

Liability for a Bureaucratic Dead End

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On October 05, the U.S. Supreme Court heard oral arguments in *Los Angeles County v. Humphries*, 554 F.3d 1170 (9th Cir. 2009), *cert. granted*, 130 S.Ct. 1501 (U.S. Feb. 22, 2010) (No. 09-350). Like *Connick v. Thompson* (No. 09-571) discussed in the last issue of this magazine, *Humphries* addresses a local government's liability and the scope of *Monell v. Dept. of Social Serv.*, 436 U.S. 658 (1978), but in the content of claims for declaratory relief.

Craig and Wendy Humphries lived with S., Craig's daughter from a previous relationship, in Los Angeles. In 2001, 15-year-old S. ran away to her mother's home in another state, claiming that the Humphries had been abusing her for months. An emergency room physician diagnosed "nonaccidental trauma, with extremity contusions." After an investigation, the Los Angeles County Sheriff's Department (LASD) arrested the Humphries for felony torture and child abuse, and their two other children were placed in protective custody. Detective Wilson completed a report that listed the case as a "substantiated report" of child abuse, and the Humphries were notified that they had been listed in the State's computerized "Child Abuse Central Index" (CACI). Three months later, the charges were dismissed after investigators concluded that S. had fabricated the claims of abuse. The Humphries successfully petitioned the criminal court for orders finding them "factually innocent" of the felony charge (i.e., the court found "that no reasonable cause exist[ed] to believe that the arrestee committed the offense"), and dependency proceedings concerning their children were dismissed when the court concluded the charges of child abuse were "not true."

The CACI was established pursuant to the Child Abuse and Neglect Reporting Act (CANRA), which required that reports of "substantiated" abuse be submitted for inclusion in the CACI, based on a low standard of proof ("substantiated" meant only more likely than not). The CACI information was made available to a broad range of third parties, inside and out of the State, for a variety of purposes: certain employers and prospective employers, licensing agencies, agencies looking for volunteers, and others. The catch was this: there was no provision for removing individuals who were originally listed in the CACI pursuant to a "substantiated report" because CANRA offered no procedure for challenging a listing. The Humphries learned that they were likely on the CACI permanently. (For example, the report against them as "substantiated" child abusers was still listed two years after the two tribunals ruled that the allegations were not true.) A LASD officer apparently advised the Humphries that the fact that charges were filed "would indicate to [the LASD] that some sort of crime did occur," and the dismissal of the case "would not negate the entries."

The Humphries brought a 42 U.S.C. § 1983 action against State and County officials, claiming that their arrest and incarceration, and initial and continued inclusion in CACI, violated their constitutional rights, including their right to due process under the Fourteenth Amendment. Among other remedies, they sought a declaration that CANRA and the County's policies were unconstitutional as they provided no removal or corrective mechanism, and an injunction ordering the County to notify the State that the LASD's report to the CACI was unfounded and to prohibit further disclosure of the CACI records about the Humphries.

The district court granted the County defendants' motion for summary judgment on the CACI claim, finding that the plaintiffs could not establish the threshold requirement of a constitutional violation because the listing procedures did not violate due process, without deciding whether the County would otherwise be liable under *Monell*. On appeal, the Ninth Circuit reversed and remanded, finding that CANRA and CACI did not afford due process, and that the County was not entitled to summary judgment because nothing in CANRA had prevented the LASD from creating an independent procedure to allow the Humphries to challenge their CACI listing. The County unsuccessfully sought a rehearing on the basis that (1) the issue of whether any violation had been the result of a custom, policy, or practice fairly attributable to the County under *Monell* had not been litigated in the motion for summary judgment or on appeal— the finding had been that there was no constitutional violation; and (2) the County was not free to alter the State's statutory scheme on inclusion or removal from the CACI; thus, whether it could be held responsible under *Monell* remained open to litigation. The Ninth Circuit later decided that the plaintiffs were prevailing parties for purposes of a fee award as against both the State and the County, despite the failure to establish the County's *Monell* liability. It rejected the argument that the County could not be held liable for fees in the absence of a finding that it violated the *Monell* "policy or custom" standard as "it [was] well established in our circuit that the limitations to liability established in *Monell* do not apply to claims for prospective relief."

The County argued that the ruling in *Monell* clearly applied to claims involving declaratory relief. The Ninth Circuit expressly declined to follow *Monell* and held that claims for declaratory and prospective injunctive relief were not subject to *Monell* "policy, custom, or

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Notes

1. Stop the Beach Renourishment, Inc. v. Fla. Dep't of Envt'l Protection, 130 S. Ct. 2592 (2010).
2. *Brief of Amicus Curiae*, The Florida Shore and Beach Preservation Association, The Florida Association of Counties, and The Florida League of Cities In Support of Respondents, 2009 WL 3236333 at *17 (U.S. Oct. 5, 2009), citing the Fla. Dep't of Env. Protection, Bureau of Beaches and Coastal Systems, *Strategic Beach Management Plan* (May 2008) at 2.
3. *Id.* at *20 n.3.
4. *See generally*, Fla. Dept. of Env. Protection, *Critically Eroded Beaches in Florida* (June 2009) at 1-3, available at http://www.dep.state.fl.us/beaches/publications/pdf/CritEroRpt09.pdf.
5. The Florida Beach Erosion Control Program was established in 1964.
6. The Florida Beach and Shore Preservation Act, *Fla. Stat.* ch. 161, part I (2009). The specific sections of the Act in issue were sections 161.191 and 161.201.
7. Walton County v. Stop Beach Renourishment, Inc., 998 So.2d 1102 (Fla. 2008).
8. All of the decisions and many of the briefs are collected at www.inversecondemnation.com. Type in "beach takings case" in the search window or go directly to http://www.inversecondemnation.com/inversecondemnation/beachfront-takings-case-resources.html. The Supreme Court decision is at http://www.supremecourt.gov/opinions/09pdf/08-1151.pdf.
9. Tony Mauro, *Was Stevens' Condo the Reason for Justice's Recusal in Fla. Property Rights Case?*, The National Law Journal, Dec. 07, 2009.
10. Bormann v. Bd. of Sup'rs in and for Kossuth County, 584 N.W.2d 309 (Iowa 1998), *petition for cert. denied*, Girres v. Bormann, 525 U.S. 1172 (1999) (U.S. Feb. 22, 1999) (No. 98-1003).
11. Oral Argument Transcript, 2009 WL 4323938 at *8 (Dec. 02, 2009).
12. *Id.* at *20.
13. Stevens v. City of Cannon Beach, 510 U.S. 1207 (1994).
14. *Id.* at 1334-35 (citations omitted).
15. Jeffrey Toobin, *Activism v. Restraint*, The New Yorker, May 24, 2010, cited in Blumm and Dawson, *The Florida Beach Case and the Road to Judicial Takings*, (2010) available at http://ssrn.com/abstract=1669707. Blumm and Dawson cover the decision and its background in detail.
16. Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992).
17. Penn Central Transp. Co. v. New York City, 438 U.S. 104 (1978).
18. 389 U.S. 290 (1967).
19. *Id.* at 443.
20. Kelo v. City of New London, 545 U.S. 469 (2005).
21. Lingle v. Chevron U.S.A. Inc., 544 U.S. 528 (2005).
22. San Remo Hotel, L.P. v. City and County of San Francisco, 545 U.S. 323 (2005).
23. *Common Sense and Private Property*, New York Times, June 17, 2010 at http://www.nytimes.com/201%6/18/opinion/18fri1.html?_r=1&ref=editorials.
24. PFZ Properties, Inc. v. Rodriguez, 928 F. 2d 28 (1st Cir. 1991), *cert. dismissed as improvidently granted*, 503 U.S. 257 (1992).
25. Stop the Beach Renourishment, Inc. v. Fla. Dep't of Envt'l Protection, 130 S. Ct. 2592, 2596.
26. *Id.* at 2618.
27. *Id.* at 2603.
28. Maunalua Bay Beach Ohana 28 v. State of Hawaii, 122 Haw. 34, 222 P.3d 441 (Haw. Ct. App. 2009).
29. 2010 U.S. LEXIS 8503 (Nov. 01, 2010).
30. PPL Montana, LLC v. State of Montana, 229 P.3d 421 (Mont. 2010).
31. First English Evangelical Lutheran Church of Glendale v. County of Los Angeles, 482 U.S. 304 (1987).
32. For a good sense of opinions from both sides, see John D. Echeverria, *Stop the Beach Renourishment: Why the Judiciary is Different*, Vermont Law School Legal Studies Research Paper Series Research Paper No. 10-45, Vermont Law School (Aug. 02, 2010) at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1652351, and Thomas, Murakami, and Eyerly, *Of Woodchucks and Prune Yards: A View of Judicial Takings from the Trenches*, Aug. 09, 2010, at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1655658. Seems like everyone is duking it out on SSRN these days. **ML**

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5. *id.*
6. Mary William Walsh, *San Diego Agrees to Settle SEC Pension Fraud Case*, N.Y. Times, Nov 15, 2006, athttp://www.nytimes.com/2006/11/15/business /15pension.html?ref=business.
7. These individuals worked for the City of San Diego during the time of the 2002 /2003 bond offerings, but not at the time the complaint was filed.
8. Securities Exchange Act of 1934, 15 U.S.C. §77(a)(q) (2006).
9. Press Release No. 2010-204 (Oct. 27, 2010). **ML**

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practice" rule of causation. The sole rationale for discarding the requirement was that claims for declaratory and other prospective relief allegedly did not result in the sort of financial burdens imposed by damages awards, which the Ninth Circuit perceived as the basis for *Monell*'s rejection of respondeat superior liability against governments. The County, however, maintains that "[u]nless a plaintiff establishes constitutional liability under that standard, no remedy, whether it be damages, injunctive or declaratory relief, is appropriate." For their part, the respondents argue that when a plaintiff seeks prospective relief, a separate showing of municipal responsibility is not required because the other standards applicable to such claims (e.g., Article III standing constraints) ensure the requisite connection exists between the local government and the challenged conduct. Accordingly, the question before the Supreme Court is whether the "custom, policy, or practice" requirement extends to prospective equitable relief sought against a local entity.

A decision is forthcoming. **ML**