



## Alerts

### U.S. Supreme Court Clarifies That "Policy or Custom" Requirement for Establishing Section 1983 Municipal Liability Applies to Claims Seeking Declaratory or Injunctive Relief

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*Professional Lines Alert*

One of the unique aspects of Section 1983 litigation is that there is no vicarious liability. A municipality cannot be held liable under Section 1983 for the unconstitutional acts of an employee simply because the employee was acting in the course and scope of his or her employment at the time that the constitutional violation occurred. In *Monell v. New York City Dept. of Social Servs.*, 436 U.S. 658, 690-91 (1978), the U.S. Supreme Court held that a local unit of government can only be held liable under Section 1983 when the alleged constitutional violation was caused by "a policy statement, ordinance, regulation or decision officially adopted or promulgated . . . [or for] deprivations visited pursuant to a governmental custom." This is commonly referred to as *Monell's* "policy or custom" requirement for establishing municipal liability under Section 1983. This policy or custom requirement is an additional element that must be proven to establish Section 1983 municipal liability. On November 30, 2010, the U.S. Supreme Court clarified that *Monell's* policy or custom requirement applies to all Section 1983 municipal liability claims, irrespective of whether the relief sought is monetary or equitable in nature. *Los Angeles County, California v. Humphries, No.09-350, 2010 WL 4823681*

The years following the Supreme Court's decision in *Monell* saw a split arise in the federal circuits over whether the policy or custom requirement applied to claims for declaratory or injunctive relief. While several federal appellate courts concluded that *Monell's* policy or custom requirement applied to claims seeking prospective injunctive relief, the U.S. Court of Appeals for the Ninth Circuit reached the opposite conclusion. The Supreme Court resolved that circuit split in *Humphries*, holding that the policy or custom requirement applies across the board in any Section 1983 claim brought against any local unit of government.

In *Humphries*, the Court observed that there was nothing in the text of Section 1983 suggesting that the elements of a Section 1983 claim would differ depending upon the nature of the relief sought. The Court noted that Section 1983's text suggests the opposite because it provides that a person who violates Section 1983's elements "shall be liable . . . in an action at law, suit and equity or other proper proceeding for a redress."

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Another unique feature of Section 1983 litigation is that a “prevailing party” in a civil rights suit is entitled to attorney fees under 42 U.S.C. Section 1988. An ancillary benefit of *Humphries* is that the Court’s decision renders it more difficult to recover attorney fees in connection with Section 1983 claims seeking injunctive or declaratory relief. In order to obtain declaratory or injunctive relief from a local unit of government, a party must demonstrate that a policy, custom or practice of that governmental entity was the target of that relief.

For further information, please contact [Steven M. Puiszis](#), or your regular [Hinshaw attorney](#).

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