No. 86-772

In The
Supreme Court of the United States
October Term, 1986

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CITY OF SAINT LOUIS,

Petitioner,

v.

JAMES H. PRAPROTNIK,

Respondent.

—o—

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

—o—

BRIEF OF THE CITY OF LITTLE ROCK, ARKANSAS, AS AMICUS CURIAE IN SUPPORT OF PETITIONER

—o—

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QUESTIONS PRESENTED

1. Whether principles of causation applicable to actions brought against officials and local governments pursuant to 42 U.S.C. § 1983 differ such that a judgment may be rendered against a local government despite the return of a verdict exonerating the local official who was alleged to have promulgated the unconstitutional policy and acted pursuant to that policy?

2. Whether the failure of a local government to establish an appellate procedure for the review of officials' decisions which does not defer in substantial part to the original decisionmaker's decision constitutes a delegation of authority to establish final government policy such that liability may be imposed on the local government on the basis of the decisionmaker's act alone, when the act is neither taken pursuant to a rule of general applicability nor is a decision of specific application adopted as the result of a formal process?

LIST OF PARTIES

The parties in the Court of Appeals were the City of St. Louis, defendant and appellant, and James H. Praprotnik, plaintiff and appellee.

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INTEREST OF THE CITY OF LITTLE ROCK, ARKANSAS, AS AMICUS CURIAE IN SUPPORT OF PETITIONER

The City of Little Rock, a municipal corporation organized under the laws of the State of Arkansas, is interested in this case to the extent that it can further define what is meant by setting municipal policy. As a political subdivision of a State, the City is not required

to obtain consent of the parties in order to file this amicus brief. Sup.Ct.R. 36.4.

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SUMMARY OF ARGUMENT

Municipalities should not be subjected to liability under 42 U.S.C. § 1983 for the discretionary decisions of policymakers. Further, an official's decision should not be deemed municipal policy for purposes of § 1983 liability, unless that decision can reasonably be deemed to implement policy for the entire municipality as opposed to setting policy for a single department of the municipality.

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ARGUMENT

The respondent herein ("Praprotnik") was laid off from his job with the City of St. Louis. Praprotnik argued, in part, that his job was terminated in violation of his First Amendment rights because he had successfully appealed earlier demotions and disciplinary actions. He obtained a jury verdict of $15,000.00 for this violation. *City of St. Louis v. Praprotnik,* 798 F.2d 1168 (8th Cir. 1986), *cert. granted,* 107 S.Ct. 871 (January 12, 1987).

The City of St. Louis was held liable under 42 U.S.C. § 1983 because it had delegated authority to it supervisors—including certain of Praprotnik's supervisors—to [illegible] which City jobs to eliminate. 798 F.2d at 1176. In short, the Eighth Circuit held that permitting an of-

ficial to make a discretionary decision within his particular department was the same as setting policy for the entire city. If a particular supervisor's decision results in a constitutional violation, the entire City is liable. It is to this question of scope of the policymaker's authority that this brief is addressed.

Clearly, a municipality is not liable under 42 U.S.C. § 1983 unless a constitutional violation occurs as a result of municipal policy, custom or practice. *Monell v. Dept. of Social Services*, 436 U.S. 658 (1978). The municipal policy must be the moving force behind the constitutional tort. *Polk County v. Dodson*, 454 U.S. 312, 326 (1981). Merely employing a tortfeasor does not subject a municipality to liability since the doctrine of *respondeat superior* does not apply. *Pembaur v. City of Cincinnati*, — U.S. —, 106 S.Ct. 1292, 1297-98 (1986).

However, there is no clear identification of when the exercise of authority by a policymaker can be equated to officially promulgated municipal policy. *Compare Praprotnik; Jett v. Dallas Independent School District*, 798 F.2d 748 (5th Cir. 1986); *Williams v. Butler*, 802 F.2d 296 (8th Cir. 1986), *cert. pending sub. nom., City of Little Rock v. Williams*, No. 86-1049. The City of Little Rock ("Little Rock") urges the Court to use this case to state that to be actionable under § 1983 an official's actions must define policy for the entire municipality as opposed to a subdivision—or single department—of the municipality.

In *Pembaur* a plurality of the Court stated that a municipality may delegate discretionary decisions to vari-

ous municipal officials without designating those officials as final authorities for determining municipal policy.

> Thus, for example, the County Sheriff may have discretion to hire and fire employees without also being the county official responsible for establishing county employment policy. 106 S.Ct. 1300, n.12

Yet, despite this language the Court in *Praprotnik* has taken an entirely different view of when municipal policy is established.

To hold the City of St. Louis liable under 42 U.S.C. § 1983, Praprotnik had to establish that his immediate supervisors had authority to set citywide personnel policy. The Eighth Circuit concluded that his supervisors had this authority because the City permitted them to determine initially which positions within their departments could be abolished because of a lack of work, or a lack of funds. *Praprotnik,* 798 F.2d at 1172. In the Eighth Circuit's view, the request of Praprotnik's supervisors to eliminate his position, even though subject to review, was the equivalent of the City of St. Louis deciding to violate Praprotnik's free speech rights. Hence, permitting a city official to make an initial decision in his area of responsibility, subject to review, is the same as granting that official final authority to establish municipal policy.

The Eighth Circuit has also defined another circumstance in which an official's acts are deemed the equivalent of municipal policy. *Williams v. Butler.* This point is reached when a municipal official, permitted the discretion to hire and fire his employees, illegally terminates an employee—even if that termination is in violation of stated municipal policy. This illegal act of one official is deemed

the equivalent of the municipality adopting the illegality as its officially promulgated policy.

The Fifth Circuit, however, has set a different parameter as to when municipal liability attaches. *Jett v. Dallas Independent School District*. According to the Fifth Circuit, the policy maker must have been delegated final authority to make general policy decisions for the municipality as opposed to specific authority in one area. 798 F.2d at 760. It is this view, suggested by *Pembaur*, that Little Rock believes should be adopted. *Praprotnik* provides the Court the vehicle for adopting this view.

To be sure, this bright line test for municipal liability is consistent with the Court's rulings in this area. It is easy to find municipal liability when an officially promulgated policy has resulted in a constitutional violation. *Monell*. There is no doubt in that circumstance that the municipality determined to take a course of action that would result in violating an individual's rights. Hence, the municipality should be held liable.

It is not so clear when the constitutional violation occurs as a result of delegating to a city official authority in a specific area. The question is whether cities should be held liable for the actions of its officials in a specific area if that action is inconsistent with general policy guidelines the city has established? *Pembaur*, as noted above, clearly suggests that to hold a city liable under such circumstances would, in effect, add the doctrine of *respondeat superior* to 42 U.S.C. § 1983.

In today's society, municipalities of any size have to delegate decision making authority to various officials. The municipality should set general guidelines to be fol-

lowed by those decisionmakers, and it has the right to assume that those guidelines will be followed. It would be absurd to believe that a decisionmaker was executing municipal policy if he acted contrary to that policy. *Pembaur*, 106 S.Ct. 1301-02 (White, J., concurring).

More to the point, it would be absurd to equate an individual decision within a specific department of government to officially promulgated municipal policy absent a stated desire by the municipality to do so. Yet, the City of St. Louis was held liable, in part, because a twice removed supervisor's decision to eliminate Praprotnik's position was deemed the equivalent of a municipal policy to punish those employees that successfully appeal disciplinary actions.

This Court must clearly state that absent a clear indication to the contrary, the acts of municipal officials within their scope of authority do not equate to officially promulgated municipal policy for which § 1983 liability may attach. Until the Court does so, the appellate courts will continue to issue divergent views like those pointed out above.

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CONCLUSION

The Court should use this case to clearly delineate when a municipal officials' acts equate to officially promulgated municipal policy. The Court should state that absent a clear delegation of policy making authority for the entire municipality, the decisions of municipal officials, acting within their limited area of authority, do not constitute a basis for municipal liability under 42 U.S.C. § 1983.

Respectfully submitted,

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