**No. 08-31196**

**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE FIFTH CIRCUIT**

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**WORLD WIDE STREET PREACHERS FELLOWSHIP and KENNETH COLEMAN, SR.,**
*Plaintiffs-Appellants*,

v.

**THE TOWN OF COLUMBIA,**
*Defendant-Appellee*.

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**ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA**

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# BRIEF *AMICUS CURIAE* OF THE NATIONAL LEGAL FOUNDATION,

in support of *Plaintiffs-Appellants*
Supporting reversal of order denying injunctive relief.

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## CERTIFICATE OF INTERESTED PERSONS

Pursuant to Federal Rule of Appellate Procedure 26.1 and Fifth Circuit Rule 28.2.1, the undersigned counsel of record certifies that the following listed individuals and entities have an interest in the outcome of this case. None of the following individuals and entities, including *Amicus Curiae* The National Legal Foundation, is a corporation that issues shares of stock to the public. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

1. The National Legal Foundation, *Amicus Curiae* on behalf of Plaintiff-Appellant;
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3. Douglas E. Myers, Counsel for *Amicus Curiae*, The National Legal Foundation.
4. Randall L. Wenger, Counsel for Plaintiffs-Appellants
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## INTEREST OF *AMICUS CURIAE*

The National Legal Foundation (NLF) is a public interest law firm dedicated to the defense of First Amendment liberties and the restoration of the moral and religious foundation on which America was built. The NLF and its donors and supporters, in particular those in Louisiana, are vitally concerned with the outcome of this case because of the effect the loss of religious, speech, and assembly rights could have on religious liberty and expression of people assembling in public fora.

This brief is filed pursuant to consent from Counsel of Record for the Appellants and pursuant to a Motion for Leave to File a Brief *Amicus Curiae*.

## SUMMARY OF THE ARGUMENT

This Brief makes one argument not made by the Plaintiffs-Appellants World Wide Street Preachers Fellowship, *et al.* (the "Preachers"). Proof of liability under *Monell v. Department of Social Services*, 436 U.S. 658 (1978), is unnecessary in the instant case for the purposes of assessing the Preachers' claim for injunctive and declaratory relief because of the prospective nature of the relief and because the holding in *Monell* discussed almost exclusively liability leading to monetary damages.

## ARGUMENT

### I. THIS COURT SHOULD ADOPT THE HOLDINGS IN *CHALOUX V. KILLEEN* AND *NOBBY LOBBY, INC. V. CITY OF DALLAS* BECAUSE *MONELL* IS INAPPLICABLE FOR DETERMINING THE PROPRIETY OF THE PREACHERS' CLAIM FOR INJUNCTIVE RELIEF.[1]

The Preachers have correctly argued that the court below erred by not finding the Appellee Town of Columbia (the "Town") liable for violations arising under 42 U.S.C. § 1983 (LEXIS through May 15, 2009) of the Preachers' rights under the standards first definitively articulated by *Monell v. Department of Social Services*, 436 U.S. 658 (1978) ("*Monell* liability"). (*See* Appellants' Br. at 33-41.) Your *Amicus* will not reiterate those arguments here. Instead, even if this Court should disagree and affirm the court below as to *Monell* liability, independent grounds exist for ordering prospective injunctive relief against the Town because proof of *Monell* liability is unnecessary to enjoin the Town from future violations of the Preachers' constitutional rights.

Although this Court has not directly addressed whether proof of *Monell* liability is required before it will grant a plaintiff prospective injunctive or declaratory relief against a municipality, *see Nobby Lobby, Inc. v. City of Dallas*, 970 F.2d 82, 93 n.12 (5th Cir. 1992) ("Because substantial evidence supports the

[1] Although the Preachers also seek relief for nominal damages, *Amicus* assumes *arguendo* that *Monell* liability has not been proven, and therefore, the Preachers' request for injunctive relief is the only remedy potentially still available.

district court's finding that the officers' conduct in this case was pursuant to a city policy we express no opinion on whether a plaintiff must establish a municipal policy or custom to obtain declaratory relief against a municipality."), cases within and outside the circuit demonstrate that *Monell* should provide no impediment to such relief.

As a preliminary matter, it is worth noting that the Preachers have named a single, municipal defendant—namely the Town—but have not named any individual defendants in their official capacity. Because an official-capacity suit is, "in all respects other than name, to be treated as a suit against the entity," *Kentucky v. Graham*, 473 U.S. 159, 166 (1985), the fact that no individual defendants have been named neither adds nor subtracts anything from the case at hand. Claims for injunctive relief under § 1983 are sometimes filed against only institutional defendants, *see e.g., White v. Dallas Indep. Sch. Dist.*, 581 F.2d 556, 558 (5th Cir. 1978), and this Court, having ruled in the instant case at an earlier stage, accepted the municipal defendant before it in like manner. *World Wide St. Preachers Fellowship v. Town of Columbia*, 245 Fed. Appx. 336, 339 (5th Cir. 2007).

A. The *Monell* Court plainly articulated a right to sue municipal defendants, but purposely reserved articulating the "full contours" of municipal liability under § 1983 for subsequent litigation.

What is at issue, however, is whether the letter and spirit of *Monell* permit certain kinds of relief to be granted against municipal defendants without a finding

of *Monell* liability. As discussed further below, a number of courts have held that, because the facts and holding of *Monell* were overwhelmingly about liability and monetary damages, proof of *Monell* liability is unnecessary for determining the propriety of prospective relief, namely injunctive and declaratory relief. *See e.g., Nobby Lobby, Inc. v. City of Dallas*, 767 F. Supp. 801, 809 (N.D. Tex. 1991) ("*Monell* does not apply . . . where Plaintiff seeks only prospective injunctive and declaratory relief against the City for unconstitutionally enforcing a state criminal statute.") The *Nobby Lobby* Court went on to explain that "*Monell* concerned the liability of municipal officials . . . where plaintiffs sought *damages* based on [a] municipality's 'official policy.'" *Id.* (citation omitted) (emphasis added).

Rightly understood, *Monell* appears to convey two major, but distinct, themes. First, *Monell* unequivocally subjects municipalities to civil actions under § 1983. 436 U.S. at 690 ("Our analysis of the legislative history of the Civil Rights Act of 1871 compels the conclusion that Congress *did* intend municipalities and other local government units to be included among those persons to whom § 1983 applies." (emphasis in original)). Second, although *Monell* began as a suit for both injunctive and monetary relief, the *Monell* District Court mooted the plaintiffs' injunctive claims because of a change in the defendants' policy. *Id.* at 661. On appeal the plaintiffs did not challenge the ruling on injunctive relief, but continued to press for damages. *Id.* at 661-62. The Second Circuit rejected plaintiffs'

argument, finding that a "damages action against officials sued in their official capacities could not proceed." *Id.* at 662. Thus, the Supreme Court had before it *only* a damages suit and its holding is limited to such suits. Therefore, the first theme—that municipalities can be sued under § 1983—is truly the heart of the *Monell* holding and the primary impetus for this Court to conclude that prospective injunctive and declaratory relief should not be precluded by the latter theme.

The *Monell* Court arrived at its key holding after significant analysis, going to great pains to analyze the legislative history and the legal context from which § 1983 arose and the nature of the remedies it was designed to provide. *Id.* at 665. In particular, the Court found many statements within the legislative history which demonstrated the broad sweep intended for the law. For example, the Court related Representative Shellabarger's comments concerning the "remedial" nature of § 1983, its goal being to "aid . . . the preservation of human liberty and human rights." *Id.* at 684. Shellabarger went on to explain how "[a]ll statutes and constitutional provisions authorizing such statutes are liberally and beneficently construed," urging that "wise judicial interpretation" construes statutes with the "largest latitude consistent with the words employed." *Id.*

Shellabarger appealed to the authority of eminent jurists, quoting Justice Story's approval of Chief Justice Jay's opinion from *Chisholm v. Georgia*. *Id.* at 684 ("Where a power is remedial in its nature there is much reason to contend that

it ought to be construed liberally, and it is generally adopted in the interpretation of laws."). The *Monell* Court summarized the debates by noting that "both Houses . . . intended to give a broad remedy for violations of federally protected civil rights." *Id.* at 685. In other words, "everyone . . . knew § 1983 would be applied to state officers," and that it was "intended to provide remedy, to be broadly construed, against all forms of official violation of federally protected rights." *Id.* at 700-01.

The *Monell* Court, however, did not quite match the ambition of the legislators who first enacted § 1983. Importantly, the Court was rather circumspect in its reversal of the court below. "In [reversing the judgment below], we have no occasion to address, and do not address, what the full contours of municipal liability under § 1983 may be." *Id.* at 695. The key passage of the holding, however, highlights that the Court was addressing suits for damages and not prospective relief.

> We conclude, therefore, that a local government may not be sued under § 1983 for an *injury inflicted* solely by its employees or agents. Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, *inflicts* the *injury* that the government as an entity is responsible under § 1983.

*Id.* at 694 (emphases added).

One of the "contours" not addressed in *Monell* was the propriety of prospective injunctive and declaratory relief without proof of liability under *Monell*. As set out more fully below, injunctive and declaratory relief without

proof of *Monell* liability are remedies well within the letter and spirit of *Monell* itself.

B. *Monell* is inapplicable when a plaintiff seeks injunctive or declaratory relief because of the prospective nature of such relief.

The logic of the Federal District Court for the Northern District of Texas cogently makes the case for the easier availability of injunctive and declaratory relief. In rejecting the municipality's argument that the plaintiff must prove that certain "police officers were acting pursuant to an official policy of the City" in order to obtain relief, the court held that the "Supreme Court did not intend to apply any 'official policy or custom' requirement to preclude an action seeking prospective relief against a municipality or its officials for unconstitutionally enforcing state laws." *Nobby Hobby*, 767 F. Supp. at 809. Simply put, because the "dispute [was] solely over the propriety of prospective relief," *Monell* did not apply. *Id.*

On appeal, as alluded to previously, this Court found it unnecessary to address the precise holding articulated by the *Nobby Lobby* District Court because the case so plainly manifested *Monell* liability. 970 F.2d at 93 n.12. The instant case, however, presents this Court with an opportunity to address the matter (if it finds *Monell* liability in doubt) by explicitly permitting prospective injunctive and declaratory relief without the necessity of proving damages liability under *Monell*.

The Ninth Circuit Court of Appeals and Federal District Courts in Michigan and New York have also explicitly recognized that that *Monell* does not control claims for prospective relief. The federal court in Michigan explained well the reason:

> Because the plaintiffs' prayer for relief against the state defendants is limited to prospective injunctive and declaratory relief, it cannot be said that they seek to hold the state responsible for the past acts of the [those state defendants].

*Platte v. Thomas Township*, 504 F. Supp. 2d 227, 240 (E.D. Mich. 2007). Put differently, the phrase "*Monell* liability" suggests culpability for past wrongful behavior and resultant financial harm, for which the availability damages is carefully circumscribed by the requirements of *Monell*. That same circumscription simply does not apply when considering prospective relief.

The *Platte* Court grounded its logic in part on Ninth Circuit Court of Appeals decision in *Chaloux v. Killeen*, 886 F.2d 247, 250 (9th Cir. 1989). There, the Ninth Circuit noted that the

> *Monell* doctrine did not intend to limit the reach of plaintiffs seeking prospective relief under § 1983 against the further exercise of governmental authority under an allegedly unconstitutional state statute. The availability of such relief is "necessary to permit the vindication of important federal rights."

*Chaloux*, 886 F.2d at 251 (citation omitted). Thus, the instant case, one exclusively against a municipal defendant, mirrors *Chaloux* in all material respects,

adding further weight to the application of the Ninth Circuit's reasoning to the instant case.

Continuing the logic of *Nobby Lobby*, *Chaloux*, and *Platte*, the Southern District Court of New York placed the legal landscape in a helpful context. "There is scant and conflicting authority as to whether *Monell* applies in actions where the only remedy demanded is prospective injunctive and declaratory relief. However, *those courts which have squarely addressed the issue* have concluded that it does not."[2] *Reynolds v. Giuliani*, 118 F. Supp. 2d 352, 362 (S.D.N.Y. 2000) (emphasis added). The court articulated an important reason for adopting such a view, namely that prospective relief really only burdens a municipality to the same extent it was already burdened under the law. *Id.* at 363. In other words, prospective relief does nothing but require the municipality to follow and enforce the law.

The court's logic is especially compelling in the instant case where a violation of the Preachers' rights has already been adjudicated, *World Wide St. Preachers Fellowship v. Town of Columbia*, 2008 U.S. Dist. LEXIS 90674 at *33 (W.D. La. Nov. 7, 2008), and the Preachers contend that the Town failed to train its officers. (*See* Appellants' Br. at 39-40.) Injunctive relief, therefore, forces the

[2] Although the District Court's statement was true at the time it was made, since then the First Circuit rejected *Chaloux* as incorrectly decided. *See Dirrane v. Brookline Police Dep't*, 315 F.3d 65, 71 (1st Cir. 2002). Also, as explained below, the Second Circuit ultimately reversed the District Court on the issue of *Monell* liability. *Reynolds v. Giuliani*, 506 F.3d 183, 191 (2d Cir. 2007).

Town to take seriously its obligation to ensure its police officers protect the constitutional rights of all people within their jurisdiction.

Although the Second Circuit Court of Appeals ultimately rejected the District Court's understanding of *Monell*, *Reynolds v. Giuliani*, 506 F.3d 183, 191 (2d Cir. 2007), its reasoning is unpersuasive. The *Reynolds* Court failed to consider the *Monell's* legislative history, the nature of the relief sought by the plaintiffs there, the Court's persistent use of the words "inflict" and "injury," and the Court's reticence to clearly announce the "contours" of municipal liability under § 1983. Instead, the *Reynolds* Court summarily dismissed the *Chaloux* Court's reading of *Monell*, simply asserting that "*Monell* draws no distinction between injunctive and other forms of relief." *Reynolds*, 506 F.3d at 191.

As noted previously, the *Monell* Court noted approvingly the admonition from Justices Story and Jay that "[w]here a power is remedial in its nature there is much reason to contend that it ought to be construed liberally, and it is generally adopted in the interpretation of laws." *Monell*, 436 U.S. at 685 (citation omitted). Thus, § 1983 being remedial in nature, the appropriately liberal construction on it is the view taken by *Nobby Lobby*, *Chaloux*, and *Platte*. Damages require proof of *respondeat superior* liability, whereas prospective relief merely requires proof of constitutional harm by a municipal actor. Because Officer Robert Miles (a municipal actor) denied the Preachers their rights guaranteed under the First

Amendment, *World Wide St. Preachers Fellowship*, 2008 U.S. Dist. LEXIS 90674 at *33, under the theory articulated above, they have proved enough to enjoin the Town from further violations of their rights.

## CONCLUSION

For the foregoing reasons, and for the reasons put forth in Plaintiffs-Appellants' Brief, this Court should reverse the District Court's denial of injunctive relief in favor of the Preachers.

Respectfully submitted,
this 11th day of June, 2009

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## CERTIFICATE OF SERVICE

I hereby certify that I have duly served the attached Brief *Amicus Curiae* of The National Legal Foundation in the case of *World Wide Street Preachers Fellowship, et al. v. Town of Columbia*, No. 08-31196, on all required parties by depositing two paper copies and one electronic copy in the United States mail, first class postage, prepaid on June 11, 2009 addressed as follows:

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