Marbury v. Madison long ago established the practice of judicial review. A staple now of the checks and balances amongst the three federal branches, one impact of this practice, for better or for worse, is that the needle on the meter of constitutional rights moves slowly. It took 58 years to get to the idea that separate can never be equal. *Monroe* resolved "under color" 90 years after the 1983 language was drafted, and 17 more passed before *Monell* established municipal liability. I suggest that it's time to move that needle again and open up municipalities to vicarious liability when its agents receive qualified immunity because a right they violated was not clearly established.

Section 1983 is a "remedial statute," which means that its purpose is to "make whole" an aggrieved individual. What may often be the case, however, is that an individual gets deprived of a constitutional right, but due to various immunities, is left without a remedy at law. A solution is municipal liability, made possible by *Monell*. While the Supreme Court jurisprudence has developed four separate ways to establish municipal liability — officer acts pursuant to formal policy; acts of policymakers; persistent and widespread acts; and failure to train/supervise/discipline — in practice, it is not so easy. If the goal of 1983 is "remedial" then individuals should have a remedy when their constitutional rights are violated. *Respondeat superior* solves this problem.

Dissenting in *Bryan County*, Justice Breyer correctly points out that while Congress's rejection of the Sherman Amendment in the Ku Klux Klan Act stemmed in part from their refusal to impute vicarious liability to a municipality based on the acts of *private* individuals, this does not necessarily mean Congress was rejecting any and all vicarious liability to a municipality. It would not be inconsistent with congressional intent to find that liability can be imputed to a municipality through the acts of its agents. However, I would keep with history's slow moving needle and impute liability only in certain qualified immunity situations — and in doing so, hopefully avoid a "floodgates" argument from any opposition.

Currently, if a court finds that a constitutional right was violated but that right wasn't clearly established, officers will receive qualified immunity, closing off an opportunity for recovery. The next step for the aggrieved individual would be to argue municipal liability via one of the four avenues mentioned above. But if a court finds that a person's constitutional rights were violated, then that person should be made whole, and vicarious liability in those situations accomplishes that. The argument that this would hurt a municipality's treasury is weakened by the fact that municipalities already indemnify their officers for adverse judgments, and any argument about a potential chilling effect is offset by the fact that officers still enjoy qualified immunity.

Opening up vicarious liability in these limited circumstances is consistent with 1983's "remedial" purpose. When the right case comes along, the Supreme Court should correct *Monell's* foreclosure of vicarious liability and move the needle further towards justice.