IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

No. 86-1088

CITY OF CANTON, OHIO,
Petitioner,

v.

GERALDINE HARRIS, WILLIE G. HARRIS,
BERNADETTE HARRIS,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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REPLY BRIEF OF PETITIONER

In the City's petition for certiorari, it argued primarily that this case should be held pending the outcome of *City of Springfield* v. *Kibbe*, No. 85-1217, and then disposed of in light of that decision. On February 25, 1987, the Court dismissed the writ in *City of Springfield* as improvidently granted. 107 S. Ct. 1114 (1987). The majority explained that the issue the Court granted certiorari to resolve—whether a city can be held liable under 42 U.S.C. § 1983 for providing inadequate police training, and, if so, what standard should govern the imposition of such liability—was in fact not adequately preserved by the petitioner. After the argument in and just prior to the disposition of *City of Springfield*, the Court granted certiorari in *City of St. Louis* v. *Praprot-*

nik, No. 86-772, in which one issue is whether a city may be liable under Section 1983 for "final" discretionary actions of employees taken within the scope of their delegated authority. 55 U.S.L.W. 3472 (Jan. 13, 1987).

As respondents candidly admit, liability against the City of Canton is predicated solely upon "[t]he grant of discretion to the shift commander to evaluate Mrs. Harris' medical condition coupled with *the City's failure* to show any evidence of adequate training . . . ." Br. in Opp. 5 (emphasis in original).[1] Thus, the court of appeals has adopted a theory of municipal liability under Section 1983 that shifts the burden to the city to prove that its training is adequate whenever the city delegates decision-making discretion to municipal employees. This case is therefore a bridge between the issue posed in *St. Louis* and the issue raised but not decided in *Springfield*. As in *St. Louis*, the effect of a delegation of authority to city employees is crucial to this case and, as in

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[1] Respondents' statement of the case, which is completely devoid of citation to the record, contains various allegations of Mrs. Harris' mistreatment by the City that are not before the Court. Br. in Opp. 3. Not only were such allegations flatly contradicted at trial, but the jury found against Mrs. Harris on all claims arising out of these allegations and on all claims against the individual defendants. Pet. App. 2a-3a. *See City of Los Angeles* v. *Heller*, 106 S. Ct. 1571 (1986).

The only issue before the Court is whether respondents may recover, under the theory set forth by the court of appeals, on the claim that Mrs. Harris was "unreasonably denied medical attention while incarcerated at the city jail." *See* Pet. App. 4a. The case before the Court does not involve *any* factual issue relating to the jury verdict, the jury instruction or respondents' belated attempt to reargue the facts. On the contrary, this petition presents the purely legal question of whether the court of appeals theory of municipal liability—based on employee discretion and the absence of proof of "adequate" training—is consistent with congressional intent to limit municipal liability under Section 1983 to a city's *own* acts. *See Monell* v. *Department of Social Services*, 436 U.S. 658, 690-95 (1978).

Springfield, the case presents the issue of the appropriate standards for determining when Section 1983 liability against a city is warranted for a claim of inadequate training. In fact, this case is a perfect vehicle for resolving the issue originally accepted for review in *Springfield*. As respondents concede, "*Kibbe* involves unconstitutional conduct *arising out of grossly negligent training* as opposed to a *regulation coupled with inadequate training* [which is involved in this case]. (Br. in Opp. 6; emphasis in original). The basic issue of municipal liability under Section 1983 for inadequate training of employees could not be more clearly and directly presented than it is in this case.

The court of appeals held unambiguously that municipal liability is appropriate if there is delegated authority to a city employee and the city fails to meet its burden of proving that the employee's training was adequate. Such a standard of Section 1983 liability requires no finding that the city has acted indifferently or recklessly with regard to the rights of the city's residents. In fact, it requires no evidence of knowledge by the city. As such, the holding below conflicts with decisions of other courts of appeals which have required proof of deliberate indifference by city officials before imposing municipal liability under Section 1983. See *City of Springfield* v. *Kibbe*, 107 S.Ct. at 1121 (O'Connor, J., dissenting) (collecting cases requiring "deliberate indifference" as the basis for finding a "custom" or "policy" of local government).[2]

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[2] Respondents also assert that the City's regulation conferring discretion upon the shift commander is "vague and unconstitutional." Br. in Opp. 6. This assertion is plainly wrong. The regulation *requires* a shift commander to seek medical assistance for a detainee in certain clear circumstances—when the victim is unconscious or semi-conscious, when the victim complains of illness or when the victim is unable to explain his condition. In all other circumstances, the police shift commander is required to use his judgment as to whether medical assistance is warranted. The

Because the Sixth Circuit's theory of municipal liability is so broad, the practical effect of the court of appeals' decision on cities and counties will be tremendous. As Judge Merritt explained in dissent, the decision below erects a "requirement that cities must have paramedical officers or other trained medical specialists who exercise some type of professional judgment at the jail." Pet. App. 10a. In the absence of clear evidence that such paramedical training is necessary to protect detainees' constitutional rights, this financial burden on local governments in Ohio, Kentucky and Tennessee is wholly unjustified.

In short, there are more compelling reasons to grant the petition in this case than there were in *City of Springfield.* Moreover, the issues presented in this case are complementary to the issues currently before the Court in *City of St. Louis.* Because *City of St. Louis* will not be argued until next Term, the Court might wish to consider granting the petition in this case and having the cases heard in tandem. Alternatively, the Court at least should hold the petition pending its decision of *St. Louis* and then dispose of this petition as appropriate in light of that case.

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regulation is neither unconstitutional nor impermissibly vague. Municipal governments simply cannot codify every day-to-day employee decision; at some point, government employees must exercise discretion. Thus, the City's failure to require specifically by regulation that medical treatment be provided to persons (like Mrs. Harris) who appear to be having difficulty sitting in a chair because of anxiety over being arrested is hardly a basis for liability under Section 1983.

CONCLUSION

The petition for a writ of certiorari should be granted. Alternatively, the petition should be held pending the decision in *City of St. Louis* v. *Praprotnik*, No. 86-772, and then disposed of as appropriate in light of that decision.

Respectfully submitted,

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