No. 09-350

In The Supreme Court of the United States

LOS ANGELES COUNTY, CALIFORNIA,

Petitioner,

vs.

CRAIG ARTHUR HUMPHRIES and WENDY DAWN ABORN HUMPHRIES,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

REPLY BRIEF OF PETITIONER

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ARGUMENT

I.

MONELL EXPRESSLY STATES THAT THE POLICY, CUSTOM, AND PRACTICE CAUSATION REQUIREMENT APPLIES TO ALL CLAIMS FOR RELIEF UNDER § 1983, INCLUDING DECLARATORY RELIEF, AND RESPONDENTS OFFER NO COMPELLING REASON TO DEPART FROM THIS ESTABLISHED PRECEDENT.

Monell v. Dep't of Soc. Servs. is not ambiguous on application of its causation standards to all claims for relief under § 1983, including injunctive and declaratory relief:

> Local governing bodies . . . can be sued directly under § 1983 for monetary, *declaratory*, or injunctive relief where, as here, the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers.

436 U.S. 658, 690 (1978) (emphasis added).

Respondents contend that *Monell* does not mean what it says. They assert that the cited passage occurs after the court's consideration of whether a municipality was a person under § 1983 and before its discussion of the causation requirements for such claims, and merely refers to the requirement of state action for liability. (Brief of Respondents ("Br.

Resps.") 23.) This strained construction does not withstand scrutiny.

First, the cited passage is the introductory paragraph to the section addressing causation. It encapsulates the threshold holding that a local entity may be sued under § 1983 and the following conclusion that such claims are limited to injuries inflicted as a result of a policy, custom, or practice.

Second, there is no discussion of policy, custom or practice as being necessary to showing action under color of state law. The citation to *Adickes v. S.H. Kress & Co.*, 398 U.S. 144 (1970) is merely with reference to the point that official action may take many forms aside from express policy. *Monell*, 436 U.S. at 691.

Third, in rejecting *respondeat superior* liability, the Court referenced its decision in *Rizzo v. Goode*, 423 U.S. 362, 370-71 (1976) rejecting injunctive relief against defendants who themselves caused no injury but were sued based upon the actions of subordinates. *Monell*, 436 U.S. at 692, 694 n.58.

Nor does *Monell* distinguish between the types of relief available in § 1983 claims – the court addressed causation within the statutory language of § 1983, noting that the provision's limitation of relief to those circumstances where an entity causes or causes another to violate a constitutional right was not consistent with respondeat superior liability. 436 U.S. at 692.

Respondents do not address this statutory language. Nor do they dispute the fact that *Monell* repeatedly refers to the causation requirement as a prerequisite to *any* relief under the statute: "[A] local government *may not be sued* under § 1983 for an injury inflicted solely by its employees or agents." 436 U.S. at 694 (emphasis added). It is only when "execution of a government's policy or custom . . . inflicts the injury that the government as an entity is *responsible* under § 1983." *Id.* (emphasis added).

Nor, as respondents assert, is *Monell* premised on the notion that a policy, custom, or practice requirement is necessary to avoid imposition of devastating financial liability. (Br. Resps. 27.) *Monell* expressly notes that rejection of respondeat superior liability by the drafters of § 1983 was not based on a fear of draining local treasuries. 436 U.S. at 664 n.9. Rather, *Monell* rested its holding on the language of § 1983 viewed against the background of congressional understanding of the coercive power of allowing civil claims and a reluctance to impose obligations on municipalities to control and protect against the conduct of others. (Brief of Petitioner ("Br. Pet.") 28-32.) It is illogical to conclude that drafters concerned about indirectly coercing conduct through damages liability would nonetheless find a lesser standard of causation should be applied to directly coerce conduct through prospective relief.

This Court has repeatedly reaffirmed the *Monell* policy, custom, and practice causation requirement as an important principal of federalism, limiting the

circumstances in which federal courts may intervene in the operation of local governments. *City of Canton v. Harris*, 489 U.S. 378, 392 (1989); *Bd. of the County Comm'rs v. Brown*, 520 U.S. 397, 415 (1997). This important limitation is even more vital with respect to the direct control of local entities through issuance of declaratory or injunctive relief. Certainly, nothing in *Monell* or its progeny, or the legislative history of § 1983 remotely supports the sort of standardless view of causation urged by respondents to be applied to claims for prospective relief.

Under the principle of *stare decisis*, this Court is reluctant to overturn established authority, especially authority construing federal statutes, absent a compelling reason to do so. *Runyon v. McCrary*, 427 U.S. 160, 175 n.12 (1976); *Edelman v. Jordan*, 415 U.S. 651, 671 n.14 (1974). Here, respondents offer no such compelling reason. As four Circuits have expressly recognized, for 32 years, *Monell* has plainly stated that the policy, custom, or practice requirement applies to claims for declaratory and injunctive relief. *Greensboro Professional Firefighters Association, Local 3157 v. City of Greensboro*, 64 F.3d 962, 966-67 (4th Cir. 1995); *Church v. City of Huntsville*, 30 F.3d 1332, 1342-47 (11th Cir. 1994); *Dirrane v. Brookline Police Department*, 315 F.3d 65, 71 (1st Cir. 2002); *Reynolds v. Giuliani*, 506 F.3d 183, 191 (2d Cir. 2007). Only a single circuit has departed from that standard. There is no compelling reason to reconsider *Monell* in this regard.

II.

CAUSATION IS A PREREQUISITE FOR ANY RELIEF UNDER § 1983 AND GENERAL STANDARDS FOR ISSUANCE OF PROSPECTIVE RELIEF ARE NOT A SUBSTITUTE FOR THE SPECIFIC STANDARDS OF CAUSATION OF *MONELL*.

A. Causation Is A Prerequisite For Any Relief Under § 1983, Regardless Of Form.

Faced with the plain language of *Monell*, respondents must engage in rhetorical sleight-of-hand by putting the cart before the horse and attempting to substitute a generalized standing inquiry for *Monell*'s specific causation requirements. Respondents assert:

> Meritorious claims for prospective relief with respect to a constitutional violation will – because of standing requirements and the principles governing issuance of prospective relief – necessarily demonstrate that the municipality has caused the challenged injury. No separate showing based on the standard developed in damages cases is necessary.

(Br. Resps. 30.)

Respondents' argument ignores the fact that the question of whether a defendant caused the plaintiff's injury is always a threshold inquiry in determining standing and whether the plaintiff is entitled to relief of any kind under § 1983. *City of Los*

Angeles v. Lyons, 461 U.S. 95, 101-02 (1983) ["The plaintiff must show that he 'has sustained or is immediately in danger of sustaining some direct injury' *as the result of the challenged official conduct* and the injury or threat of injury must be both 'real and immediate,' not 'conjectural' or 'hypothetical' "]; emphasis added; *Rizzo*, 423 U.S. at 370-71 ["The plain words of the statute impose liability whether in the form of payment of redressive damages or being placed under an injunction only for conduct which 'subjects or causes to be subjected' the complainant to a deprivation of rights secured by the Constitution and laws"].

If no injury has been caused by the defendant then a court need not even get to the question of what remedy would be appropriate. That was the very point in *Rizzo*, where one of the reasons the court found no Article III standing was because the injunction ran against defendants who themselves had not caused plaintiffs' injuries. 423 U.S. at 371 ("[T]here was no affirmative link between the occurrence of the various incidents of police misconduct and the adoption of any plan or policy by petitioners – express or otherwise – showing their authorization or approval of such misconduct").

Respondents' assertion that "[t]he creation of a separate policy or custom requirement . . . would serve no purpose" (Br. Resps. 34) has it backwards. There is no "separate" causation inquiry – causation is always a threshold prerequisite to establish entitlement to any relief, prospective or otherwise.

B. Generalized Standards Concerning Issuance Of Prospective Relief Are Not A Substitute For The Specific Causation Standards Of *Monell* Which Take Into Account Core Principles Of Federalism.

The tenuous basis for respondents' argument is underscored by the fact that they must blow hot and cold on the ease with which the substantive *Monell* requirements may be satisfied in appropriate cases for prospective relief. Thus, in asking the Court to jettison *Monell*'s long-standing and refined standards for liability in claims for prospective relief, they assure the Court that such claims in any event will necessarily meet the policy, custom, or practice standard. (Br. Resps. 34 ["(P)rospective municipal relief will *always* stem from a situation that involves a continuing injury sanctioned by the municipality, municipal policy, or widespread municipal custom" [emphasis in original].)

Yet, on the other hand, respondents elsewhere assert that application of this very same policy, custom, or practice standard will somehow foreclose injunctive relief in appropriate cases. (Br. Resps. 36-39.)

Which is it? Either claims for prospective relief can easily satisfy *Monell*'s specific requirements, hence there is no reason to depart from *Monell*, or respondents are suggesting that federal courts may properly intervene into the operation of local and state governments based on some lesser and

heretofore unarticulated standard. At best, respondents are proposing some sort of vaguely defined *Monell*-lite. If there is any invitation to rampant confusion, it is allowing courts to apply differing causation standards in crafting injunctive, as opposed to damages relief against municipalities. Respondents acknowledge that such differing standards are undesirable. (Br. Resps. 39.) Yet, that is precisely what respondents would spawn with their almost-but-not-quite policy, custom, or practice standard for prospective relief.

This case underscores the mischief wrought by such a rule. First, because it is untethered to any specific standard of causation, the "declaratory relief" *ex post facto* imposed by the Ninth Circuit in rendering the fee award is necessarily imprecise. The court found that plaintiffs had essentially established declaratory relief as against the County because it had "held that the State and County procedures used in maintaining the Child Abuse Central Index . . . were constitutionally insufficient, and thus the Child Abuse and Neglect Reporting Act . . . 'violates the Humphries' procedural due process rights.'" (Appendix to Petition for Certiorari ("App.") 2.) Yet, it is not clear what "procedures" of the County have been declared violative of due process. The procedures in this particular case? Procedures that are the equivalent of a policy for purposes of *Monell*? Surely not the latter, since, as the Ninth Circuit acknowledged, at this stage of the litigation the existence of a policy, custom, or practice under *Monell* has not even been

litigated and remains an open issue. Requiring courts to apply the *Monell* causation requirements assures that any ruling is sharply focused and provides meaningful assistance in resolving the pertinent issues between the parties.

Second, the Ninth Circuit's statement that the County had the power to craft procedures to afford the Humphries due process – which respondents contend established the requisite causal connection as to the County (Br. Resps. 35 n.17) – was made without the careful consideration of state and municipal interests that this court has held are necessarily encompassed in the *Monell* standards.

As noted, the County's power to remedy the violation, i.e., whether it was free under state law to do so, was not at issue before the Ninth Circuit. The sole issue concerned the constitutionality of the statute. Even the Ninth Circuit acknowledged this in the face of the County's rehearing petition which noted that there was a serious issue under state law as to whether the County had the power to alter the statutory scheme – the court made it clear that the ultimate question of *Monell* liability remained open in the district court. (App. 72.) Thus, the court's statement concerning this "causal link" as to the County is not tied to any legal standard whatsoever and made in the face of substantial case authority from both other circuits and within California

concerning the liability of municipalities for enforcing state law.[1] (Br. Pet. 42 n.6.)

Surely, nothing is more invasive than a federal court declaring the circumstances under which a local entity may be sued merely for enforcing state law, or going even further and requiring municipalities to make substantive changes to state statutes. To say that local entities would automatically be liable for prospective relief – including a payment of attorneys' fees both their own, and a successful plaintiff's – could well lead local entities not to enforce state laws that they deem vulnerable to challenge, even under circumstances where there may be a viable defense. Or, if sued for enforcing such laws, immediately settle, even in the face of viable arguments to preserve the law, simply to avoid additional expenditure of and exposure to attorneys' fees, as well as entanglement of federal courts in internal

[1] In some respects, this issue parallels the concerns the 42nd Congress had with respect to the Sherman Amendment. As noted, Congress was concerned that the Sherman Amendment would impose an obligation on municipalities to enforce state law under circumstances where the state itself had not imposed such an obligation. (Br. Pet. 28-30.) Here, the Ninth Circuit has suggested, without analysis, that the County may be required to rewrite the governing statutes and add additional procedural protections. (App. 72.) Yet, as noted, there is a serious question under California law as to whether a municipality is authorized to do so without reaching into an area preempted by the State. (Br. Pet. 42, n.6.) In short, the State has not simply declined to impose that obligation on municipalities, it has possibly foreclosed them from doing so.

operations. Such a rule would also invite local entities to rewrite state laws to avoid potential claims, therefore eroding the power of state legislatures to set state law.

Under any scenario the result is the same – erosion of a state's ability to enforce and enact its laws, and a severe disruption of the internal operation of state governments and relationship to their municipalities. As this Court has repeatedly noted, these are precisely the sort of considerations that inform the *Monell* requirements. *City of Canton v. Harris*, 489 U.S. at 392; *Bd. of the County Comm'rs v. Brown*, 520 U.S. at 415. Application of the *Monell* standards assures that such intervention only occurs after careful consideration and analysis, and not as a result of an ad hoc, essentially standardless determination in the context of a claim for prospective relief under the Ninth Circuit's rule and under the imprecise standards proposed by respondents.

III.

APPLICATION OF THE *MONELL* REQUIREMENTS ALLOWS PROSPECTIVE RELIEF WHERE A CONSTITUTIONAL VIOLATION IS FAIRLY ATTRIBUTABLE TO THE ACTIONS OF A MUNICIPALITY AND DOES NOT AFFORD "LESS" PROTECTION THAN IS AVAILABLE AGAINST THE STATES.

A. Respondents Do Not Identify Any Circumstance In Which *Monell* Would Foreclose Prospective Relief In An Appropriate Case.

As noted, respondents contend that essentially all claims for prospective relief will necessarily meet the *Monell* requirements in order to satisfy the standards for granting such relief. At the same time, however, respondents labor mightily to concoct situations where, according to them, application of the *Monell* standards to claims for prospective relief would defeat proper redress. Yet, the proffered examples fit neatly within the *Monell* framework making it clear that relief could be afforded in appropriate cases.

Respondents posit an unconstitutional state statute that leaves enforcement to municipalities as the sort of case that would fall between the cracks, because the municipality could argue it is not subject to prospective relief because it is not enforcing municipal policy, but merely state law. (Br. Resps. 36.) As a threshold matter, the question is purely hypothetical here – since the State of California

through its Attorney General is a defendant and the very entity that maintains the database from which respondents want their names removed, as well as the entity that created the statute in question. Respondents can obtain fully effective prospective relief from the State, without regard to any claim against the County. Thus application of the *Monell* requirements to this claim against the County would in no way deprive these plaintiffs of a meaningful remedy.

But even the purest form of the hypothetical falls easily within *Monell* strictures. It may be, as some courts have held, that claims against municipalities based solely upon enforcement of state law are in fact suits against the state itself since the local entity acts purely in a ministerial capacity. *Bockes v. Fields*, 999 F.2d 788, 791 (4th Cir. 1993) (where State Board set mandatory standards for social service employment decision, State Board – not county board – was policymaker with respect to employment decisions); *Familias Unidas v. Briscoe*, 619 F.2d 391, 404 (5th Cir. 1980) (county judge acted on behalf of state and not county in enforcing particular state law). This court has recognized that there are circumstances under which many local officials in fact act on behalf of the state and not the local entity in the performance of duties. *McMillian v. Monroe County*, 520 U.S. 781, 793 (1997) (county sheriff in Alabama acts on behalf of the state and not the county for *Monell* purposes). Or it may be a simple matter to establish that a local entity, not surprisingly, has a policy,

custom or practice of enforcing a particular state law, since it would be a rare municipality that would simply disregard state strictures.

Alternatively, it may be a situation where a statute affords some discretion to the local entity, in which case its exercise of that discretion via a policy, custom, or practice could properly give rise to liability under *Monell*. *Garner v. Memphis Police Dep't*, 8 F.3d 358, 364-66 (6th Cir. 1993) (Although state law authorized use of force against fleeing suspect, standards for use of force were prescribed by municipal policy). That appears to be the premise lurking in the background of the Ninth Circuit's statement to the effect that the County could have supplied additional procedures here, albeit made in circumstances where the court acknowledged that compliance with *Monell*'s strictures was an open issue in the case.

As petitioner has noted, there is significant question under California law as to whether it in fact would be free to impose additional protections and if, under those circumstances, the action could be fairly attributable to petitioner or to the State. It is conceivable that the County could eventually lose under application of *Monell*'s strictures. However, as previously explained (*ante* at 9-11) given the significant impact such liability rules have on the internal operations of a state and its municipalities, it is profoundly important to make the appropriate inquiry, applying clear standards.

Respondents also posit hypotheticals where municipal employees reject a license or an application based upon invidious reasons and assert that in such cases the plaintiffs would not be able to obtain an injunction directing the entity to issue the document in question. (Br. Resps. 37-38.) However if a low level official invidiously declines to issue a license and it is brought to the attention of a policymaking official, or an individual to whom such authority has been delegated, the failure to issue a license upon a renewed request would meet the requirements of *Monell*. *Pembaur v. City of Cincinnati*, 475 U.S. 469, 480, 483 (1986); *City of St. Louis v. Praprotnik*, 485 U.S. 112, 127, 130 (1988).[2]

Similarly, respondents contend that if a municipality becomes aware of an on-going constitutional violation by one of its employees, it would somehow have strong incentive to do nothing because if the policymaker investigated the matter and declined to act, this would open the door to *Monell* liability. (Br. Resps. 38.) However, evidence that a policymaking official had notice of an ongoing violation and *deliberately* declined to investigate would be "textbook" deliberate indifference of the sort this Court

[2] Respondents proffer a watered-down version of this sort of *Monell* claim in their contention that "requisite causation is . . . demonstrated by the litigation posture taken by the municipality." (Br. Resps. 34.) Yet, the fact that such claims are easily resolved under *Monell*'s strictures makes it unnecessary to substitute the newly minted and vaguely defined "litigation posture" standard respondents propose.

has indicated would give rise to redress under *Monell*. *See City of Canton v. Harris*, 489 U.S. at 391 ["deliberate indifference to the rights of its inhabitants" may satisfy *Monell*].

B. Application Of The *Monell* Requirements To Claims For Declaratory Or Other Prospective Relief Is Consistent With The Manner In Which The Court Has Treated Official Capacity Claims Against State Officials.

Respondents also contend that application of *Monell* to claims for prospective relief against municipalities affords plaintiffs less protection against constitutional violations than that afforded as against states. (Br. Resps. 21-22.) As petitioner has noted, the premise of this argument – that a plaintiff may obtain injunctive relief against a state official without having to show that the violation was the result of action fairly attributable to the state – is untenable. The court has twice invoked *Monell* in making it clear that official capacity claims for prospective relief against state officials require some showing that the entity is the moving force behind the deprivation in that the entity's police or custom must have played a part in the violation of federal law. (Br. Pet. 9-10), citing *Kentucky v. Graham*, 473 U.S. 159, 166 (1985); *Hafer v. Melo*, 502 U.S. 21, 25 (1991).

Respondents attempt to distinguish *Graham* and *Hafer* on the ground that the court "simply observed that a causation requirement applies to

official-capacity actions." (Br. Resps. 41.) However, respondents ignore the fact that the Court explained what that causation standard was – a showing that the injury subject to the official capacity claim for prospective relief was the result of a policy, custom, or practice attributable to the entity, i.e., the state.

Moreover, respondents point to nothing in this Court's Eleventh Amendment jurisprudence suggesting the availability of prospective relief against a state official, absent some showing of official policy in the form of an unconstitutional statute, or an injury inflicted by a state official to whom final authority has been delegated.

CONCLUSION

Respondents have identified no circumstance in which application of the specific causation standards of *Monell* would bar prospective relief in an appropriate case. To be sure, application of the *Monell* standards may be easy in some cases and difficult in others, but as this Court has repeatedly held, principles of federalism dictate that federal courts undertake this searching inquiry before intervening in the operation of local governments. There is no justification for a departure from *Monell*'s standard of causation in claims for prospective relief. The order of

the Ninth Circuit imposing attorneys' fees should be reversed.

Respectfully submitted,

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