 66 F.3d at 60. A court's jurisdiction to hear a suit and a defendant's potential immunity from a kind of suit are "wholly distinct" issues. *Blatchford v. Native Vill. of Noatak & Circle Vill.*, 501 U.S. 775, 786 n.4 (1991) (finding that 42 U.S.C. § 1362 is a jurisdictional statute, not a statute abrogating Eleventh Amendment immunity, in a tribe's lawsuit against a state).

Several aspects of federal practice make plain the distinction between certain defendants' Eleventh Amendment immunity and whether a court has subject matter jurisdiction to hear the claims. In *Biggs v. Meadows*, the Fourth Circuit held that "a plaintiff need not plead expressly the capacity in which he is suing a defendant in order to state a cause of action under § 1983." 66 F.3d at 60. Explicitly addressing

this Circuit's approach to Rule 9(a) in *Nix*, the *Biggs* Court noted that "unlike subject matter jurisdiction, which federal courts must evaluate independent of the parties' contentions, courts have discretion to raise Eleventh Amendment immunity." *Id.* (quoting *Patsy v. Bd. Of Regents*, 457 U.S. 496, 515 n.19 (1982)). Moreover, unlike a subject matter jurisdiction defense, a state can waive its Eleventh Amendment immunity. *Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982). Finally, although Congress can limit states' Eleventh Amendment immunity, it cannot avert a constitutional limitation on the subject matter jurisdiction of the federal courts. *See Nat'l Mut. Ins. Co. v. Tidewater Transfer Co.*, 337 U.S. 582, 586-88 (1949). As these distinctions show, the court's jurisdiction and defendants' immunity operate by different mechanisms and serve different purposes.

The question of whether a § 1983 defendant has Eleventh Amendment *immunity*, therefore, does not implicate Rule 9(a)'s heightened pleading standard for *jurisdiction*.[18] In fact, read in context with other federal rules like Rule 8, Rule 9(a) arguably can be read to discourage imposition of a clear-statement rule for pleading capacity in § 1983 suits, since it affirms that pleadings "need not allege" capacity unless they implicate jurisdiction. *See* 5A Charles Alan Wright & Arthur R. Miller,

[18] Moreover, as described *infra*, Eleventh Amendment immunity poses no barrier to this case.

Federal Practice and Procedure § 1291 (4th ed. 2023) (noting the traditional view that "those portions of Rule 9 that require specific or detailed allegations should not be construed in an unduly strict fashion"). In fact, as the Supreme Court wrote *per curiam* in a recent case assessing the sufficiency of § 1983 pleadings, "a basic objective of the rules is to *avoid* civil cases turning on technicalities." *Johnson v. City of Shelby, Miss.*, 574 U.S. 10, 11 (2014) (finding, under Rule 8, that a § 1983 claim need not even reference § 1983); *see also Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 507 (2002) (finding that a "heightened [pleading] standard conflicts with Rule 8(a)'s express language" setting a particular threshold for pleading).

A 2017 panel of this Court has embraced this view, implicitly recognizing the flaws in the *Nix* analysis of Rule 9(a). In *Wealot*, the Court "refrain[ed]" from applying the Eighth Circuit's "stringent pleading rule" in a § 1983 case where the plaintiff had not pleaded capacity. 865 F.3d at 1124 n.4. *Wealot* acknowledged that the Court had "referenced the Eleventh Amendment's jurisdictional limit in support of our stringent pleading rule" for § 1983 claims, but characterized this as a "judicially created rule" that "does not deprive us of subject matter jurisdiction" over a § 1983 claim. *Id.*; *see also Baker*, 501 F.3d at 926 (Gruender, J., dissenting) ("[T]he logic laid out in *Nix* supporting our presumption [of a clear-statement rule] may be faulty in its premise.").

Purpose and Function of Rule 9(a). The Court's rule also does not reflect the purpose and function of Rule 9(a) and is unique among courts of appeals. In *Nix*, the Court observed that the then-operative version of the Rule may demand a "stipulation" that the defendant is sued in her individual capacity in the complaint. 879 F.2d at 431. Yet Rule 9(a) is not directed at the distinction between individual- and official-capacity suits, but rather the defendant's "capacity to sue or be sued," Fed. R. Civ. P. 9(a)(1)(A), or "the qualification of a party to litigate in court." 5A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1292 (4th ed. 2023); *see also Hobbs v. Roberts*, 999 F.2d 1526, 1530 (11th Cir. 1993) (noting that "capacity" under Rule 9(a) and Rule 17(b) is "a different kind of capacity than the [official or individual] kind at issue here"). "Capacity has been defined as a party's personal right to come into court, and should not be confused with the question of whether a party has an enforceable right or interest or is the real party in interest." 6A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1559 (3d ed. 2023).

Capacity to be sued is evaluated under Rule 17, which looks to state law to determine whether the defendant is an entity cognizable by a court. Fed. R. Civ. P. 17; *Allright Missouri, Inc. v. Billeter*, 829 F.2d 631, 635 (8th Cir. 1987); *Swaim v. Moltan Co.*, 73 F.3d 711, 718 (7th Cir. 1996); Wright & Miller, § 1292. For example, because a drug task force is not a distinct legal entity under state law, it

lacks capacity to be sued under Rule 17(b). *See Brown v. Fifth Jud. Dist. Drug Task Force*, 255 F.3d 475, 477-78 (8th Cir. 2001) (collecting cases). Where state law affords a university's board of regents the power to sue and be sued, but not the constituent schools, the school of medicine does not have the capacity to be sued. *Lundquist v. Univ. of S. Dakota Sanford Sch. of Med.*, 705 F.3d 378, 381 (8th Cir. 2013). And where state law allows a corporation with a forfeited charter to be sued, it may be made to defend in federal court. *See United States v. Ne. Pharm. & Chem. Co.*, 810 F.2d 726, 746 (8th Cir. 1986).

Here, Geisler is plainly an entity that may sue and be sued according to state law. Geisler is an adult and a natural person who, "by the law of [her] domicile," Minnesota, has capacity to sue and defend herself in court. Fed. R. Civ. P. 17(b)(1). Even if S.A.A.'s lawsuit were construed as targeting the City of Maple Grove, that entity's capacity to be sued is determined "by the law of the state where the court is located." *Lundquist*, 705 F.3d at 380 (quoting Fed. R. Civ. P. 17(b)(3)). Under Minnesota law, "a municipal corporation … may sue and be sued." Minn. Stat. § 412.211 (2022). Because neither Geisler nor her city employer may claim lack of capacity to be sued under state law, and therefore Rule 17(b), S.A.A.'s lawsuit is not subject to dismissal under Rule 9(a).

Forfeiture. Geisler's objection to S.A.A.'s pleadings fails for an additional reason: Geisler forfeited it by failing to raise the issue in her answer.[19] A party contending that she lacks capacity to sue or be sued must raise that concern "by a specific denial" that "state[s] any supporting facts that are peculiarly within [her] knowledge." Fed. R. Civ. P. 9(a)(2). A specific denial—as opposed to a general denial—is "[a] separate response applicable to one or more particular allegations in a complaint." *Denial*, BLACK'S LAW DICTIONARY (11th ed. 2019); *see also Lang v. Texas & P. Ry. Co.*, 624 F.2d 1275, 1277 (5th Cir. 1980) (observing that "Rule 9(a) … require[s] a defendant to plead absence of capacity"). According to the plain text of the rule, "[f]ailure to raise capacity in a responsive pleading amounts to forfeiture of" the argument. *Swaim*, 73 F.3d at 718.

Geisler did not question her capacity to be sued in any responsive pleading. *See* R.Doc.8; R.Doc.24; App.176-85; R.Doc.76, at 1-10. Instead, she waited until 18 months after S.A.A. filed her complaint and raised the issue for the first time in a motion for summary judgment. App.272; R.Doc.98, at 1. To echo the First Circuit, Geisler "should have made clear [her] objections to the capacity of the [pleadings] as soon as possible." *Marston v. Am. Emp. Ins. Co.*, 439 F.2d 1035, 1041 (1st Cir.

[19] Geisler's omission constitutes forfeiture—which is a failure to "make the timely assertion of a right"—rather than waiver—which constitutes "intentional relinquishment or abandonment of a known right." *Barna v. Bd. of Sch. Directors of Panther Valley Sch. Dist.*, 877 F.3d 136, 146 (3d Cir. 2017).

1971). The pleadings would have been "correct[ed]," "and the case would have proceeded without interruption." *Id.* Yet instead, Geisler hopes to prevail by "holding back until the eleventh hour," *id.*, and relying on a "gotcha" procedural rule rather than the merits of her defense.

For these reasons, this Court's rule and the district court's construction of S.A.A.'s complaint as asserting only official-capacity claims have no basis in Rule 9(a). Eleventh Amendment immunities are not the kind of jurisdictional matters requiring a clear statement of capacity under Rule 9(a). The Rule inquires whether a party has capacity to sue and be sued rather than in which capacity suit is brought. As importantly, Geisler forfeited any Rule 9(a) issue by failing to make a specific denial in her answer.

3. The Eleventh Amendment Does Not Require a Clear Statement

Nor does the Eleventh Amendment of its own force impose a clear-statement rule for pleading personal capacity § 1983 claims. First, the Eleventh Amendment has no bearing on *personal* capacity § 1983 suits whatsoever. The Eleventh Amendment ensures that a *state* is immune from suit under most circumstances. *Hans v. Louisiana*, 134 U.S. 1, 10 (1890). An *official capacity* suit against an officer is "another way of pleading an action against an entity of which an officer is an agent." *Monell*, 436 U.S. at 690 n.55. "The Eleventh Amendment bars a suit against state officials when the state is the real, substantial party in interest." *Pennhurst*

State Sch. & Hosp. v. Halderman, 465 U.S. 89, 101 (1984) (internal quotations omitted).

By contrast, the Supreme Court has explicitly denied that "a civil rights suit under 42 U.S.C. § 1983 against a state officer in his individual capacity implicates the Eleventh Amendment and a State's sovereign immunity from suit." *Lewis*, 581 U.S. at 166. The only suits against individuals barred by the Eleventh Amendment are official-capacity suits. The Amendment therefore provides little guidance on the requirements to plead a personal-capacity suit.

Second, the Eleventh Amendment has no bearing where, as here, the § 1983 suit seeks to recover from *municipal* actors, as opposed to state actors. As this Court recognized in *Wealot*, the Supreme Court "has consistently refused to construe the [Eleventh] Amendment to afford protection to political subdivisions such as counties and municipalities." 865 F.3d at 1123, n.4. The Supreme Court has also held that there is no "basis for concluding that the Eleventh Amendment is a bar to municipal liability." *Monell*, 436 U.S. at 690 n.54. In this case, S.A.A. has filed a § 1983 suit against a police officer from the city of Maple Grove, Minnesota. The Eleventh Amendment does not bar such suits. *See Moore*, 272 F.3d at 773 n.2 ("The officers are employees of a municipality, and the Eleventh Amendment does not apply to municipalities."); *Stoner v. Santa Clara Cnty. Off. of Educ.*, 502 F.3d 1116, 1125 (9th Cir. 2007); *Hobbs*, 999 F.2d at 1528.

Even if a presumption were necessary, the default presumption should be an individual-capacity suit and a requirement that any official-capacity suit—which may implicate the Eleventh Amendment—be pled explicitly. As the Ninth Circuit has observed, construing complaints as official-capacity suits is "inconsistent with the very nature" of § 1983, as the statute "applies only to deprivations of federal rights by 'persons,' and [a state] is not a person under the statute." *Price v. Akaka*, 928 F.2d 824, 828 (9th Cir. 1990) (citing *Will*, 491 U.S. at 61). It thus makes little sense to mechanically interpret plaintiffs' suits as targeting an entity that may not be sued under the statute. So too is "[a]ny other construction … illogical" in § 1983 damages suits, where "a claim for damages against state officials in their official capacities is plainly barred." *Shoshone–Bannock Tribes v. Fish & Game Comm'n of Idaho*, 42 F.3d 1278, 1284 (9th Cir. 1994) (concluding that "[w]here state officials are named in a complaint which seeks damages under 42 U.S.C. § 1983, it is presumed that the officials are being sued in their individual capacities").

In short, the Eleventh Amendment imposes certain requirements on official-capacity suits and suits against states—not individual-capacity suits or municipal suits. It therefore can impose no requirement on how to plead such suits. In fact, if anything, the Eleventh Amendment counsels against a clear-statement rule for personal-capacity suits.

4. The Eighth Circuit's "Magic Words" Requirement Creates an Improper Heightened Pleading Standard

S.A.A.'s complaint was held insufficient because she "didn't use the magic words." App.965-66; R.Doc.127, at 16-17. Requiring a clear statement of personal capacity runs afoul of modern notice pleading under Rule 8(a) and the contemporary approach in this circuit to pleading § 1983 claims. Requiring the plaintiff to incant a particular formulation in her complaint, rather than make plain the capacity issue through the course of proceedings, imposes the kind of heightened pleading standard that the Supreme Court expressly eliminated for § 1983 cases against municipal defendants in *Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit*. 507 U.S. 163, 167-68 (1993) (Rehnquist, C.J.) (rejecting "a more demanding rule for pleading a complaint under § 1983 than for pleading other kinds of claims for relief"). The Supreme Court expressly held that "it is impossible to square the 'heightened pleading standard' applied by the Fifth Circuit [for § 1983 cases] with the liberal system of 'notice pleading' set up by the Federal Rules." *Id.* at 168.

In fact, under modern pleading standards that apply to legal distinctions, the *per curiam* Supreme Court does not even require that a § 1983 suit invoke § 1983 at all. *Johnson v. City of Shelby, Miss.*, 574 U.S. 10, 11 (2014). Requiring a plaintiff to use particular words to specify the type of § 1983 suit she pursues, when she is not required to specify that she is suing under that statute, would be inconsonant with

modern pleading. The Federal Rules "do not countenance dismissal of a complaint for imperfect statement of the legal theory supporting the claim asserted." *Id*.

This Circuit has recognized as much in related contexts. Applying *Leatherman*'s reasoning, this Court discarded heightened pleading standards on the merits of § 1983 suits against individual defendants in *Doe v. Cassel*, 403 F.3d 986, 989 (8th Cir. 2005). Today, "[t]he only permissible heightened pleading requirements in civil suits are those contained in the Federal Rules of Civil Procedure or those in federal statutes enacted by Congress," *id*.—none of which impose a heightened pleading standard for § 1983 capacity any more than they do for pleading § 1983 claims more generally.

5. The Court Should Set Aside the Clear-Statement Rule

This Court has already qualified its clear-statement rule. In *Murphy*, for instance, the Court "deem[ed] the complaint amended" where the plaintiff did not "clearly assert personal capacity claims in his initial complaint," moved to amend, and the "defendants had sufficient notice they were being sued in their personal capacities." 127 F.3d at 755. *Murphy* recognized that notice represents the core concern in § 1983 cases, and that any jurisdictional issues may be cured through a simple amended complaint.

In *Wealot v. Brooks*, this Court similarly found no need to apply *Egerdahl*'s strict interpretation of capacity claims, instead remanding to the district court to facilitate an amended complaint. 865 F.3d at 1123 n.4. The Court observed,

> [A]lthough we have referenced the Eleventh Amendment's jurisdictional limit in support of our stringent pleading rule, this complaint's failure to abide by our judicially created rule does not deprive us of subject matter jurisdiction so that we are compelled to dismiss.

Id. (citation omitted). "This is especially true," the Court continued, "given only municipal actors—as opposed to state—are involved." *Id.* So too were the defendants placed on notice of the individual-capacity claims, given that they raised qualified immunity in the answer to their complaint. *Id.* The district court could therefore exercise its discretion in allowing an amended complaint. *Id.*[20]

This Court adopted its clear-statement rule in *Egerdahl* with no analysis and in misplaced reliance on language in *Nix v. Norman*. In *Wealot*, a subsequent panel has since specified that notice, rather than "magic words," represents the most important indicator of capacity pleadings, and that the Eleventh Amendment does not compel dismissal. This Court should clarify that *Nix v. Norman* does not require

[20] Judge Wollman disagreed with the panel's reasoning, concluding that the Eighth Circuit's clear-statement rule "may represent 'a lonely position' on the issue, but it is one that must be addressed to the court en banc." *Id.* at 1130 (Wollman, J., concurring).

clear statement of individual-capacity claims and that the "course of proceedings" governs instead.[21]

II. THE DISTRICT COURT ABUSED ITS DISCRETION IN DENYING THE MOTION TO AMEND

In the alternative, the Court should hold that the district court abused its discretion in denying S.A.A.'s motion to amend the complaint. S.A.A. moved to amend only eight days after Geisler asserted for the first time—18 months and three amended complaints into the lawsuit—that the complaint failed to comply with the clear-statement rule. Add.3-4; App.935-36; R.Doc.124, at 3-4. S.A.A. had good cause because she acted diligently to amend the complaint, and Geisler would not be prejudiced by the amendment.

After a district court issues a scheduling order, the order "may be modified only for good cause." Fed. R. Civ. P. 16(b). In considering good cause, this Court evaluates "the movant's diligence in attempting to meet the order's requirements." *Sherman v. Winco Fireworks, Inc.*, 532 F.3d 709, 716 (8th Cir. 2008). If the party exercised diligence, the district court may also consider "prejudice to the nonmovant resulting from modification of the scheduling order." *Id.* at 717. In *Sherman*, for instance, this Court determined that good cause did not exist where the plaintiff knew

[21] For these reasons, and those discussed *supra* Section I.A., setting aside the clear-statement rule is in accord with the stare decisis factors, including the nature of the error, the quality of the reasoning, and the workability of the rule. *See Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 268-90 (2022).

of the deficiency in its pleadings for "eight full months after it was actually aware" of the relevant omission. *Id.* So too was good cause lacking where the plaintiff delayed for "eight months" despite "kn[owing] of the claims they sought to add when they filed the original complaint." *Barstad v. Murray Cnty.*, 420 F.3d 880, 883 (8th Cir. 2005). S.A.A. took only eight days to amend the complaint and therefore acted diligently regarding the scheduling order.

This Court's prior holdings indicate that good cause to amend exists when a plaintiff discovers that a defendant misreads the capacity pleadings in a § 1983 complaint. The Court determined in *Wealot*, for example, that the district court "may, at its discretion, allow [the plaintiff] to amend her complaint to reflect the course of these proceedings." 865 F.3d at 1123 n.4. Yet the district court had set its scheduling order nearly three years prior. *See* Scheduling and Trial Order, *Wealot v. Brooks*, No. 4:14-cv-00309 (W.D. Mo. Nov. 13, 2014), ECF No. 8. The Court must have similarly found good cause in accepting the amended complaint in *Murphy* after a similar length of time. *See* 127 F.3d at 755; Scheduling Order, *Murphy v. Arkansas*, No. 4:95-cv-00028 (E.D. Ark. Feb. 9, 1995), ECF No. 16.

Geisler was not prejudiced by the lack of explicit capacity pleading in the complaint. She treated the complaint as stating individual-capacity claims since the onset of this litigation. Her answer and motion for summary judgment raised qualified immunity, App.184; R.Doc.76, at 9, and her counsel indicated that she

would not have approached the case any differently had the complaint expressly sued Geisler in her individual capacity, App.289-99; R.Doc.98, at 18-28; *see also* App.918-21; R.Doc.120, at 17-20.

Because S.A.A. showed good cause and Geisler would suffer no prejudice, the district court abused its discretion in denying her motion for leave to file an amended complaint.

CONCLUSION

This Court should reverse the decision below.

Dated: January 12, 2024

Respectfully submitted,

s/ Joseph A. Greenaway, Jr.

Andrew T. Tutt
Patrick Dorsey
Jack Hoover
ARNOLD & PORTER
KAYE SCHOLER LLP
601 Massachusetts Avenue, NW
Washington, DC 20001-3743
(202) 942-5000

Nicholas Sweeney
BRAZIL LAW GROUP
1622 W. Lake Street
Minneapolis, MN 55408
(612) 874-6109
nsweeney@djbrazil-law.com

Joseph A. Greenaway, Jr.
Lisa Cordara
ARNOLD & PORTER
KAYE SCHOLER LLP
250 West 55th Street
New York, NY 10019-9710
(212) 836-8000
joseph.greenaway@arnoldporter.com

Brooke D'Amore Bradley
ARNOLD & PORTER
KAYE SCHOLER LLP
Three Embarcadero Center, 10th Fl.
San Francisco, CA 94111-4024
(415) 471-3100

Counsel for Appellant

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), the undersigned hereby certifies that this brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B)(i).

1. Exclusive of the exempted portions of the brief, as provided in Federal Rule of Appellate Procedure 32(f), the brief contains 12,925 words.

2. This brief has been prepared in proportionally spaced typeface using Microsoft Word for Office 365 in 14-point Times New Roman font. As permitted by Federal Rule of Appellate Procedure 32(g)(1), the undersigned has relied upon the word count feature of this word processing system in preparing this certificate.

3. Pursuant to Eighth Circuit Local Rule 28A(h), undersigned counsel hereby certifies that the brief has been scanned for viruses and that the brief is virus-free.

s/ Joseph A. Greenaway, Jr.
Joseph A. Greenaway, Jr.

Counsel for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on January 12, 2024, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

s/ Joseph A. Greenaway, Jr.
Joseph A. Greenaway, Jr.

Counsel for Appellant