"Not being a State often places the District of Columbia at a disadvantage. In this case, however, it works to its benefit."[1] So began the court's opinion in *Garnett v. Zeilinger*.[2] In *Garnett*, several D.C. residents and a nonprofit organization sued the District for failure to meet strict deadlines set by the Supplemental Nutrition Assistance Program (SNAP) Act[3] for processing benefit applications.[4] Moving under 42 U.S.C. § 1983, the plaintiffs sought an injunction requiring the District to comply with the statutory deadlines.[5] If D.C. were a state, the plaintiffs "would be entitled to summary judgment if they could show that the State has fallen short of absolute compliance."[6] "But, because D.C. is a municipality," they bore the added burden of "establish[ing] that the failure resulted from a policy or practice adopted by District officials."[7] Despite extensive discovery, the plaintiffs could not prove that a policy or practice caused D.C.'s violations of the SNAP Act.[8] The court entered summary judgment for the District.[9]

Cases like *Garnett* illustrate a recurring and consequential gap in the enforcement of federal rights against municipalities. While *Monell v. Department of Social Services*[10] held that municipalities were "persons" suable under § 1983,[11] it also held that a municipality could be liable only where "a government's policy or custom" created the violation.[12] Significant scholarly attention has been devoted to the gauntlet plaintiffs must run to satisfy *Monell* in actions for damages.[13] Because *Monell*'s policy or custom requirement applies equally to claims for injunctive relief,[14] those seeking equitable remedies are likewise left out in the cold.

This Note posits that plaintiffs seeking prospective relief against municipalities needn't worry about *Monell*'s requirements because they needn't rely on § 1983 at all. Rather, they can — and should — sue directly in equity. As the Court articulated in *Armstrong v. Exceptional*

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[1] Garnett v. Zeilinger, 485 F. Supp. 3d 206, 210 (D.D.C. 2020).
[2] 485 F. Supp. 3d 206 (D.D.C. 2020).
[3] 7 U.S.C. §§ 2011–2036d.
[4] *Garnett*, 485 F. Supp. 3d at 210.
[5] *Id.*
[6] *Id.*
[7] *Id.* (citing Monell v. Dep't of Soc. Servs., 436 U.S. 658, 694 (1978)).
[8] *See id.* at 227–29.
[9] *Id.* at 232–33.
[10] 436 U.S. 658 (1978).
[11] *Id.* at 690.
[12] *Id.* at 694.
[13] *See, e.g.*, Fred Smith, *Local Sovereign Immunity*, 116 COLUM. L. REV. 409, 413–14, 416 (2016) (explaining that, functionally, "the municipal causation requirement and the individual immunities that local officers receive render specific classes of governmental defendants insusceptible to suit, even when there is a determination that a government's agent has violated constitutional rights," *id.* at 416).
[14] *See* Los Angeles County v. Humphries, 562 U.S. 29, 36–37 (2010).

Child Center, Inc.,[15] "in a proper case, relief may be given in a court of equity . . . to prevent an injurious act by a public officer."[16] Equitable relief to enforce the Federal Constitution and laws is presumptively available against federal and state officials.[17] Nothing in the history or background principles of equity requires differential treatment for municipalities.

This argument might seem obvious. But it is also theoretically underdeveloped. Only two federal courts of appeals have (tangentially) recognized the power of federal courts to enjoin municipalities absent a statutory cause of action,[18] and after *Trump v. CASA, Inc.*,[19] such specific equitable remedies must have "a historical pedigree."[20] Today, plaintiffs continue to use § 1983 as their primary cause of action against municipalities — often to limited effect.[21] Closing this gap is crucial because municipalities are closer to people's everyday lives than any other level of government in our federal system. There are around fourteen million local employees in the United States, compared to five-and-a-half million state and two million federal employees.[22] Ever-expanding local governments decide key questions of housing, education, policing, incarceration, and infrastructure,[23] making it all the more important for plaintiffs to have a means of enjoining unlawful municipal action. The question is whether they can do so even when *Monell*'s requirements are not met.

History shows they can. Part I explains the unique status of municipal defendants and the emergence of *Monell* as an exceptionally high barrier to relief. Part II outlines *CASA*'s historical test for the scope of equitable remedies and applies that test to injunctive relief against municipalities. Part III touches on the possibility that § 1983 displaced equitable relief. The Note concludes that, given over a century of courts doing as much, a federal court today can enjoin a municipal defendant without satisfying *Monell*'s strictures.

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[15] 575 U.S. 320 (2015).

[16] *Id.* at 327 (quoting Carroll v. Safford, 44 U.S. (3 How.) 441, 463 (1845)).

[17] *See id.*; *Ex parte* Young, 209 U.S. 123, 148 (1908).

[18] *See* Moore v. Urquhart, 899 F.3d 1094, 1103 (9th Cir. 2018); Green Valley Special Util. Dist. v. City of Schertz, 969 F.3d 460, 475 (5th Cir. 2020) (en banc).

[19] 145 S. Ct. 2540 (2025).

[20] *Id.* at 2554.

[21] *See* Nancy Leong, *Constitutional Accountability Through State Tort Law*, 2023 WIS. L. REV. 1707, 1708–09; Smith, *supra* note 13, at 413 ("Plaintiffs suing cities for violations of federal constitutional rights must prove that a city's policy or custom caused a constitutional violation.").

[22] Kimberly Ennis et al., *Annual Survey of Public Employment & Payroll Summary Report: 2024*, U.S. CENSUS BUREAU (Mar. 27, 2025), https://www.census.gov/library/publications/2025/econ/g25-aspep.html [https://perma.cc/Y8UD-R3NN]; *Workforce Size & Composition*, OFF. OF PERS. MGMT. (Dec. 2025), https://data.opm.gov/explore-data/analytics/workforce-size-and-composition [https://perma.cc/HQP2-KBQJ].

[23] *See, e.g.*, Smith, *supra* note 13, at 419–20 (describing local government creep in mass incarceration, the militarization of local law enforcement, and growing local mass surveillance).

I. THE PUZZLE OF MUNICIPAL DEFENDANTS

A municipality is a local political entity, such as a city, town, or county, established by state charter with "the autonomous authority to administer local affairs."[24] "[M]unicipal defendant[s]," the term used by this Note, refers to municipalities themselves, municipal agencies or governing bodies (such as police departments or school boards), and municipal officers in their official capacities, as a suit against any one of these entities is a suit against the municipality itself.[25]

The familiar rules of the road for suing state and federal government defendants do not apply to municipalities. State and federal governments are immune from suit absent waiver or abrogation of sovereign immunity.[26] But federal courts can enjoin state or federal officials who act unlawfully because their misconduct "strip[s]" them "of [their] official or representative character" under the rule of *Ex parte Young*.[27] *Young* contained two separate holdings, though the distinction is sometimes overlooked.[28] First, when a state or federal official behaves unconstitutionally, they cannot claim sovereign immunity;[29] and second, a plaintiff may enjoin that official directly and without a statutory cause of action.[30] *Young* did not make clear whether the latter was grounded in equity, federal question jurisdiction, the Constitution, or all of the above.[31] More recently, in *Armstrong*, the Supreme Court suggested that "[t]he ability to sue to enjoin unconstitutional actions by state and federal officers is the creation of courts of equity."[32] And though the Court never mentioned municipal officials, *Armstrong* did quote an 1845 decision, *Carroll v. Safford*,[33] which concerned a municipal defendant,[34] in stating more broadly that "relief may be given in a court of equity . . . to prevent an injurious act by a public officer."[35]

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[24] *Municipal Corporation*, BLACK'S LAW DICTIONARY (12th ed. 2024).

[25] Monell v. Dep't of Soc. Servs., 436 U.S. 658, 689 (1978); *see id.* at 690 n.55; Kentucky v. Graham, 473 U.S. 159, 167 n.14 (1985).

[26] *See, e.g.*, Franchise Tax Bd. v. Hyatt, 139 S. Ct. 1485, 1494–95 (2019).

[27] 209 U.S. 123, 160 (1908); *see also* Phila. Co. v. Stimson, 223 U.S. 605, 620 (1912) (extending the principle of *Young* to federal officials).

[28] *See* David L. Shapiro, Ex parte Young *and the Uses of History*, 67 N.Y.U. ANN. SURV. AM. L. 69, 77 (2011).

[29] *See Young*, 209 U.S. at 155–56.

[30] *See id.* at 144–45, 165.

[31] *See* Shapiro, *supra* note 28, at 77–78 (summarizing debate around plaintiffs' cause of action in *Young*); *cf.* Samuel L. Bray & Paul B. Miller, *Getting into Equity*, 97 NOTRE DAME L. REV. 1763, 1773–76, 1780–82, 1795 (2022) (explaining why equity does not technically furnish causes of action).

[32] Armstrong v. Exceptional Child Ctr., Inc., 575 U.S. 320, 327 (2015); *see id.* at 326–27 (citing, inter alia, *Young*, 209 U.S. at 150–51).

[33] 44 U.S. (3 How.) 441 (1845).

[34] *Id.* at 442.

[35] *Armstrong*, 575 U.S. at 327 (quoting *Carroll*, 44 U.S. at 463). Writing for the Court in *Free Enterprise Fund v. Public Company Accounting Oversight Board*, 561 U.S. 477 (2010), Chief Justice

As creatures of statute, rather than true sovereigns, municipalities have no claim to sovereign immunity.[36] This makes *Young*'s sovereign immunity holding unnecessary when suing municipalities,[37] which in turn suggests that municipalities should be easier to sue than states or the federal government. After all, sovereign immunity and causes of action are analytically distinct inquiries.[38]

But for the past few decades, plaintiffs have nearly exclusively relied upon § 1983 to enjoin unlawful municipal actions instead of the freestanding equitable remedy greenlit by *Young* and reinforced in *Armstrong*.[39] Perhaps this is because, though *Young* spoke to both the defendant's sovereign immunity and the plaintiff's cause of action, "the analysis of each question tends to merge with the analysis of the other."[40] Since the first holding is irrelevant to municipalities, the second holding has also been lost. Perhaps the Court's 1978 determination[41] that municipalities were persons suable under § 1983 made the statute a reliable way to get municipalities into court. Whatever the reason, because litigation against municipal defendants has taken place primarily under § 1983, it is governed by *Monell*'s policy or custom requirement. The result has been pervasive gaps in the enforcement of federal rights against municipalities — gaps that equity can fill.

This Part examines those gaps and what a solution might look like. It details recent history where equity, rather than § 1983, was the default, explains the impact of *Monell*, and examines subsequent circuit precedent holding that municipalities are proper defendants in equity.

A. The School Desegregation Cases

In the most famous case involving a municipality, the plaintiffs in *Brown v. Board of Education*[42] sued the Topeka Board of Education to enjoin its policy of school segregation using a then-dormant statute, 42 U.S.C. § 1983.[43] Section 1983 explicitly provides for equitable relief.[44]

Roberts dismissed the government's suggestion that the plaintiffs lacked "an implied private right of action directly under the Constitution." *Id.* at 491 n.2. The Court's equitable relief precedents proved "such a right to relief as a general matter, without regard to the particular constitutional provisions at issue." *Id.*

[36] *See* Lincoln County v. Luning, 133 U.S. 529, 530 (1890).

[37] *See* Kentucky v. Graham, 473 U.S. 159, 167 n.14 (1985); Monell v. Dep't of Soc. Servs., 436 U.S. 658, 690 n.55 (1978).

[38] *See, e.g.*, Larson v. Domestic & Foreign Com. Corp., 337 U.S. 682, 692–93 (1949).

[39] *See* sources cited *supra* note 21. Though *Armstrong* focused on state and federal officers, it didn't *exclude* municipalities from its holding that equity can enjoin public officials who violate federal law. *See Armstrong*, 575 U.S. at 326–27.

[40] Shapiro, *supra* note 28, at 77 (noting "confusion" among courts and commentators even though *Young*'s two holdings are "analytically distinct").

[41] *See Monell*, 436 U.S. at 701.

[42] 347 U.S. 483 (1954).

[43] *See* Complaint at 1, Brown v. Bd. of Educ., 98 F. Supp. 797 (D. Kan. 1951) (Civ. No. T-316).

[44] 42 U.S.C. § 1983 ("Every person" violating the Constitution and laws under color of state law "shall be liable . . . in a[] . . . suit in equity").

So it seemed an ideal cause of action for school desegregation plaintiffs, provided municipal entities were persons suable under § 1983.

Ten years after the *Brown* complaint was filed, *Monroe v. Pape*[45] held that they were not.[46] Yet school desegregation cases commanding equitable enforcement of *Brown* did not suddenly cease once § 1983 became unavailable. In *Griffin v. County School Board*,[47] the Court overturned the Fourth Circuit's reversal of a Virginia district court's injunction against county officials who closed public schools rather than desegregate.[48] Neither the Court, nor the Fourth Circuit, nor Judge Bell's dissent in the Fourth Circuit even mentioned § 1983.[49] Instead, the Court seemed assured of a federal court's power to enjoin a municipality's constitutional violation: "We have no doubt of the power of the court to give this relief . . . . It has long been established that actions against a county can be maintained in United States courts in order to vindicate federally guaranteed rights."[50] Judge Bell's dissent below pointed to the long history of federal courts enjoining municipalities.[51]

In the decade following *Griffin*, the Supreme Court became more aggressive in ensuring that district courts enjoined unconstitutional segregationist practices by local school boards.[52] Nowhere in these cases did the Court cite § 1983. Nor could it have, given *Monroe*'s holding that municipalities were not persons under § 1983.[53] And nowhere in the briefs did any school board protest that the plaintiffs lacked a cause of action in equity when § 1983 was unavailing.[54] It is difficult to resist the conclusion that this was because the law was settled. The "*existing* powers of federal courts to enforce the Equal Protection Clause" — "their historic equitable remedial powers" — were all that was needed for a federal court to enjoin unconstitutional action by municipalities,[55] even without a congressionally provided cause of action.

B. The Problems of Monell *and* Humphries

The trend shifted in 1978, as the Court held in *Monell* that municipalities were persons who could be sued under § 1983.[56] But that

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[45] 365 U.S. 167 (1961).

[46] *Id.* at 191–92.

[47] 377 U.S. 218 (1964).

[48] *Id.* at 232, 234.

[49] *See id.* (not mentioning § 1983); Griffin v. Bd. of Supervisors, 322 F.2d 332 (4th Cir. 1963) (same); *id.* at 344 (Bell, J., dissenting) (same).

[50] *Griffin*, 377 U.S. at 232–33 (citing Lincoln County v. Luning, 133 U.S. 529 (1890); Kennecott Copper Corp. v. State Tax Comm'n, 327 U.S. 573, 579 (1946)).

[51] *See Griffin*, 322 F.2d at 347–48 (Bell, J., dissenting).

[52] *See, e.g.*, Green v. Cnty. Sch. Bd., 391 U.S. 430, 442 (1968); Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 31–32 (1971); Keyes v. Sch. Dist. No. 1, 413 U.S. 189, 213–14 (1973).

[53] Monroe v. Pape, 365 U.S. 167, 191–92 (1961).

[54] *See, e.g.*, Brief for the Respondents, *Green*, 391 U.S. 430 (No. 695); Brief of Respondents, *Swann*, 402 U.S. 1 (No. 281); Brief for Respondents, *Keyes*, 413 U.S. 189 (No. 71-507).

[55] *Swann*, 402 U.S. at 17.

[56] Monell v. Dep't of Soc. Servs., 436 U.S. 658, 701 (1978).

reversal came with a qualification. Anxious about legislative history suggesting that the Forty-Second Congress did not wish to impose respondeat superior liability on municipalities,[57] the Court held "that a local government may not be sued under § 1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government's *policy or custom* . . . inflicts the injury that the government as an entity is responsible under § 1983."[58]

Subsequent cases established a burdensome framework for proving this policy or custom.[59] If plaintiffs cannot point to a written municipal policy violating the Constitution or federal laws, they must show that a final policymaker committed, ordered, ratified, or delegated a violation,[60] that a municipal custom "is so widespread as to have the force of law,"[61] or that a municipality failed to train its officers such that it exhibited "deliberate indifference" to a violation.[62]

In the decades since it was handed down, *Monell* has proven a near-fatal barrier to plaintiffs' suits.[63] As Professor Pamela S. Karlan writes, while "governments are repeat players, plaintiffs are not," such that "individual plaintiffs may be unlikely to have sufficient information to plead, let alone to prove without substantial discovery, such a de facto policy."[64] Data substantiate this claim: Analyzing 1,200 police misconduct lawsuits, Professor Joanna C. Schwartz found that "[i]t is far more difficult for plaintiffs to prove *Monell* claims against municipalities than it is for plaintiffs to defeat qualified immunity,"[65] and that plaintiffs routinely scrapped their *Monell* claims as their cases progressed.[66]

Consequentially, the Court ruled in *Los Angeles County v. Humphries*[67] that *Monell* also applies when § 1983 plaintiffs seek injunctive relief.[68] Justice Breyer approached the case as one of straightforward

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[57] *See id.* at 692 n.57.

[58] *Id.* at 694 (emphasis added).

[59] *See* Smith, *supra* note 13, at 414 ("[T]he municipal causation requirement nonetheless often inoculates local governments from accountability, including for conduct that would render them liable for violations of state law." (footnote omitted)); Richard H. Fallon, Jr., *Asking the Right Questions About Officer Immunity*, 80 FORDHAM L. REV. 479, 482 n.11 (2011) ("Under cases decided subsequent to *Monell*, the standards for establishing the liability of local governmental entities for constitutional violations committed by their officials are exceedingly difficult to satisfy.").

[60] *See* Pembaur v. City of Cincinnati, 475 U.S. 469, 480 (1986); City of St. Louis v. Praprotnik, 485 U.S. 112, 127 (1988) (plurality opinion).

[61] Bd. of the Cnty. Comm'rs v. Brown, 520 U.S. 397, 404 (1997).

[62] City of Canton v. Harris, 489 U.S. 378, 389 (1989). "[F]ailure to train claims are very difficult to bring, and even more difficult to win," due to the tight causation requirement and expense of discovering "the sheer volume of factual evidence" needed to make a showing. Barbara E. Armacost, *Organizational Culture and Police Misconduct*, 72 GEO. WASH. L. REV. 453, 472 (2004).

[63] *See, e.g.*, Fallon, *supra* note 59, at 482 n.11.

[64] Pamela S. Karlan, Lecture, *The Paradoxical Structure of Constitutional Litigation*, 75 FORDHAM L. REV. 1913, 1920–21 (2007).

[65] Joanna C. Schwartz, *Municipal Immunity*, 109 VA. L. REV. 1181, 1187 (2023).

[66] *Id.* at 1211.

[67] 562 U.S. 29 (2010).

[68] *Id.* at 36–37 (citing Monell v. Dep't of Soc. Servs., 436 U.S. 658, 690 (1978)).

statutory interpretation.[69] Brushing aside respondents' warning that such an interpretation would "leave some set of ongoing constitutional violations beyond redress," he maintained that "respondents ha[d] not presented . . . any actual or hypothetical example that provides serious cause for concern."[70]

While Justice Breyer may have been right about § 1983's text, he was wrong about *Humphries*'s effect. For example, in *Cain v. City of New Orleans*,[71] former criminal defendants sought to enjoin an allegedly unconstitutional system of jailing indigents and enforcing preset bonds.[72] Though the court held that the plaintiffs had plausibly alleged a constitutional violation, the need to prove deliberate indifference by the city doomed their claims.[73] The plaintiffs could seek equitable relief only against the sheriff, who had acted pursuant to *state* law when he collected three percent of every bond and distributed the proceeds to the judges hearing plaintiffs' cases.[74] *Cain* is not alone in illustrating how cases fall through the cracks when municipal defendants are held to *Monell*'s liability standard.[75]

Taken to its logical conclusion, *Humphries* would allow the following situation to go unremedied under § 1983: A city police officer has a practice of giving speeding tickets to Black motorists and warnings to all other motorists. The City has a formal antidiscrimination policy and regularly trains its officers on racial sensitivity. If the officer were a state official, Black motorists could enjoin his unconstitutional actions in equity, notwithstanding potential justiciability issues.[76] But because the officer is a municipal official acting in defiance of the City's stated policy, he is not suable under § 1983.

This puts plaintiffs in a difficult position, for § 1983 suits against municipal defendants can trigger *Monell*'s policy or custom requirement no matter how they're pled. Several courts have held that government actors must be sued in their official capacity to warrant injunctive relief,[77] but official-capacity actions against municipal officers are actions

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69 *See id.* at 37.

70 *Id.* at 38.

71 No. 15-4479, 2017 WL 467685 (E.D. La. Feb. 3, 2017).

72 *Id.* at *1–2, *4.

73 *Id.* at *7, *9.

74 *Id.* at *16–18.

75 *See, e.g.*, Snyder v. King, 745 F.3d 242, 246–50 (7th Cir. 2014) (affirming dismissal of challenge to voter registration cancellation due to absence of municipal policy or custom); Collura v. City of Philadelphia, 421 F. App'x 256, 258 (3d Cir. 2011) (per curiam) (affirming dismissal of First Amendment claim for retaliatory library suspension); Hooper v. City of Seattle, No. C17-77, 2017 WL 4410029, at *8–11 (W.D. Wash. Oct. 4, 2017) (denying preliminary injunction barring dismantling of homeless encampments).

76 *See* City of Los Angeles v. Lyons, 461 U.S. 95, 112–13 (1983).

77 *See, e.g.*, Brown v. Montoya, 662 F.3d 1152, 1161 n.5 (10th Cir. 2011); Greenawalt v. Ind. Dep't of Corr., 397 F.3d 587, 589 (7th Cir. 2005); Hatfill v. Gonzales, 519 F. Supp. 2d 13, 26 (D.D.C.

against municipalities.[78] Getting out of the § 1983 minefield may be plaintiffs' best path forward. The question is whether an alternative path exists.

C. *Equitable Alternatives*

There is clearly a right to "injunctive relief against state [and federal] officers" who violate the federal Constitution and laws.[79] Whether that is true for *municipal* defendants has not been the subject of great scholarly or judicial attention.

Among the federal courts of appeals, the Fifth and Ninth Circuits have come closest to recognizing equitable jurisdiction over unlawful municipal conduct, separate and apart from any statutory cause of action.[80] In *Green Valley Special Utility District v. City of Schertz*,[81] the Fifth Circuit endorsed "a cause of action against [municipal officials] *at equity*, regardless of whether" the plaintiff could "invoke § 1983."[82] The court recognized that under prevailing circuit precedent — functionally abrogated by *Monell* but never formally repudiated[83] — municipalities and municipal officials were "not proper § 1983 defendants."[84] No matter; *Ex parte Young* and *Armstrong* independently authorized injunctive relief.[85] Likewise, in *Moore v. Urquhart*,[86] the Ninth Circuit held that the plaintiffs, who sought declaratory and injunctive relief against a local sheriff, "d[id] not need a statutory cause of action."[87] Instead, they could "rely on the judge-made cause of action recognized in *Ex parte Young*," which allowed "courts of equity to enjoin enforcement of state statutes that violate the Constitution or conflict with other federal laws."[88] Because injunctive claims under *Young* could "be brought against both state and county officials," the court thought it "unnecessary . . . to resolve the parties' dispute over whether the Sheriff act[ed] on behalf of" the county or the state.[89]

2007). *But see* Redondo-Borges v. U.S. Dep't of Hous. & Urb. Dev., 421 F.3d 1, 7 (1st Cir. 2005) (authorizing § 1983 claim for injunctive relief against individual-capacity defendants); MCI Telecomm. Corp. v. Bell Atl.-Pa., 271 F.3d 491, 506 (3d Cir. 2001) (similar).

[78] *See, e.g.*, McMillian v. Monroe County, 520 U.S. 781, 785 n.2 (1997).

[79] Armstrong v. Exceptional Child Ctr., Inc., 575 U.S. 320, 326 (2015); *see also* Free Enter. Fund v. Pub. Co. Acct. Oversight Bd., 561 U.S. 477, 491 n.2 (2010) (reaching a similar conclusion).

[80] Without explicitly deciding the issue, the D.C. Circuit has "assume[d] the existence of . . . a common-law action," which "exists as 'the creation of courts of equity,'" capable of enjoining unconstitutional conduct. D.C. Ass'n of Chartered Pub. Schs. v. District of Columbia, 930 F.3d 487, 493 (D.C. Cir. 2019) (quoting *Armstrong*, 575 U.S. at 327).

[81] 969 F.3d 460 (5th Cir. 2020) (en banc).

[82] *Id.* at 475.

[83] *See id.* at 474 n.26.

[84] *Id.* at 475.

[85] *See id.* n.27.

[86] 899 F.3d 1094 (9th Cir. 2018).

[87] *Id.* at 1103.

[88] *Id.*

[89] *Id.*

In both decisions, the court's analysis was thin.[90] And subsequent briefing over the *Moore* defendant's unsuccessful petition for certiorari casts doubt on whether the plaintiffs truly sought — and whether the Ninth Circuit in fact embraced — applying *Young* to municipalities.[91] Regardless, *CASA* made clear that modern equitable relief must have an adequate "historical pedigree,"[92] potentially casting doubt on whatever remedy was recognized in *Moore* and *Green Valley*. That history is the subject of Part II.

II. RECOVERING THE HISTORY OF INJUNCTIONS AGAINST MUNICIPALITIES

In *CASA*, the Supreme Court held that universal injunctions exceeded the scope of equitable authority conferred upon federal courts by the 1789 Judiciary Act.[93] Relying on *Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc.*,[94] the Court confirmed that the Act authorized "only those sorts of equitable remedies 'traditionally accorded by courts of equity' at our country's inception," or those which are "'analogous' to the relief issued 'by the High Court of Chancery in England'" in 1789.[95] Accordingly, an equitable remedy today "need not have an exact historical match, but . . . must have a founding-era antecedent."[96]

The Roberts Court's turn to this sort of equitable originalism echoes its transformation of other fields of law.[97] Its precise method is also rather unsettled. At first blush, *CASA* announced a straightforward, timebound inquiry: Courts must evaluate equitable practice in 1789.[98] Yet that is not what *CASA* did. Professors Jack Goldsmith and Mila Sohoni have each observed that despite identifying 1789 as its lodestar, the Court "examined developments into the twentieth century"[99] and "did not limit itself to the landscape of equity" in 1789;[100] "it barely

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90 *See Green Valley*, 969 F.3d at 475 (one sentence); *Moore*, 899 F.3d at 1103 (half a sentence).

91 Responding to the contention that *Moore* had invented "a new cause of action for prospective relief under *Ex parte Young* that bypasses *Monell*[and] represents a blatant, end-run around *Humphries*," Petition for Writ of Certiorari at 15, Johanknecht v. Moore, 139 S. Ct. 2615 (2019) (mem.) (No. 18-1056), the plaintiffs insisted they "d[id] not seek relief against a municipality" but instead "challenge[d] the constitutionality of a *state* law that the Sheriff enforces," Respondents' Brief in Opposition to Petition for Writ of Certiorari at 8, *Johanknecht*, 139 S. Ct. 2615 (No. 18-1056).

92 Trump v. CASA, Inc., 145 S. Ct. 2540, 2554 (2025).

93 Ch. 20, 1 Stat. 73; *CASA*, 145 S. Ct. at 2254. Universal injunctions may still issue as "necessary to provide complete relief to each plaintiff with standing to sue." *Id.* at 2562–63.

94 527 U.S. 308 (1999).

95 *CASA*, 145 S. Ct. at 2551 (quoting *Grupo*, 527 U.S. at 318–19).

96 *Id.* at 2554.

97 *See* Jack Goldsmith, *The Supreme Court, 2024 Term — Essay: Interim Orders, the Presidency, and Judicial Supremacy*, 139 HARV. L. REV. 86, 119 n.197 (2025).

98 *See CASA*, 145 S. Ct. at 2551.

99 Goldsmith, *supra* note 97, at 115 n.176.

100 Mila Sohoni, Essay, *In* CASA *You Missed It*, 78 STAN. L. REV. (forthcoming 2026) (manuscript at 9), https://ssrn.com/abstract=5799882 [https://perma.cc/XMD7-NMC7].

looked at the state of American equity as of 1789 at all."[101] To illustrate the course charted by courts of equity at the Founding, for instance, the Court cited a case from 1897.[102] So while a court's analysis should begin in 1789, *CASA* does not foreclose, and may even encourage, considering subsequent developments in equitable practice.[103]

Noting another methodological wrinkle, Goldsmith argues that "[o]n the Court's logic that jurisdictional statutes authorize equitable remedies, it should have looked to the state of remedies beginning in 1875," not the Founding.[104] Section 11 of the Judiciary Act of 1789 gave the federal courts jurisdiction over "suits . . . in equity" where the United States was a party, a noncitizen was a party, or the parties were diverse;[105] it did not create general federal question jurisdiction. Congress did not enact the modern federal question jurisdiction statute until 1875.[106] The *CASA* Court's choice of starting point did not ultimately make a difference, since it concluded that "universal injunctions were not a feature of federal-court litigation until sometime in the 20th century."[107] Yet treating 1875 as the "baseline could make a difference in future federal question cases"[108] — including, as this Part shows, when it comes to enjoining municipalities.

There is special reason to pay attention to postbellum practice for suits against municipal defendants: The Fourteenth Amendment was ratified in 1868.[109] It is that amendment that today makes possible a broad range of constitutional challenges against municipal action, and that binds states and their subdivisions to the Bill of Rights.[110] Thus, in the Second Amendment context, the Court has explicitly "acknowledge[d]" the "ongoing scholarly debate on whether courts should primarily rely on the prevailing understanding of an individual right when the Fourteenth Amendment was ratified in 1868."[111]

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[101] *Id.* (manuscript at 9–10).

[102] *CASA*, 145 S. Ct. at 2551–52 (citing Scott v. Donald, 165 U.S. 107, 109 (1897)).

[103] *See also, e.g.*, Gordon v. Washington, 295 U.S. 30, 36 (1935) (explaining that section 11's reference to "'suits in equity' has been understood to refer to suits in which relief is sought according to the principles applied by the English court of chancery before 1789, *as they have been developed in the federal courts*" (emphasis added)).

[104] Goldsmith, *supra* note 97, at 116.

[105] Judiciary Act of 1789, ch. 20, § 11, 1 Stat. 73, 78.

[106] *See* Act of Mar. 3, 1875, ch. 137, § 1, 18 Stat. 470, 470.

[107] *CASA*, 145 S. Ct. at 2553; *see* Goldsmith, *supra* note 97, at 116 n.183.

[108] Jack Goldsmith, *A Legal Mistake at the Heart of Trump v. CASA?*, AM. ENTER. INST. (July 11, 2025), https://www.aei.org/op-eds/a-legal-mistake-at-the-heart-of-trump-v-casa [https://perma.cc/UQY2-9EZX].

[109] *See* James E. Pfander & Samy Abdelsalam, *Pulp Fiction? A Reappraisal of* Ex parte Young, 140 HARV. L. REV. (forthcoming 2027) (manuscript at 54), https://ssrn.com/abstract=5740783 [https://perma.cc/8HHQ-AQSP], (advocating analysis of postbellum federal practice to "align the enforcement of the Fourteenth Amendment with the practice of federal courts of equity at the time that Amendment was drafted and ratified").

[110] *See* N.Y. State Rifle & Pistol Ass'n v. Bruen, 142 S. Ct. 2111, 2137 (2022).

[111] *Id.* at 2138; *see also* United States v. Rahimi, 144 S. Ct. 1889, 1898 n.1 (2024) (similar).

Postbellum equity practice may also bear on a modern court's equitable authority.

Accordingly, this Note surveys the early, mid-, and late nineteenth-century historical record, ending toward the beginning of the twentieth century. In brief, at the Founding and for many years thereafter, federal courts routinely enjoined municipal entities without taking issue with their status as municipalities. This history confirms what logically follows from *Ex parte Young*: Federal courts have long enjoined state and federal actors from violating federal law and the Constitution without requiring a statutory cause of action, much less imposing a stringent "policy or custom" requirement. The same should be true for suits against municipalities.

A. Founding-Era History

Municipalities in the early republic were principally modeled after the English municipal corporations of the seventeenth and eighteenth centuries.[112] Municipalities created by charter were "granted the rights and privileges of a corporation . . . and [were] of capacity . . . to sue and be sued; and to have a common seal."[113] Early cases recognized the rights of corporations to sue and be sued in federal court, though for purposes of diversity they did so through their members' citizenship, rather than through their own.[114] Because of this wrinkle, the fact that no Bill of Rights provision was formally incorporated until 1897,[115] and the fact that the precursor to the modern federal question jurisdiction statute was passed only in 1875,[116] it is reasonable to attribute the paucity of Founding-era cases involving municipalities to a lack of subject matter jurisdiction, rather than to deficiencies in the equitable remedial authority of the courts.

And yet, in 1815, the Supreme Court affirmed an injunction prohibiting municipal officials from claiming title to private land[117] under "the spirit and the letter of the constitution of the United States."[118] The facts of *Terrett v. Taylor*[119] are complex, and Justice Story's opinion is

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[112] 1 EUGENE MCQUILLIN, THE LAW OF MUNICIPAL CORPORATIONS § 1:8 (3d ed.), Westlaw (database updated June 2025).

[113] *Id.* § 1:18.

[114] *See* Adam Winkler, Bank of the United States v. Deveaux *and the Birth of Constitutional Rights for Corporations*, 43 J. SUP. CT. HIST. 237, 252–53 (2018). By the mid-nineteenth century, corporations, including municipal corporations, were considered citizens for diversity purposes. *See* Louisville, Cincinnati & Charleston R.R. Co. v. Letson, 43 U.S. (2 How.) 497, 558 (1844); Cowles v. Mercer County, 74 U.S. (7 Wall.) 118, 121 (1869).

[115] Chi., Burlington & Quincy R.R. Co. v. Chicago, 166 U.S. 226, 241 (1897) (incorporating the Takings Clause).

[116] Act of Mar. 3, 1875, ch. 137, § 1, 18 Stat. 470, 470.

[117] Terrett v. Taylor, 13 U.S. (9 Cranch) 43, 43, 55 (1815).

[118] *Id.* at 52.

[119] 13 U.S. (9 Cranch) 43 (1815).

not a model of clarity.[120] Simplifying somewhat, the case revolved around a 516-acre parcel of land in present-day Alexandria, Virginia, then a part of the District of Columbia.[121] The parcel was among the Episcopal Church's former "glebe lands," which belonged, "by law, to the minister of the church."[122] In 1798, the Virginia legislature had passed a statute disestablishing religion beyond doubt, and three years later, it asserted a right to and ordered the sale of all vacant glebe lands.[123] County officials known as "overseers of the poor" were responsible for enforcing the law and selling the land.[124]

Members of the Episcopal Church of Alexandria filed a bill in federal chancery court in the District of Columbia to quiet title and enjoin the overseers.[125] The Supreme Court ruled for the plaintiffs, writing that a legislature could not transfer property from a private corporation to the state under "the principles of natural justice, . . . the fundamental laws of every free government, [and] *the spirit and the letter of the constitution of the United States*."[126] Justice Story did not specify exactly which constitutional provision was at issue, though Professor G. Edward White suggests it was the Contract Clause of Article I, Section 10.[127] Ultimately, the Court held "that the Plaintiffs are of ability to maintain the present bill" and "that the overseers of the poor of the parish of Fairfax have no just, legal, or equitable title to the said land, and ought to be perpetually enjoined from claiming the same."[128]

The *Terrett* Court never once questioned whether a federal court had the authority to enjoin municipal officers from acting unconstitutionally. Justice Story did not even raise this issue in *Terrett*, nor in the follow-on case of *Town of Pawlet v. Clark*.[129]

In subsequent years, municipal injunction cases continued to pop up in the District due to federal courts having original jurisdiction over nearly all D.C. civil and criminal matters.[130] In *Goszler v. Corporation of Georgetown*,[131] for example, the circuit court enjoined Georgetown from leveling the street outside the plaintiff's house.[132] Though the court eventually changed its mind and the Supreme Court affirmed,

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[120] For an excellent analysis of *Terrett*, see Michael W. McConnell, *The Supreme Court's Earliest Church-State Cases: Windows on Religious-Cultural-Political Conflict in the Early Republic*, 37 TULSA L. REV. 7, 8–20 (2001).

[121] *See Terrett*, 13 U.S. (9 Cranch) at 43.

[122] McConnell, *supra* note 120, at 9.

[123] *See id.* at 12–13.

[124] *Id.* at 8; *accord id.* at 13.

[125] *Terrett*, 13 U.S. (9 Cranch) at 43–45.

[126] *Id.* at 52 (emphasis added).

[127] *See* G. EDWARD WHITE, THE MARSHALL COURT AND CULTURAL CHANGE 1815–1835, at 610 (Oxford Univ. Press abr. ed. 1991) (1988); U.S. CONST. art. I, § 10, cl. 1.

[128] *Terrett*, 13 U.S. (9 Cranch) at 55.

[129] 13 U.S. (9 Cranch) 292 (1815).

[130] Act of Feb. 27, 1801, ch. 15, § 5, 2 Stat. 103, 106.

[131] 19 U.S. (6 Wheat.) 593 (1821).

[132] *Id.* at 593–94.

neither court expressed any doubt over the power of a federal court to enjoin a municipality absent a statutory cause of action.[133] Nor did the Supreme Court raise that question in *Corporation of Washington v. Pratt*,[134] where it upheld a perpetual injunction prohibiting the District from conveying the plaintiff's property for taxes.[135] In *CASA*'s terms, injunctions against municipalities were "'traditionally accorded by courts of equity' at our country's inception."[136]

B. The Mid-Century

In the mid-nineteenth century, federal courts continued to issue injunctions against municipal defendants without a statutory cause of action. Injunctive relief was governed by familiar equitable principles, such as the prevention of "a great and perhaps irreparable injury" as well as "a multiplicity of prosecutions and suits which must arise if the parties are left to litigate at law."[137] For instance, upon deeming a municipal ordinance unlawfully monopolistic,[138] the federal circuit court for the District of Columbia "restrain[ed] the corporation from enforcing the penalties" of a by-law that was "clearly illegal and void at common law."[139] Another circuit court enjoined an unlawful municipal ordinance set by the city of Portland[140] in order to "prevent[] . . . a multiplicity of suits."[141] And, when a plaintiff sought to compel St. Clair County, Michigan, to pay its assets toward judgments obtained against it, yet another circuit court granted the relief requested "by the ordinary exercise of [its] chancery powers."[142]

The Supreme Court was no different. Recall that when *Armstrong* recognized "a long history of judicial review of illegal executive action,"[143] it invoked an 1845 Court decision by the name of *Carroll v. Safford*.[144] *Carroll* grew out of a suit to enjoin the treasurer of Genesee County, Michigan, from conveying certain tracts of land.[145] The

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[133] *See id.* at 594, 598.

[134] 21 U.S. (8 Wheat.) 681 (1823).

[135] *See id.* at 682, 690.

[136] Trump v. CASA, Inc., 145 S. Ct. 2540, 2551 (2025) (quoting Grupo Mexicano de Desarrollo, S.A. v. All. Bond Fund, Inc., 527 U.S. 308, 319 (1999)).

[137] Lambell v. Corporation of Washington, 14 F. Cas. 1043, 1044–45 (C.C.D.D.C. 1841) (No. 8,025).

[138] *Id.* (by-law granted a monopolistic contract to a fisherman to sell fish out of his wharf and "prohibit[ed] the sale of fish out of any vessel at any other site," *id.* at 1044).

[139] *Id.* at 1044.

[140] Coulson v. Portland, 6 F. Cas. 629, 635, 637 (C.C.D. Or. 1868) (No. 3,275).

[141] *Id.* at 635.

[142] Lyell v. St. Clair County, 15 F. Cas. 1137, 1138 (C.C.D. Mich. 1845) (No. 8,621); *accord id.* at 1137; *see also Coulson*, 6 F. Cas. at 634 ("[C]ourts have gone great lengths in enjoining the interposition and collection of assessments and taxes upon real property, by municipal corporations for local purposes.").

[143] Armstrong v. Exceptional Child Ctr., Inc., 575 U.S. 320, 327 (2015).

[144] 44 U.S. (3 How.) 441 (1845); *see Armstrong*, 575 U.S. at 327.

[145] 44 U.S. (3 How.) at 442.

Supreme Court took up four questions certified from the court below, the last of which asked "[w]hether the remedy by bill in equity, and the relief sought, [were] proper."[146] *Carroll* held they were. All nine Justices "entertain[ed] no doubt, that, in a proper case, relief may be given in a court of equity": "to prevent a cloud from being cast on the complainant's title, or to remove such cloud; to prevent multiplicity of suits, or to *prevent an injurious act by a public officer*, for which the law might give no adequate redress."[147] Almost two centuries later, the *Armstrong* Court resurfaced this line from *Carroll*[148] in recognizing a court's freestanding "ability . . . to enjoin unconstitutional actions by state and federal officers."[149] While *Armstrong* spoke only of state and federal defendants, *Carroll* was a suit *against a municipality*.

Though *Carroll* did not discuss the Court's equitable authority at much length, in the years thereafter, the Court affirmed injunctions against municipal defendants with increasing regularity. In *Town of East Hartford v. Hartford Bridge Co.*,[150] the Supreme Court upheld an injunction restraining the town from operating a ferry "to the special injury of [a] bridge company."[151] With Connecticut having repealed its grant of ferry rights to East Hartford, the town's attempt to continue running the ferry was "done . . . without legal authority, and should therefore be restrained by injunction."[152] Courts of equity could also intervene to protect shareholders suing on behalf of a company over threatened injury by municipal entities.[153] In *Dodge v. Woolsey*,[154] the Supreme Court affirmed an injunction barring the Cuyahoga County Treasurer from levying taxes on a Cleveland bank in violation of the Contracts Clause.[155] "It is now no longer doubted," the *Dodge* Court observed, "either in England or the United States, that courts of equity, in both, have a jurisdiction . . . to apply preventive remedies by injunction" so as to avert "a violation of charters, or . . . misapplication of [corporations'] capitals or profits."[156]

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[146] *Id.* at 443.
[147] *Id.* at 463 (emphasis added).
[148] *Armstrong*, 575 U.S. at 327 (quoting *Carroll*, 44 U.S. (3 How.) at 463).
[149] *Id.*
[150] 51 U.S. (10 How.) 511 (1851).
[151] *Id.* at 540.
[152] *Id.*
[153] *See generally* DEBORAH A. DEMOTT, SHAREHOLDER DERIVATIVE ACTIONS: LAW AND PRACTICE § 1:4 (2025), Westlaw (database updated Oct. 2025) (describing "use of the derivative action as a vehicle to challenge the constitutionality of federal and state legislation").
[154] 59 U.S. (18 How.) 331 (1856).
[155] *Id.* at 339, 358, 361.
[156] *Id.* at 341.

C. Postbellum

The Supreme Court's endorsement of enjoining municipal defendants continued apace in the 1870s,[157] a period that dovetailed with Congress's grant of federal question jurisdiction[158] and the broader shift from legal to equitable remedies against government action.[159] Where the Court denied injunctive relief, it did so because the case did not fall under a recognized head of equitable jurisdiction; the Court did not treat municipalities differently on account of their status as municipalities. For instance, *Dows v. City of Chicago*[160] and *Hannewinkle v. Georgetown*[161] made clear that a court would enjoin municipal tax collection only if enforcing the tax would produce a multiplicity of suits, cause irreparable injury, or cloud title, or if the plaintiff lacked an adequate remedy at law.[162] Simply put, there had to be "some cause presenting a case of equity jurisdiction."[163] Similarly, while it would not be enough to allege "the mere illegality of [a] tax . . . , nor its injustice nor irregularity,"[164] the Court recognized that it might rule differently given proof of fraud or a "violation of the constitution, either in the statute or in its administration."[165]

The chance for the Court to do so came in the October 1879 Term, when it twice upheld injunctions against unlawful municipal action. In *Cummings v. National Bank*,[166] eight Justices agreed that — even "[i]ndependently" of an Ohio statute specifically authorizing injunctive

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[157] *Cf.* CONG. GLOBE, 42d Cong., 1st Sess. 777 (1871) (remarks of Sen. Sherman) ("I ask my friend from Kentucky where is the authority in the Constitution of the United States for any municipal corporation or any other kind of a corporation to sue or be sued in the courts of the United States, and yet it is done every day?").

[158] *See* Henry Paul Monaghan, *A Cause of Action, Anyone?: Federal Equity and the Preemption of State Law*, 91 NOTRE DAME L. REV. 1807, 1825 n.122 (2016) ("When Congress conferred general federal-question jurisdiction in 1875, the inclusion of general equity authority resulted in a flood of litigation." (citation omitted)); James E. Pfander & Jacob P. Wentzel, *The Common Law Origins of* Ex parte Young, 72 STAN. L. REV. 1269, 1330 (2020) (similar).

[159] *See* Pfander & Wentzel, *supra* note 158, at 1276, 1330 (recounting this development with respect to "unlawful government action," *id.* at 1330, without explicitly distinguishing municipal defendants).

[160] 78 U.S. (11 Wall.) 108 (1871).

[161] 82 U.S. (15 Wall.) 547 (1873).

[162] *Dows*, 78 U.S. (11 Wall.) at 110; *Hannewinkle*, 82 U.S. (15 Wall.) at 548 (stating that, for an injunction "to restrain the collection of a tax, . . . [t]here must be an allegation . . . that there is apprehension of multiplicity of suits, or some cause presenting a case of equity jurisdiction"); *see also* Humphrey v. Pegues, 83 U.S. (16 Wall.) 244, 246, 249 (1873) (affirming lower court injunction against "State officers of counties in South Carolina," *id*. at 246, restraining unlawful tax collection).

[163] *Hannewinkle*, 82 U.S. (15 Wall.) at 548; *see also* Ewing v. City of St. Louis, 72 U.S. (5 Wall.) 413, 418 (1867) (holding that equitable relief would issue against "inferior boards or tribunals of special jurisdiction" only when "necessary to prevent a multiplicity of suits or irreparable injury").

[164] State Railroad Tax Cases, 92 U.S. 575, 613 (1876).

[165] *Id.* at 615; *see also* Rees v. City of Watertown, 86 U.S. (19 Wall.) 107, 124–25 (1874) (declining to grant injunctive relief but reasoning that had the plaintiff "been unreasonably obstructed in the pursuit of his legal remedies, [the Court] should be quite willing to give him the aid requested," *id.* at 125).

[166] 101 U.S. 153 (1880).

relief — "when a rule or system of valuation is adopted . . . to operate unequally and to violate a fundamental principle of the Constitution," and "is applied not solely to one individual, but to a large class of individuals or corporations, . . . equity may properly interfere to restrain the operation of this unconstitutional exercise of power."[167] Likewise, in *Crampton v. Zabriskie*,[168] the Court declared there to be "no serious question" that resident taxpayers could "invoke the interposition of a court of equity to prevent an illegal disposition of the moneys of the county . . . [t]he right ha[ving] been recognized by the State courts in numerous cases."[169] Given "the nature of the powers exercised by municipal corporations, the great danger of their abuse and the necessity of prompt action to prevent irremediable injuries," the *Crampton* Court thought it "eminently proper for courts of equity to interfere" to guard against municipal officers' attempts, "in excess of their powers, to create burdens upon property-holders."[170]

Four years later, *Transportation Co. v. Parkersburg*[171] recognized that county officials could be sued to enjoin a municipal ordinance under the Constitution's Tonnage Clause.[172] Though the Court ultimately upheld the lower court's denial of an injunction, it did so because it thought the ordinance constitutional;[173] the Court never questioned its authority to command equitable relief.[174] By 1885, in *Allen v. Baltimore & Ohio Railroad Co.*,[175] the Court could describe *Parkersburg* as establishing the principle that "a bill in equity would lie which seeks to have a wharfage ordinance declared void, and for an injunction to restrain further collections under it."[176] In turn, the *Allen* Court had little difficulty sustaining an injunction against the treasurer of Augusta County[177] because the case lay "within the terms of the rule as declared in *Cummings*."[178] Invoking *Parkersburg* and *Dodge*,[179] the Court regarded both its equitable authority "and the propriety of its exercise" as "indisputable": Where individual constitutional rights were "in jeopardy . . . and no adequate remedy for their enforcement [was] provided by the forms and proceedings purely legal, the same necessity invoke[d] and

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[167] *Id.* at 157–58.
[168] 101 U.S. 601 (1880).
[169] *Id.* at 609.
[170] *Id.*; *see also* Litchfield v. County of Webster, 101 U.S. 773, 779 (1880) ("[W]e think equity may relieve against that part of the statutory interest which is in the nature of a penalty.").
[171] 107 U.S. 691 (1883).
[172] *See id.* at 693–95.
[173] *Id.* at 698.
[174] *See id.* at 695.
[175] 114 U.S. 311 (1885).
[176] *Id.* at 316.
[177] *Id.* at 311, 314.
[178] *Id.* at 314.
[179] *See id.* at 314, 316.

justifie[d] . . . that jurisdiction in equity vested by the Constitution of the United States."[180]

Allen also demonstrates that federal courts of equity have historically treated municipal and state defendants symmetrically. The *Allen* Court located its holding "fully within the principle firmly established in . . . *Osborn* [*v. Bank of the United States*[181]],"[182] the landmark 1824 opinion by Chief Justice Marshall enjoining state officials from taxing a federal bank.[183] Subsequent Supreme Court decisions drew on both *Allen* and *Osborn* in explaining that equitable remedies could be deployed to prevent a state officer from "violat[ing] and invad[ing] the personal and property rights of the plaintiffs," upon proof of both irreparable injury and the lack of an adequate remedy at law.[184] And in 1908, *Osborn* proved key to the Court's reasoning in *Ex parte Young*, where Justice Peckham explained that this sort of equitable jurisdiction had "been exercised by Federal courts from the time of *Osborn*."[185] Nowhere in this line of cases did the Court distinguish between municipal and state defendants with respect to the availability of equitable relief.[186] When the Ninth Circuit held in *Moore* that "[a]ctions under *Ex parte Young* can be brought against both state and county officials,"[187] therefore, its statement was historically accurate.

Contemporary treatise writers agreed that courts of equity could enjoin municipalities.[188] In 1872, Judge John Dillon explained that, "[g]enerally speaking, equity will interfere in favor of, or against, municipal corporations, on the same principles by which it is guided in other cases."[189] The next year, James High wrote that "[t]he jurisdiction of courts of equity to restrain the proceedings of municipal corporations, . . . where such proceedings encroach upon private rights and are

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180 *Id.* at 316–17.

181 22 U.S. (9 Wheat.) 738 (1824).

182 *Allen*, 114 U.S. at 314.

183 22 U.S. (9 Wheat.) at 842.

184 Hagood v. Southern, 117 U.S. 52, 69–71 (1886) (citing, inter alia, *Osborn*, 22 U.S. (9 Wheat.) 738, and *Allen*, 114 U.S. 311).

185 *Ex parte* Young, 209 U.S. 123, 167 (1908); *see also* Pfander & Wentzel, *supra* note 158, at 1283–84 (describing *Young* as "[b]uilding on a principle first embodied in *Osborn*," *id.* at 1283); Shapiro, *supra* note 28, at 73 (similar).

186 In *In re Ayers*, 123 U.S. 443 (1887), the Supreme Court reviewed a decision where the court below had seemingly lumped together "the treasurer and Commonwealth's attorney of each county, city, and town in the State of Virginia" along with the auditor and attorney general of that state. *Id.* at 450 (statement of the case). The Court reversed the lower court's injunction because it impermissibly required specific performance by the state, *see id.* at 502, but never questioned the propriety of treating state and county officials interchangeably. Two decades later, *Ayers* would prove a key part of the Court's reasoning in *Young*. *See* 209 U.S. at 151–53.

187 Moore v. Urquhart, 899 F.3d 1094, 1103 (9th Cir. 2018).

188 *See* Note, *Injunctive Relief Against Municipalities Under Section 1983*, 119 U. PA. L. REV. 389, 398 (1970) (collecting treatises).

189 JOHN F. DILLON, TREATISE ON THE LAW OF MUNICIPAL CORPORATIONS § 728, at 678 (Chicago, James Cockroft & Co. 1872).

productive of irreparable injury, may be regarded as well established."[190] And Professor John Norton Pomeroy observed that courts could enjoin municipal taxation based on the inadequacy of legal remedies as well as "the inherent jurisdiction of equity to interfere for the prevention of a multiplicity of suits"[191] — in other words, the usual heads of equitable jurisdiction. As Judge Dillon explained, that the defendant was a municipality in fact warranted "a relaxation, rather than a strict application," of equity's requirement of no "plain and full remedy at law,"[192] for "these corporations hold their powers in trust for the public benefit, and . . . the remedy by injunction or by bill in equity is often more efficacious than any other to restrain and correct municipal abuses."[193] It is no wonder that, by 1890, the Supreme Court could observe that its "records . . . for the last thirty years [were] full of suits against counties."[194]

At the turn of the century, the Court continued to uphold injunctions against municipalities. For example, in the 1898 case of *Norwood v. Baker*,[195] the Court affirmed an injunction restraining the application of a municipal ordinance to Baker's property.[196] Quoting *Cummings*'s endorsement of equity's ability to "interfere to restrain the operation of [an] unconstitutional exercise of power,"[197] the Court characterized the municipal assessment as one "in which the entire assessment is illegal," such that Baker did not need to first pay the validly owed portion before suing on the rest.[198] By 1914, the injunction had become "generally recognized and used as an appropriate remedy to be invoked . . . against the municipality for the protection of public and private rights, when irremediable loss or damage [was] menaced."[199]

The *CASA* Court held that universal injunctions exceeded a federal court's equitable authority because they "were not a feature of federal-court litigation until sometime in the 20th century."[200] History tells a

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[190] JAMES L. HIGH, A TREATISE ON THE LAW OF INJUNCTIONS, AS ADMINISTERED IN THE COURTS OF THE UNITED STATES AND ENGLAND § 783, at 463 (Chicago, Callaghan & Co. 1873); *see also id.* § 793, at 469 ("[C]ourts of equity have undoubted jurisdiction to interfere by injunction when the corporate authorities of a city are taking improper or illegal proceedings, under claim of right, to do an act injurious to the rights of citizens and property holders."); *id.* § 784, at 464 (similar).

[191] 1 JOHN NORTON POMEROY, A TREATISE ON EQUITY JURISPRUDENCE § 260, at 277–78 (San Francisco, A.L. Bancroft & Co. 1881).

[192] DILLON, *supra* note 189, at 678.

[193] *Id.*

[194] Lincoln County v. Luning, 133 U.S. 529, 530 (1890).

[195] 172 U.S. 269 (1898).

[196] *Id.* at 293, 297; *see also* DeVillier v. Texas, 144 S. Ct. 938, 943–44 (2024) (accepting that *Norwood* did not "rel[y] on § 1983 for a cause of action," *id.* at 944).

[197] *Norwood*, 172 U.S. at 292 (quoting Cummings v. Nat'l Bank, 101 U.S. 153, 158 (1880)).

[198] *Id.* at 293.

[199] ROGER W. COOLEY, HANDBOOK OF THE LAW OF MUNICIPAL CORPORATIONS § 161, at 488 (St. Paul, Minn., West Publishing Co. 1914).

[200] Trump v. CASA, Inc., 145 S. Ct. 2540, 2553 (2025).

different story for equitable relief against municipalities. From the Founding into the twentieth century, without mention of a statutory cause of action, federal courts regularly enjoined towns, cities, villages, and their officers for violations of federal law and the Constitution.

III. A NOTE ON FORECLOSURE

This Note has demonstrated a historical basis for federal courts to enjoin municipalities no differently from state and federal officials. True, Congress can foreclose even well-established equitable remedies.[201] But it did not displace equitable relief against municipalities by enacting § 1983.

Federal courts may presumptively enjoin violations of the Constitution and federal law "[a]bsent the clearest command to the contrary from Congress."[202] The Court has recognized two ways that Congress demonstrates intent to foreclose equitable relief. First, it can "prescribe[] a detailed remedial scheme" through which plaintiffs must shepherd their claims.[203] But this jurisprudence has been construed narrowly,[204] and the mere fact that § 1983 supplies a cause of action against violations caused by a municipal policy or custom does not mean it forecloses equitable suits to remedy all other violations. The Court rejected such an argument in *Verizon Maryland, Inc. v. Public Service Commission*,[205] holding that the fact that the Telecommunications Act of 1996[206] provided a cause of action to challenge certain state commission decisions did not imply intent to foreclose equitable relief against all others.[207] And like that Act, § 1983 places no restrictions on the relief a court can award.[208]

Second, *Armstrong* held that Congress has displaced equitable relief where even a cursory alternative remedy combines with "the judicially uadministrable nature" of the text of the statute sought to be enforced.[209] But this test is inapplicable to § 1983 in the first instance. *Armstrong* concerned a substantive, rights-conferring provision of the Medicaid Act,[210] whereas § 1983 is simply a procedural vehicle for enforcing rights derived elsewhere.[211] Even if that were not the case, the sea of § 1983

[201] *See* Armstrong v. Exceptional Child Ctr., Inc., 575 U.S. 320, 327–28 (2015).
[202] Califano v. Yamasaki, 442 U.S. 682, 705 (1979).
[203] Seminole Tribe of Fla. v. Florida, 517 U.S. 44, 74 (1996).
[204] *See* Verizon Md., Inc. v. Pub. Serv. Comm'n, 535 U.S. 635, 647–48 (2002).
[205] 535 U.S. 635 (2002).
[206] Pub. L. No. 104-104, 110 Stat. 56 (codified as amended in scattered sections of 47 U.S.C.).
[207] *See Verizon*, 535 U.S. at 647–48.
[208] *See id.* at 644.
[209] Armstrong v. Exceptional Child Ctr., Inc., 575 U.S. 320, 328 (2015).
[210] 42 U.S.C. §§ 1396–1396v; *see Armstrong*, 575 U.S. at 328–29 (examining § 1396a(a)(30)(A)).
[211] *See* DeVillier v. Texas, 144 S. Ct. 938, 943 (2024) (citing § 1983 as a cause of action that allows plaintiffs to "assert[] offensively" preexisting constitutional rights).

suits federal courts hear daily suggests that the statute is hardly difficult for judges to administer.

Finally, over a century of historical practice would look quite odd if, in 1871, Congress had sought to channel all equitable enforcement of federal rights against state and municipal actors through § 1983. Such a holding would undermine, if not outright overrule, the many municipal cases decided shortly after § 1983's passage,[212] all of which relied on equity and none of which mentioned § 1983. Determining that § 1983 silently displaced equity would mean that the courts had simply gotten it wrong for over 150 years. And it would be strange indeed to conclude that § 1983 permits equitable remedies against *state* officials under *Ex parte Young* but forecloses relief against *municipal* defendants. At least from a sovereign immunity perspective, that conclusion would paradoxically mean that states — which possess "a residuary and inviolable sovereignty"[213] — are more vulnerable to federal injunctions than nonsovereign municipalities, creatures of statute that may be dissolved at any moment.[214]

CONCLUSION

At the Founding and for many years thereafter, federal courts recognized that municipal corporations could be enjoined directly for violations of the federal laws and Constitution. Federal courts in the mid-twentieth century continued to exercise that power even absent § 1983's cause of action. No case has ever suggested that federal courts were stripped of that authority. Equitable actions against municipal defendants appear to have fallen out of use in recent decades, but they stand on firm historical footing. Reviving them could prove critical for plaintiffs unable to meet *Monell*'s stringent policy or custom requirement. It would have made a difference in *Garnett*. There, the district court recognized that courts across the country had enjoined state defendants guilty of noncompliance with the SNAP Act's deadlines.[215] "Notably," however, "none of th[o]se cases involved municipalities," meaning that they triggered "the SNAP Act's absolute liability standard, rather than the deliberate indifference standard applicable" to D.C. under § 1983.[216] Because the plaintiffs could show only "some

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[212] *See* Cummings v. Nat'l Bank, 101 U.S. 153 (1880); Crampton v. Zabriskie, 101 U.S. 601 (1880); Transp. Co. v. Parkersburg, 107 U.S. 691 (1883). The same would be true of the Court's seminal school desegregation cases. *See supra* section I.A, pp. 1634–35.

[213] Alden v. Maine, 527 U.S. 706, 715 (1999) (quoting THE FEDERALIST No. 39, at 242 (James Madison) (Clinton Rossiter ed., 2003)).

[214] *See* Hunter v. City of Pittsburgh, 207 U.S. 161, 178–79 (1907).

[215] Garnett v. Zeilinger, 485 F. Supp. 3d 206, 230 (D.D.C. 2020).

[216] *Id.*

noncompliance,"[217] the judge granted summary judgment for the District.[218] But equity would not warrant a different standard.

Federal courts would still be bound by traditional principles of equitable practice.[219] Under those very principles, there is no reason to conclude that courts cannot enjoin municipalities in equity absent a statutory cause of action — they did so for over a hundred years. When seeking prospective relief against municipalities, plaintiffs can seek relief in equity rather than subject themselves to *Monell*'s gauntlet.

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[217] *Id.*

[218] *Id.* at 232–33.

[219] *See, e.g.*, Grundmann v. Trump, 770 F. Supp. 3d 166, 182–83 (D.D.C. 2025) (pre-*CASA* case applying *Grupo* and recognizing that courts of equity will not interfere to resolve disputes over appointing public officers).