Can a Plaintiff Prevail in a Civil Rights Suit Against a Municipality for Declaratory and Injunctive Relief Without Showing that the Violation Stems from a Municipal Policy or Custom?

CASE AT A GLANCE

The Humphries, plaintiffs in the case, were designated under state law as substantiated child abusers. They sued the state, the county, and the county officers who were responsible for enforcing the state law for monetary damages and declaratory and injunctive relief under a federal civil rights statute. The Ninth Circuit ruled that the state law violated the Fourteenth Amendment Due Process Clause and awarded attorneys' fees to the Humphries as the prevailing party on their claims for declaratory and injunctive relief. The county now appeals to the Supreme Court, arguing that the Humphries could not be a prevailing party because they failed to establish that a municipal policy caused the constitutional violation.

Los Angeles County v. Humphries
Docket No. 09-350

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From: The Ninth Circuit

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The Supreme Court ruled in 1978 that a plaintiff must establish that a municipal policy caused a constitutional violation in order to succeed in a federal civil rights case against the municipality. The Ninth Circuit subsequently ruled that this standard applied to claims for monetary damages but not to claims for declaratory and injunctive relief. That question is before the Court in *Humphries*.

ISSUE

Must a plaintiff show that a municipal government's policy or custom caused an ongoing constitutional violation in order to prevail in a civil rights suit against the municipality for declaratory and injunctive relief?

FACTS

In what the appellate court called "every parent's nightmare," Craig and Wendy Humphries were accused of child abuse in March 2001 by Craig's fifteen-year-old daughter, S.H. S.H. had been living with the Humphries in Valencia, California. But on March 17, 2001, she took the Humphries's car, without their knowledge, drove to her biological mother's home in Utah, and reported that the Humphries had been abusing her for several months. An emergency room doctor diagnosed her with "non-accident trauma, with extremity conditions."

Based on the emergency room records and an investigation by the Utah police, Michael Wilson, a detective for the Family Crimes Bureau of the Los Angeles County Sherriff's Department (LASD), obtained warrants to arrest the Humphries. On April 16, 2001, Detective Wilson arrested the Humphries and booked them for state felony torture. (Detective Wilson later filed a complaint charging them with corporal injury to a child and cruelty to a child by endangering health, both misdemeanors.) On April 17, 2001, in separate, noncriminal proceedings, Detective Wilson requested that the county file a juvenile court dependency petition to have the Humphries's two other children declared dependents of the juvenile court based on the allegation that their "sibling has been abused or neglected."

The next day Detective Wilson completed a child abuse investigation report required by the California Child Abuse and Neglect Reporting Act (CANRA). Detective Wilson's report concluded that the child abuse allegations against the Humphries were "substantiated." Such a designation signified that Detective Wilson determined that "it [was] more likely than not that child abuse or neglect occurred." Cal. Penal Code § 11165.12(b). (The CANRA provides for two other designations for such reports, an "inconclusive report" and an "unfounded report." The designation for these reports, like the designation of the "substantiated report," is within the sole discretion of the investigating officer.)

Based on Detective Wilson's "substantiated" findings, the LASD forwarded his investigation report to the California Department of Justice (CADOJ), as required by the CANRA. The CADOJ then added Detective Wilson's report to California's Child Abuse Central Index (CACI), also as required by the CANRA. Now included in the CACI, Detective Wilson's report on the Humphries was available to a variety of state and municipal agencies—indeed, required to be consulted by some of them—and even to certain out-of-state agencies for their own background investigations.

As required by CANRA, the Humphries were notified of their listing in the CACI and that they could challenge their listing by contacting Detective Wilson. By then, Detective Wilson no longer worked at the LASD, and neither the CANRA nor the county provided any other procedure that would allow the Humphries to challenge their listing. After an investigation, another LASD detective informed the Humphries's attorney that the department would not reverse Detective Wilson's conclusion. (Meanwhile, other evidence surfaced that cleared the Humphries. The criminal court dismissed all charges and found the Humphries "factually innocent" of the torture charge; and the juvenile court dismissed all counts against the Humphries as "not true.") With no other recourse, the Humphries would remain on the CACI until the LASD submitted corrected information—potentially indefinitely.

The Humphries sued the state attorney general, the county, and county employees in the federal District Court for the Central District of California under 42 U.S.C. § 1983 for violation of their procedural due process rights. Their claim alleged "that CANRA and the county's and state's CACI-related policies are unconstitutional because they provide no means for people, such as the Humphries, to dispute or expunge their CACI listing or to prevent disclosures of the listing and related records." The Humphries sought an injunction ordering the county to notify the CADOJ that Detective Wilson's report was unfounded and to prohibit the state from retaining or disclosing their CACI record. They sought a declaration that CANRA and the county's and state's CACI-related policies were unconstitutional because they failed to provide a process to dispute or expunge their CACI record. And they sought damages from the county and its employees.

The district court granted summary judgment in favor of all defendants. It ruled that the individual defendants were entitled to qualified immunity. And it granted summary judgment in favor of the attorney general and the county in the due process claim, ruling that the Humphries's interest in remaining on or being taken off the CACI was not the type of liberty interest that the courts traditionally recognize for due process purposes.

The Ninth Circuit unanimously affirmed the qualified immunity ruling, but reversed the due process ruling and held that CANRA and CACI violated the Humphries's procedural due process rights. With regard to county liability for damages the panel wrote:

> the County is subject to liability under *Monell v. Department of Social Services* if a "policy or custom" of the County deprived the Humphries of their constitutional rights. The district court did not address the County's liability under *Monell* because it found no violation of the Humphries' constitutional rights.
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> Nothing in CANRA … prevented the LASD from creating an independent procedure that would allow the Humphries to challenge their listing on the [CACI]. By failing to do so, it is possible that the LASD adopted a custom and policy that violated the Humphries' constitutional rights. However, because this issue is not clear based on the record before us on appeal—and because the issue was not briefed by the parties—we remand to the district court to determine the County's liability under *Monell*.

The Humphries then moved for attorneys' fees pursuant to 42 U.S.C. § 1988 (authorizing attorneys' fees for a prevailing party in an action under 42 U.S.C. § 1983). The Ninth Circuit, in a unanimous unpublished order, granted the motion. The court found "that the Humphries have prevailed on their claim for declaratory relief and are thus entitled to an award of attorneys' fees" against the county and state. The court further found that its original ruling that the state and county CANRA procedures violated the Humphries's due process rights "materially alters the legal relationship between the parties by modifying the defendants' behavior in a way that directly benefits the plaintiff."

The court rejected the county's argument that the Humphries could not be a prevailing party—and therefore that it could not be held liable for attorneys' fees—without a finding under *Monell* that the county and state practices with regard to CANRA and CACI were a county policy or custom. The court wrote that "it is well established in our circuit that the limitations to liability established in *Monell* do not apply to claims for [declaratory and injunctive relief]." The court ruled that the county was responsible for 10 percent of the Humphries's total fees, or $59,258.09.

The county filed its petition for writ of certiorari on September 21, 2009, arguing that the Ninth Circuit erred in ruling the Humphries's a prevailing party for attorneys' fees. The Supreme Court granted review.

The case comes to the Court on the county's appeal of the lower court's award of attorneys' fees to the Humphries as the prevailing party. But the real issue in the case is whether the county can be subject to prospective relief—declaratory or injunctive relief—when the county had no policy or custom except to enforce state law.

CASE ANALYSIS

This case is about the standard a civil rights plaintiff must meet when seeking prospective relief—declaratory relief or an injunction—against a municipal government for a violation of his or her federal constitutional rights.

The starting point is the Supreme Court's ruling in *Monell v. Department of Social Services,* 436 U.S. 658 (1978). In that case, the Court for the first time ruled that a plaintiff could sue a municipal government for a violation of his or her federal constitutional rights—that a municipality was a "person" for purposes of the federal civil rights statute, 42 U.S.C. § 1983, that authorizes suits against "[e]very person" who violates any citizen's federal constitutional rights. But the Court in *Monell* ruled that a plaintiff could prevail only if the plaintiff established that the constitutional violation resulted from an official municipal policy:

> [L]ocal 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.

The *Monell* standard means that a municipality cannot be held responsible for the rogue actions of its officers. Instead, a

municipality can only be responsible when the actions reflect official municipal policy. As a result, a civil rights plaintiff must show that a municipal officer who violated his or her rights was acting pursuant to an official municipal policy (and not merely that the officer violated his or her rights). The standard thus creates an increased burden for civil rights plaintiffs who seek to recover from a municipal government under 42 U.S.C. § 1983.

The Ninth Circuit interprets the *Monell* standard to apply only to plaintiffs' claims for *monetary damages,* but not to plaintiffs' claims for *declaratory relief* or *injunctive relief.* The Ninth Circuit ruled in *Chaloux v. Killeen,* 886 F.2d 247 (1989), that the purposes behind the *Monell* standard did not apply to prospective relief, where a plaintiff sues simply to stop the constitutional violation, not to collect monetary damages for the violation. (The standard is designed to preclude municipal liability for the actions of a rogue officer acting contrary to official municipal policy—a purpose uniquely suited to claims for monetary damages for past constitutional violations of the officer. But the standard does not carry the same force in claims for prospective relief: the municipality can stop the constitutional violation of a rogue officer whether the violation stems from official municipal policy or not. Perhaps most obviously, the municipality could order the rogue officer to stop his or her behavior.) The county and the Humphries disagree about other circuits' treatment of *Chaloux,* but they agree about this: the Supreme Court has only ever applied the *Monell* standard to claims for damages; it has never ruled on the standard's application to claims for prospective relief.

The *Monell* standard takes yet a different dimension where, as here and in numerous civil rights cases, the offending officer acts only to enforce state law (and not to enforce any articulated municipal policy). In these cases, the municipality has no official stated policy, except, as required, to enforce state law. Thus the municipality is not directing the offending officer's actions in any immediate way. Instead, the officer is following the more general requirement that municipalities must comply with state law.

Here, the CANRA and the CACI, both state laws, require certain actions by municipal officers and municipalities, but they do not require municipalities to adopt an independent articulated policy. And indeed the county here had no independent articulated policy. Thus Officer Wilson acted pursuant to the CANRA and CACI requirements without specific direction from the county, other than the implicit and general direction to follow state law.

The question, then, is whether the Humphries can prevail on their claims for declaratory and injunctive relief against the county for Officer Wilson's conduct enforcing the unconstitutional state law requirements under CANRA and CACI, absent a showing that the conduct reflected official county policy.

The county sets out four principal arguments in support of its position that the *Monell* standard applies to prospective relief. First, the county argues that this interpretation is most faithful to the language and legislative history of the Civil Rights Act of 1871, which is codified at 42 U.S.C. § 1983. The county argues that the forty-second Congress rejected two versions of an amendment, the Sherman Amendment, which would have liberally authorized suits against municipalities for injuries caused by "any persons riotously and tumultuously assembled … with intent to deprive any person of any [federal constitutional rights]." Instead, Congress "abandoned municipal liability" and adopted the current version of a different civil rights statute, 42 U.S.C. § 1986, making any person having knowledge of, and power to prevent, a conspiracy to violate civil rights, liable to any person injured by that conspiracy. The moves reflect Congress's judgment that the federal government had no power to impose obligations on municipalities to control the actions of third parties (like rogue officers) and its intent to thus limit municipal liability in the final version of the Civil Rights Act. As a result, the current version of 42 U.S.C. § 1983 imposes liability on "*any person* … who *shall subject,* or *cause to be subjected,* any person … to the deprivation of [federal constitutional rights]." (Emphasis added). The plain language, consistent with the legislative history, says that a civil rights plaintiff can prevail against a municipality (the first "any person") only if he or she can show that the constitutional violation stemmed from official municipal policy ("shall subject, or cause to be subjected"). The county argues that the *Monell* Court adopted this reasoning in creating the *Monell* standard for municipal liability and wrote that it applied across the board, to all forms of relief, "monetary, declaratory, or injunctive."

Next, the county argues that the Supreme Court has consistently applied the *Monell* standard in civil rights cases involving damages. The county argues that this reflects a federalism concern—that the standard "draws a proper line between permissible and impermissible judicial intervention in the internal operation of local governments." And while the Court has only applied the standard to cases involving damages, the county argues that the standard applies with even greater force to cases involving prospective relief: a federal court injunction or declaratory relief, ordering a municipality to do or not to do something, or to alter its policies, even more directly intrudes upon municipal operations than monetary damages. Again, these considerations are reflected in the *Monell* Court's ruling that, by its plain terms, applied the standard to "monetary, declaratory, or injunctive relief."

Third, the county argues that any lesser standard for prospective relief would lead to "illogical and inconsistent results." The county argues that the Ninth Circuit applied the lower standard here and ruled its procedures in maintaining the CACI unconstitutional *without even identifying the county procedures or policy.* Thus under the Humphries's position, the county could be subject to prospective relief based upon only the vaguest determination that the county even had procedures or a policy—an absurd result. Moreover, the Humphries's position would lead to a nonsensical two-track system, where the *Monell* standard would apply to damage claims, but not to prospective relief, in the very same case.

Finally, the county distinguishes the Ninth Circuit's ruling in *Chaloux* and argues that the Supreme Court's precedents support its position. The Ninth Circuit wrote that its approach in *Chaloux*—declining to apply the *Monell* standard to prospective relief—was consistent with the Supreme Court's approach in *Ex Parte Young.* (The Court ruled in *Ex Parte Young* that a *state official* could be enjoined from enforcing an unconstitutional state law if the state official had sufficient connection with the law.) The Ninth Circuit gave two reasons: the plaintiffs sued only a county sheriff, not a state official, for enforcing an unconstitutional state law; and the sheriff had the sole duty to enforce

state law, with no underlying county policy. But the county argues that those reasons are not present here: the Humphries, unlike the plaintiffs in *Chaloux,* also sued the *state official* charged with enforcing state law; and the Humphries's suit, unlike the plaintiff's suit in *Chaloux,* was premised on purported *county policies.* Thus the Ninth Circuit's reasons for aligning *Chaloux* with *Ex Parte Young* are not present here, and the Court should not follow the *Chaloux* approach. Moreover, contrary to the Humphries's claims, the Supreme Court has consistently applied something like the *Monell* standard to claims against state officials in their official capacity for enforcing state laws. In other words, the Supreme Court already uses the *Monell* standard in this analogous context, and there is no lack of parity between the county's position here and the burden that plaintiffs face in claims against state officials for violation of state law.

The Humphries counter with four main arguments in support of their position that the *Monell* standard does not apply to prospective relief. First, they argue that their position is consistent with the Court's long-running recognition of the importance of judicial redress for ongoing violations of the Constitution. (It is the *ongoing* constitutional violation for which the Humphries seek prospective relief.) The Humphries argue that this principle serves to preserve the vitality and supremacy of federal law. Application of the *Monell* standard to prospective relief undermines this principle, and there is nothing in *Monell* or its progeny that compels that result. And contrary to the county's position, neither the legislative history of the Civil Rights Act of 1871 nor general principles of federalism justify application of the *Monell* standard to prospective relief. In fact, just the opposite: *Monell*'s analysis of the legislative history confirms that Congress intended to provide a federal remedy against municipalities; and the Court has long recognized that federalism principles do not limit federal remedies designed to protect against state conduct violating the Fourteenth Amendment.

Next, the Humphries argue that *Monell* itself supports their position. They argue that the Court's reference to "monetary, declaratory, or injunctive relief" appears in a portion of the opinion that merely concludes that municipalities are subject to § 1983 (and "monetary, declaratory, or injunctive relief" under it). The reference does not mean, as the county would have it, that civil rights plaintiffs must satisfy the *Monell* standard for each of these types of relief. Moreover, *Monell* dealt only with damages, and the Court specifically left open the question "what the full contours of municipal liability under [Section] 1983 may be."

Third, the Humphries argue that each of the Supreme Court cases applying the *Monell* standards dealt only with claims for damages. This makes sense, they argue, because *Monell* itself—and, indeed, the legislative history of the Civil Rights Act of 1871—was primarily concerned with protecting municipalities from too much liability resulting from acts too attenuated from official municipal policy. In other words, the *Monell* Court and the forty-second Congress were primarily concerned about limiting monetary damages, not prospective relief, against municipalities.

Fourth, the Humphries argue that as a practical matter the *Monell* standard is at its best redundant—and at its worst quite harmful—if applied to claims for prospective relief. The Humphries argue that a plaintiff seeking § 1983 prospective relief must independently establish that a municipal policy is likely to cause future harm as part of a showing of Article III standing and as part of the case for injunctive and declaratory relief itself. Similarly, a municipality's defense against a suit requires the municipality to adopt a policy (by virtue of its refusal to *change* its behavior when faced with litigation). The county's position, the Humphries argue, would restrict judicial relief for plaintiffs and thus encourage municipalities to ignore ongoing constitutional violations in cases, such as this one, where the municipality has no independent policy but rather simply enforces state law. The Humphries point to *Brown v. Board of Education,* 347 U.S. 483 (1954), (among other now widely acclaimed cases) as an example: the school districts' mere enforcement of state segregation laws without an independent, deliberate municipal policy would have foreclosed prospective relief, because the plaintiffs could not have established an independent, deliberate municipal policy. The Humphries argue that the county's position would result in an "illogical asymmetry" between local and state governments regarding prospective relief: a plaintiff seeking relief against the state under *Ex Parte Young* would face a lower burden than a plaintiff seeking relief against a municipality under *Monell,* even though the state (but not the municipality) enjoys sovereignty.

SIGNIFICANCE

The case is most obviously significant for what it might say about a civil rights plaintiff's burden in seeking prospective relief against a municipal government for an ongoing constitutional violation. If the Court upholds the Ninth Circuit ruling and declines to impose the *Monell* standard on plaintiffs seeking prospective relief, plaintiffs will have an easier job obtaining prospective relief against a municipal government. Plaintiffs will only need to show an ongoing constitutional violation, not that a municipal policy caused it. (Although as the Humphries argue, as a practical matter, civil rights plaintiffs need to establish a municipal policy to establish standing and to satisfy the requirements for injunctive and declaratory judgments, anyway.)

If the Court reverses and imposes the *Monell* standard, plaintiffs will have a more difficult time obtaining prospective relief. Plaintiffs will need to establish that a municipal policy caused the constitutional violation—a particularly difficult showing where, as here, the municipality had no stated, deliberate policy but instead was simply enforcing state law. (The Humphries forcefully illustrate this point by arguing that the plaintiffs in *Brown v. Board of Education* and other iconic civil rights cases could not have succeeded under the *Monell* standard.) A ruling for the county could thus create an additional incentive for municipal governments to avoid designing deliberate policies—a result that could further frustrate civil rights plaintiffs and may more generally result in less transparency in local government. (There may already be an incentive for municipalities not to adopt policies: the *Monell* standard applies to claims for damages, and therefore a municipality's decision not to adopt procedures or a policy might insulate it from damage claims. This question—whether a lack of procedures amounts to a policy—is what the Ninth Circuit asked the district court to consider on remand. It is difficult to say if a ruling here creating an additional incentive not to adopt a policy would have any effect on the incentives.)

For municipalities, a ruling against the county could create additional exposure. Municipalities may be more exposed in claims for prospective relief, because civil rights plaintiffs could prevail on claims for declaratory and injunctive relief without having to meet the *Monell*

standard. A ruling for the county could also put municipalities in a bind: they would be subject to orders for prospective relief, even when they acted only to enforce state law (and not necessarily their own practices or policies).

In contrast, a ruling for the county could mean that municipalities might insulate themselves from claims for prospective relief by *not* adopting practices or policies to implement state laws. A ruling for the county could also provide a measure of certainty and stability for municipalities as they develop practices and policies (or not): they could choose their policy preferences knowing that the same standard will apply whether a civil rights plaintiff seeks damages or prospective relief.

Beyond the significance for civil rights cases and municipal policies, the case offers the Roberts Court an opportunity to add another data point to its emerging chart on federalism. The parties briefed the federalism issues weakly—just enough to catch the Court's attention (and perhaps weakly enough to dissuade some justices from opining on it). But if the Court says anything about federalism, watch Chief Justice Roberts. He joined the four-member progressive wing in an opinion by Justice Breyer in last term's *U.S. v. Comstock,* 560 U.S. _ (2010). The Court in that case upheld federal law allowing district courts to order the civil commitment of a sexually dangerous federal prisoner beyond his or her prison term under the Necessary and Proper Clause and against a Tenth Amendment challenge. (Justices Kennedy and Alito filed separate concurrences.) Chief Justice Roberts's vote distinguished him in federalism issues from his predecessor on the Court, Chief Justice Rehnquist, who generally favored states in cases related to federalism. *Comstock,* and Chief Justice Roberts's vote in that case, may suggest a shift on the Court in favor of the federal government. *Humphries* may tell us more.

Finally, the unique posture of the case, the state of the Ninth Circuit's ruling in *Chaloux,* and the very little public attention that the case has attracted all may suggest that the Court reached out for this case in order to clarify its *Monell* ruling or say something else about federal civil rights litigation. The Ninth Circuit issued a final decision in the case that was indeterminate on the application of the *Monell* standard to damage claims. (The court remanded the case to determine the county's liability under *Monell*.) Yet the subsequent fee award pronounced the Humphries the prevailing party. Even if the Court can reconcile these rulings through *Chaloux*—the *Monell* standard was necessary for damages only, and the Humphries prevailed on prospective relief—*Humphries* is still a case that comes to the Court on this very important civil rights question by way of the Ninth Circuit's fee award based on the Humphries's success on prospective relief (and not a final judgment on all requested relief). (The issue on remand—whether the county's lack of a policy can constitute a policy—is interesting, but *Humphries* went to the Court without it.) Moreover, the circuits' rulings on the application of the *Monell* standard to prospective relief are not as markedly split as they might be. (The parties disagree over whether a split even exists.) Finally, the case has attracted remarkably little public attention. Notably, as of the publication date, not a single amicus weighed in at the Supreme Court.

All this is to say that the Court might have deferred review until the case came back up through the lower courts on all forms of relief. Or it might have deferred review on the issue until a sharper split developed among the circuits. That the Court took the case up now suggests that it has something significant to say to clarify the application of the *Monell* standard.

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PREVIEW of United States Supreme Court Cases, pages 19–23.

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