

Section 1983—The Remedy Sought is Irrelevant

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The last issue of this magazine discussed the case of *Los Angeles County, Cal. v. Humphries*, involving a Section 1983 lawsuit brought against a California local government. On November 30, the U.S. Supreme Court ruled in favor of the local government and dismissed the claim.

To recap, Craig and Wendy Humphries had brought a Section 1983 lawsuit against the State of California and Los Angeles County, based on their inclusion in a state database of "substantiated reports" of child abuse. The Humphries had been arrested by the Los Angeles County Sheriff's Department (LASD), but cleared of all charges. Years later, however, they were still listed in California's computerized "Child Abuse Central Index" (CACI), established under the State's Child Abuse and Neglect Reporting Act (CANRA). The CACI information was made available to a broad range of third parties for a variety of purposes. Unfortunately, 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 or correcting a listing. In fact, a LASD officer advised the Humphries that the fact that charges were filed against them "would indicate to [the LASD] that some sort of crime did occur," and the dismissal of the charges did "not negate the entries." The Humphries brought a Section 1983 suit against the State and the County, alleging that their initial and continued inclusion in CACI violated their right to due process under the Fourteenth Amendment. The remedies they sought included a declaration that the CANRA and the County's policies were unconstitutional (for having 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.

The U.S. Court of Appeals for the Ninth Circuit ruled that the Fourteenth Amendment required the State to provide those on the CACI list with notice and a hearing; thus, the Humphries were entitled to declaratory relief. Further, they were prevailing parties entitled to attorney's fees. The County objected, claiming that, as a municipal entity, it was liable only if its "policy or custom" caused the deprivation of a plaintiff's federal right, pursuant to the rule in *Monell v. New York City Dept. of Social Servs.*, and arguing, further, that a State, not a County, policy or law had caused any deprivation in issue. The Ninth Circuit, however, rejected the argument that the County could not be held liable for fees in the absence of a finding that it violated the *Monell* 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." It found that the Humphries had prevailed against the County on their claim for declaratory relief.

The U.S. Supreme Court reversed, finding that the *Monell* rule applied in Section 1983 cases irrespective of whether the relief sought was monetary or prospective. The decision, authored by Justice Breyer, was unanimous (note, however, that Justice Kagan did not participate in the case).

"The question presented is whether the 'policy or custom' requirement also applies when plaintiffs seek prospective relief, such as an injunction or a declaratory judgment. We conclude that it does so apply." After reviewing the history of Section 1983 liability of local public bodies, the Court concluded that the central underpinning of *Monell* was that the action that was alleged to be unconstitutional implemented or executed a government policy or custom. "Nothing in the text of § 1983 suggests that the causation requirement contained in the statute should change with the form of relief sought. In fact, the text suggests the opposite" of any "relief-based bifurcation." Specifically, "whether an action or omission [was] a municipality's 'own' [had] to do with the nature of the action or omission, not with the nature of the relief that [was] later sought in court." The Court found it unpersuasive that applying *Monell*'s requirement to prospective relief claims would leave some kinds of ongoing constitutional violations beyond redress, pointing out that "[d]espite the fact that four Circuits apply *Monell*'s requirement to prospective relief," the Humphries had "not presented us with any actual or hypothetical example that provides serious cause for concern." *Los Angeles County, Cal. v. Humphries*, 2010 WL 4823681 (U.S. Nov. 30, 2010).

In other Supreme Court activity, on December 06, the Court granted certiorari in *American Electric Power Co. v. Connecticut*, 582 F.3d 309 (2d Cir. 2009), involving cases brought by several states, the City of New York, and others (which sued in their proprietary capacity as property owners) against electric power corporations that own and operate fossil-fuel-fired power plants in 20 states, seeking abatement of the owners' alleged ongoing contributions to the public nuisance of global warming. The district court dismissed the federal common law of nuisance claims as non-justiciable under the political question doctrine, but on appeal, the U.S. Court of Appeals for the Second Circuit vacated and remanded. It held that the actions did not present non-justiciable political questions under the test in *Baker v. Carr.* As for the City, it sufficiently alleged interference with rights common to the general public; therefore, it could maintain an action for

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The City of Bell

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retirement accounts, may have exceeded $1.5 million.
7. For the *Los Angeles Times* reporter's account, see James Spencer, *The Story of How the Bell Scandal Broke: An Account From LA Times Reporter Jeff Gottlieb*, August 11, 2010, *available at* http://www.publicceo.com.
8. Jeff Gottlieb and Ruben Vives, *supra* note 1.
9. Police Chief Randy Adams, who was receiving a salary of over $450,000, was not charged.
10. Richard Winton, *Attorney general's lawsuit against bell officials could be in jeopardy*, L.A. TIMES, November 5, 2010, *available at* http://www.latimes.com
11. Letter from John Chiang, California State Controller, to Pedro Carrillo, Interim City Administrator, City of Bell, dated Sept. 22, 2010, enclosing the report of the State Controller's Office audit. The letter is available online at http://www.sco.ca.gov/Press-Releases/2010/controller_chiang_2010_bell_audit_letter.pdf.
12. Jeff Gottlieb and Ruben Vives, *Benefits push Bell ex-manager's compensation to more than $1.5 million*, L.A. TIMES, August 8, 2010, *available at* http://www.latimes.com.
13. Paloma Esquivel and Robert J. Lopez, *Times investigation: Bell demanded extra fees from some businesses*, L.A. TIMES, November 2, 2010, *available at* www.latimes.com.
14. Ruben Vives and Richard Winton, *Bell generates big money from towing cars; resident demands investigation*, L.A. TIMES, August 2, 2010, *available at* www.latimes.com.
15. Paul Pringle, *Did Steve Cooley's office neglect Bell probe?* L.A. TIMES, October 28, 2010, *available at* http://www.latimes.com.
16. Steve Lopez, *The bleeding Bell blues*, L.A. TIMES, July 21, 2010, *available at* http://www.latimes.com.
17. Paul Pringle, Corina Knoll and Kim Murphy, *Rizzo's horse had come in*, L.A. TIMES, August 22, 2010, *available at* http://www.latimes.com.
18. The survey may be accessed online at http://www.cacities.org/compensationsurvey.
19. The Institute for Local Government has resources on public engagement and collaborative governance on their website at http://www.ca-ilg.org.
20. For examples of social media policies that California cities have adopted, go to http://www.cacities.org/socialmediaresources. ML

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7. Fed. Trade Comm'n, *FTC Extended Enforcement Policy: Identify Theft Red Flags Rule*, 16 CFR 681.1 (Apr. 30, 2009).
8. Brief for Plaintiff-Appellee, *American Bar Ass'n v. Fed. Trade Comm'n*, No. 10-5057 (Aug. 20, 2010).
9. Red Flag Clarification Act of 2010, Pub. L. No. 111-319 (Dec. 18, 2010).
10. *Id.* ML

Supreme Court

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public nuisance against the owners and operators based on their contributions to global warming. (The City alleged that unrestrained emissions of greenhouse gases would increase the temperature in the City, which would, in turn, increase heat-related deaths, damage the coastal infrastructure, and wreak havoc in its residents' daily lives).

The power companies petitioned for a writ of certiorari, challenging the plaintiffs' standing to bring the actions, the existence of a cause of action to cap carbon dioxide emissions under the federal common law, and the existence of justiciable claims. The questions presented in the case are: (1) Whether states and private parties may seek emissions caps on utilities for their alleged contribution to global climate change; (2) whether a cause of action to cap carbon dioxide emissions can be implied under federal common law; and (3) whether claims seeking to cap carbon dioxide emissions based on a court's weighing of the potential risks of climate change against the socio-economic utility of defendants' conduct would be governed by "judicially discoverable and manageable standards," or could be resolved without "initial policy determination[s] of a kind clearly for nonjudicial discretion." See *American Electric Power Co. v. Connecticut*, 582 F.3d 309 (2d Cir. 2009), *cert. granted*, 2010 WL 4922905 (U.S. December 06, 2010) (No. 10-174). ML

Electronic Signatures

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governmental affairs." UETA § 2(16).
14. 15 U.S.C. § 7001(a); UETA § 7.
15. *See* Thomas J. Smedinghoff and Ruth Hill Bro, *Moving with Change: Electronic Signature Legislation as a Vehicle for Advancing E-Commerce*, 17 J. MARSHALL J. COMPUTER & INFORMATION L. 723 (Spring 1999).
16. 15 U.S.C. § 7001(a).
17. UETA §7(a), (c), and (d).
18. *See* E-SIGN, 15 U.S.C. § 7003, and UETA § 3(b) for a complete list of exceptions.
19. 15 U.S.C. § 7001.
20. *Id.* at § 7002(a).
21. UETA § 5(b).
22. *Id.* and comment 3. Some state enactments of UETA (e.g., California) require such consent to be in electronic form.
23. 15 U.S.C. § 7006(5); UETA, § 2(8) (definitions of "electronic signature").
24. 15 U.S.C. § 7001(a) and 7006(5); UETA, § 2(8) and 7(d).
25. For more on Information Assurance, see http://en.wikipedia.org/wiki/Information_assurance.
26. 15 U.S.C. § 7001(e).
27. UETA § 8(c).
28. *See* FED. R. EVID. 901(a) (1995).
29. *See* Information Security Committee, Electronic Commerce Division, ABA Section of Science & Technology Law, *Digital Signature Guidelines* (Aug. 1996), available at www.abanet.org/scitech/ec/isc/dsgfree.html. One definition of non-repudiation is "[s]trong and substantial evidence of the identity of the signer of a message and of message integrity, sufficient to prevent a party from successfully denying the origin, submission or delivery of the message and the integrity of its contents." *Id.* at § 1.20.
30. *See* FED. R. EVID. 901(b)(9)(1995). ML