No. 09-571

In The
Supreme Court of the United States

HARRY F. CONNICK, in his official capacity as District Attorney; ERIC DUBELIER, in his official capacity as Assistant District Attorney; JAMES WILLIAMS, in his official capacity as Assistant District Attorney; LEON A. CANNIZZARO, JR., in his official capacity as District Attorney; ORLEANS PARISH DISTRICT ATTORNEY'S OFFICE,

Petitioners,

v.

JOHN THOMPSON,

Respondent.

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

AMICI CURIAE BRIEF OF THE NATIONAL DISTRICT ATTORNEYS ASSOCIATION AND THE CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION IN SUPPORT OF PETITIONERS

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OTHER AUTHORITIES

Alameda County, California to Cut 29 Attorneys, June 12, 2009, http://www.jdjournal.com/2009/06/12/alameda-county-california-to-cut-14-attorneys/ 9

Anderson Cooper 360 Degrees, Murder City USA: 24 Hours in New Orleans, CNN Transcript Aired Feb. 8, 2007, http://transcripts.cnn.com/TRANSCRIPTS/0702/08/acd.02.html 14, 15

Bohrer, Court Upholds $14 Million Judgment Against Orleans DA's Office, Assoc. Press, Aug. 11, 2009 14

Brown, New Orleans Murder Rate for Year Will Set Record, Guardian News and Media Ltd., Nov. 6, 2007, http://www.guardian.co.uk/world/2007/nov/06/usa 15

Financial Woes Could Halt Justice System, WDSU.com, Jan. 7, 2009, http://www.wdsu.com/money/18426227/detail.html.....14

Filosa, Crime Thrives Under 60-Day Rule, The Times Picayune, Feb. 12, 2007, http://www.nola.com/news/t-p/frontpage/index.ssf?/base/news-7/11712631133140.xml&coll=1 15

Haley, District Attorney: Budget Crisis Means Justice Won't be Served, Sacramento Press, May 13, 2009, http://www.sacramentopress.com/headline/7590/District_Attorney_budget_crisis_means_justice_wont_be_served 9

TABLE OF AUTHORITIES – Continued

Page(s)

McNichol & Johnson, Recession Continues to Batter State Budgets; State Responses Could Slow Recovery, Ctr. on Budget & Policy Priorities, http://www.cbpp.org/cms/?fa=view&id=711 (last visited Dec. 1, 2009).....8

More Cuts at the San Joaquin DA's Office, Jan. 12, 2010, http://www.jdjournal.com/2010/01/12/more-cuts-at-the-san-joaquin-das-office/.....9

Nevada County District Attorney Raises Budget Concerns, May 13, 2010, http://yubanet.com/regional/Nevada-County-District-Attorney-Raises-Budget-Concerns.php.....9

INTEREST OF AMICI CURIAE[1]

The National District Attorneys Association (NDAA) was formed in 1950 and is the oldest and largest professional organization in the world representing criminal prosecutors. The NDAA's members are responsible for prosecuting criminal violations in every state and territory of the United States, and they are found in the offices of district attorneys, state's attorneys, attorneys general and county and city prosecutors.

The NDAA was formed to provide a national perspective for issues arising in local prosecutors' offices and to advocate at a national level for prosecutors on those issues. The association also seeks to foster and maintain the honor and integrity of the prosecuting attorneys of the United States, improve and facilitate the administration of justice, and promote the study of law and the diffusion of knowledge of the law through the continuing education of prosecuting attorneys, lawyers, law enforcement personnel, and other members of the interested public.

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[1] Pursuant to Supreme Court Rule 37.6, counsel for amicus certifies that this brief was not authored in whole or in part by counsel for any party, and no person or entity other than amicus or its counsel has made a monetary contribution to the preparation or submission of this brief. Pursuant to Rule 37.3(a), letters of consent from all parties to the filing of this brief have been filed with the Clerk. The parties were notified at least ten days prior to the filing of this brief.

The interests of the NDAA and its members are directly implicated by this case because it involves a $15 million judgment against a local district attorney's office for alleged violations committed by prosecutors found to have been inadequately trained in their obligations to disclose exculpatory evidence under *Brady* v. *Maryland*, 373 U.S. 83 (1963). That judgment threatens to cripple the local district attorney's office and hamper the performance of its essential functions. The judgment will also constrain the office's future efforts to prevent violations, of whatever type, by diverting valuable funds and resources. And the alarming prospect for similar judgments in other offices across the country based on similar claims implicates the NDAA's national mission even more directly. As a national organization, the NDAA has a significant interest in the adoption of a uniform approach to single-incident municipal-liability claims that affirms and retains heightened standards for imposing liability against municipal entities like district attorney's offices.

The California District Attorneys Association (CDAA), the statewide organization of California prosecutors, is a professional organization incorporated as a nonprofit public benefit corporation in 1974. CDAA has over 2500 members, including elected and appointed district attorneys, the Attorney General of California, city attorneys principally engaged in the prosecution of criminal cases, and attorneys employed by these officials. The association presents prosecutor's views as amicus curiae in appellate cases when it

concludes that the issues raised in such cases will significantly affect the administration of criminal justice.

SUMMARY OF THE ARGUMENT

The Court has consistently recognized that plaintiffs must satisfy stringent culpability and causation requirements in order to hold municipal entities liable for single-incident claims based on a failure to adequately train employees. To relax these standards would allow vicarious liability for employees' torts under de facto *respondeat superior* liability, which would be constitutionally suspect, incompatible with the text of 28 U.S.C. §1983, and inconsistent with the Court's decisions.

The petitioners' brief persuasively explains how the decision below improperly erodes the heightened culpability and causation standards that properly limit municipal liability, contravening the Court's clear precedent and the constitutional and doctrinal principles that underpin it. The NDAA submits this brief to augment those arguments by explaining how the relaxed approach would have serious detrimental consequences for the administration of justice across the Nation, by straining prosecutorial budgets and resources, improperly interjecting the federal courts into the retroactive micromanagement of prosecutors' offices, and impeding the ability of district attorneys to focus on their primary mission of enforcing the law. By punishing district attorneys' offices for the offenses of their outlying bad actors, the relaxed rule

will not only hamper good prosecutors' efforts to punish actual criminals, it will also, ironically, by overtaxing resources, produce more of the same sort of violations it is intended to prevent. The decision below, which affirmed a $15 million judgment that is roughly equal to the annual budget of the Orleans Parish District Attorney's Office, is an excellent example of how allowing liability in similar situations will harm rather than promote the swift and fair prosecution of crimes by district attorneys.

ARGUMENT

I. REDUCING THE BURDEN FOR LIABILITY FOR SINGLE-INCIDENT FAILURE-TO-TRAIN CLAIMS IS CONTRARY TO THE COURT'S CASES.

The Court has consistently reaffirmed that §1983 municipal liability must rest on heightened requirements of culpability and causation. See*, e.g.*, *Monell* v. *N.Y. City Dept. of Social Servs.*, 436 U.S. 658 (1978); *Pembaur* v. *Cincinnati*, 475 U.S. 469, 481 (1986); *Canton* v. *Harris*, 489 U.S. 378 (1989). These heightened requirements are necessary in order to prevent holding a municipality liable on a theory of *respondeat superior*, which would contravene both the text of §1983 and Congressional intent. See *Monell*, 436 U.S., at 668-669, 673-675, 691-692; *Pembaur*, 475 U.S., at 481; *Canton*, 489 U.S., at 392; *Board of Comm'rs of Bryan County* v. *Brown*, 520 U.S. 397, 404 (1997). Specifically, a plaintiff must show deliberate indifference on the part of the municipality and direct

causation of the plaintiff's alleged harm by the alleged failure to train. *Canton*, 489 U.S., at 389.

The decision in this case, however, effectively rejects these restrictions by allowing liability based on a single-incident *Brady* violation where there was no evidence of a causal connection between the claimed failure to train and the harm that was done to the respondent when prosecutors wrongfully withheld evidence that led to his being convicted. Br. 45-53. The petitioner's brief explains the Court's doctrine in this area and convincingly demonstrates how the ruling below fails to impose the necessary strictures on culpability and causation required to limit municipal failure-to-train liability to its proper scope. Br. 36-41. It also articulates why the dangers of allowing a less strict standard are particularly severe when the claim is based on a single incident allegedly caused by a failure to train, and especially when the alleged failure to train relates to lawyer's duties—like the *Brady* duty at issue here—that prosecutors have an independent professional obligation to learn and perform. Br. 25-31.

In short, a prosecutor who deliberately withholds evidence he knows he should divulge in order to wrongly convict an innocent man is not the same as a police officer given a gun and put on the street with no training on how to use it—the paradigmatic example of single-incident failure-to-train liability hypothesized by the Court in *Canton*. *Canton*, 489 U.S., at 390, n.10. By upholding liability on a record that reflects, at most, diffuse disagreement in the

district attorney's office about what *Brady* required and, in fact, is far more consistent with an intentional violation of known ethical and legal obligations, see Br. 54-60, the decision below incorrectly approved municipal liability for a classic employee intentional tort that no amount of training could have prevented.

II. A Relaxed Liability Rule Will Have Wide-Ranging Harmful Consequences for the Efficient and Fair Administration of Justice by District Attorneys.

Relaxing the culpability and causation standards for single-incident failure-to-train liability is not only inconsistent with the Court's teachings, it will also cause serious, wide-ranging practical harms. Specifically, the relaxed liability rule applied by the decision below will impair both the budgets and the discretion of district attorneys' offices, impeding the swift, effective, and fair administration of justice in localities across the country.

A. The Relaxed Rule Threatens to Impose Wide-Ranging Liability.

The decision below opens up a wide scope of liability for district attorney's offices. As the Court has recognized, "adopt[ing] lesser standards of fault and causation would open municipalities to unprecedented liability," as essentially it will embrace "*de facto respondeat superior* liability." *Canton*, 489 U.S., at 391-392. Given that a single incident can support liability even when not shown to have a clear causal connection to the constitutional violation,

every incident of prosecutorial error or malfeasance will become a potential subject for a failure-to-train suit in which plaintiffs can argue that more (or more formal) training would have prevented the violation. A potentially successful lawsuit thus would arise after every case reversed due to prosecutorial mistakes or misconduct—even when the prosecutor's office had no prior indication that the mistake or misconduct was likely to occur or might have been prevented.

Moreover, the field for such suits will not be limited to *Brady* errors. Instead, failure-to-train suits will bloom in all sorts of circumstances. Relaxed culpability and causation would permit liability "against any prosecutor's office for nearly any error that leads to a reversal of a conviction," including errors relating to failure to disclose impeachment material,[2] "search and seizure, *Miranda*, evidence of a defendant's other crimes, expert witnesses, sentencing, or many more." *Thompson* v. *Connick*, 578 F.3d 293, 304 (CA5 2009) (en banc) (Clement, J., urging reversal). This will include second-guessing the conduct of the trial itself since, as the Court has noted, "better training or supervision might prevent most, if not all, prosecutorial errors at trial." *Van de Kamp* v. *Goldstein*, 129 S.Ct. 855, 863 (2009).

Further, the strict rules conferring prosecutorial immunity, see *Imbler* v. *Pachtman*, 424 U.S. 409, 428

[2] See *Giglio* v. *United States*, 405 U.S. 150 (1972).

(1976), will mean there is a natural pressure to impose liability on the office as an alternative to the (immune) prosecutor. The relaxation of liability standards endorsed by the decision below will make such pressure harder to resist, and inevitably lead to more large money judgments against district attorney's offices. See *Canton*, 489 U.S., at 391-392 (noting that in "virtually every instance where a person has had his or her constitutional rights violated by a city employee, a §1983 plaintiff will be able to point to something the city 'could have done' to prevent the unfortunate incident"). Prosecutor's offices will increasingly be hit with large money judgments based on the deliberate wrongful acts of individual prosecutors.

B. The Relaxed Standard Will Strain Prosecutorial Budgets at a Particularly Bad Time.

The increase in large money judgments that would follow from the relaxed rule applied by the decision below will strain prosecutorial budgets at a particularly inauspicious time. These are difficult economic times for the Nation, and in particular for state and local governments. Budget shortfalls are predicted to afflict 48 states in fiscal years 2010 and 2011. *E.g.*, McNichol & Johnson, Recession Continues to Batter State Budgets; State Responses Could Slow Recovery, Ctr. on Budget & Policy Priorities, http://www.cbpp.org/cms/?fa=view&id=711 (last visited Dec. 1, 2009). Similar shortfalls are predicted for 2012. *Ibid*.

Prosecutors' offices are no exception, also facing dire budgetary conditions for the foreseeable future. See, *e.g.*, Nevada County District Attorney Raises Budget Concerns, May 13, 2010, http://yubanet.com/regional/Nevada-County-District-Attorney-Raises-Budget-Concerns.php. (noting that, due to budget constraints, "[s]tarting July 1, 2010, this office will no longer be able to file and prosecute many 'quality of life' type crimes such as drunk in public, fighting, battery, trespass, vehicle code infractions or City ordinance violations."); More Cuts at the San Joaquin DA's Office, Jan. 12, 2010, http://www.jdjournal.com/2010/01/12/more-cuts-at-the-san-joaquin-das-office/; Alameda County, California to Cut 29 Attorneys, June 12, 2009, http://www.jdjournal.com/2009/06/12/alameda-county-california-to-cut-14-attorneys/; Haley, District Attorney: Budget Crisis Means Justice Won't be Served, Sacramento Press, May 13, 2009, http://www.sacramentopress.com/headline/7590/District_Attorney_budget_crisis_means_justice_wont_be_served (noting that budget shortfalls would require office to cut entirely "major narcotics, community prosecution, special investigation, statutory rape, elder abuse and child abduction," and reduce in size "homicides, gangs, domestic violence, adult sexual assault, victim witness advocates, juvenile hall, and special assault and child abuse.").

In this climate, large money judgments for long-past isolated acts of prosecutorial misconduct will blow great holes in already swamped budgets

and gravely impair the administration of justice. With more of their resources going to pay for liability judgments, prosecutors will be constrained in performing their essential public justice functions, and also in taking prophylactic steps to avoid future violations. As Justice O'Connor noted over 20 years ago, the "grave step" of prompting a shift in the allocation of scarce resources means that some "services will necessarily suffer, including those with far more direct implications for the protection of constitutional rights." *Canton*, 489 U.S., at 400 (O'Connor, J., concurring in part and dissenting in part).

Further, even for unsuccessful suits, defense costs may be substantial. Just as with suits against prosecutors in their individual capacities, suits against prosecutors' offices, like this one, will be brought years after the fact and place "unique and intolerable burdens" on offices "responsible annually for [thousands] of indictments and trials." See *Imbler*, 424 U.S., at 425-426. Cities will be forced to defend against cases with stale evidence and, as in this case, without key witnesses. Defending against these suits will further strain the limited resources of the prosecutor's office, which will be required to defend the suits vigorously since, as in this case, their entire yearly budget may be on the line.

"[T]he resources of local government are not inexhaustible." *Canton*, 489 U.S., at 400 (O'Connor, J., concurring in part and dissenting in part). At present, the resources of many localities, and their

prosecutors' offices are nearly exhausted. To add to that challenge the burden of defending against, and paying large judgments in, collateral suits arising out of long-distant past convictions will unnecessarily and undesirably increase the budget strains under which district attorneys' offices must perform their essential public justice functions.

C. A Relaxed Liability Standard Will Impede District Attorneys' Executive Ability to Manage and Innovate.

The relaxed rule applied in the decision below will harm the administration of justice not only by sapping offices' scarce resources, but also by constraining the discretion of district attorneys' to manage those scarce resources as they see best. District attorneys know how to run their offices better than federal judges or juries, and they are the ones who have been elected by the people or appointed to do so. This includes the discretion to decide whether a formal training program is the most effective way to prevent violations of defendants' constitutional rights. That is why failure-to-train liability should be imposed only when it is clear that a district attorney failed to adopt a training program out of deliberate indifference to the possibility of constitutional violations and that lack of training clearly caused the constitutional violation at issue.

The decision below, which imposes liability based on murky causation and no showing of deliberate indifference, will inevitably hamstring district

attorneys' discretion to manage their offices. Once a jury imposes a massive verdict for failure to establish a formal training program about some type of error, a formal training program will need be instituted, regardless of whether the district attorney thinks it is the best way to prevent that type of violation.

Further, prospectively, district attorneys will have to think defensively about how to set up programs that will best allow them (and their successors) to defend against future lawsuits based on the inevitable (though regrettable) bad acts of rogue prosecutors. Indeed, if an individual prosecutor's unilateral decision to withhold *Brady* materials can spawn municipal liability for failure to train, then a risk adverse prosecutor's office will take measures to train for nearly any potential constitutional violation.[3] Cf. *Thompson*, 578 F.3d, at 295 (Jones, C.J., dissenting). This will necessarily impair the effectiveness of district attorneys' in organizing and managing their offices to prosecute crimes in the most effective way. Cf. *Imbler*, 424 U.S., at 425 ("[I]f the prosecutor could be made to answer in court each time such a person charged him with wrongdoing, his

[3] Under the minimal burden required by the courts below, almost any constitutional violation would satisfy *Canton*'s standard of imposing liability only when "the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need." 489 U.S., at 390.

energy and attention would be diverted from the pressing duty of enforcing the criminal law.").

At the same time district attorneys are being constricted in performing the executive function they are uniquely suited (and elected) to perform, federal courts will be thrust into the inapt role of second guessing district attorneys' management of their offices. As the Court warned, under the relaxed standard applied in this case, federal courts will have to engage "in an endless exercise of second-guessing municipal employee-training programs . . . an exercise . . . the federal courts are ill suited to undertake" and one that implicates "serious questions of federalism." *Canton*, 489 U.S., at 391-392. The Court should keep federal courts out of that unsuitable business and preserve district attorneys' discretion to manage their offices by reaffirming its jurisprudence requiring high standards of culpability and causation.

III. The Effects of this Particular Judgment on the Orleans Parish District Attorney's Office Illustrate the Practical Ills of the Relaxed Rule.

The potential effects of this particular judgment on the Orleans Parish District Attorney's office provide a specific, compelling example of the practical harms that would follow from approving the relaxed rule applied by the decision below.

First, the judgment below will devastate the budget of the Orleans Parish District Attorney's

office. The Orleans Parish District Attorney's office has an annual operating budget roughly on par with the amount of the judgment, leaving it scant room for anything other than satisfying the judgment. See Bohrer, Court Upholds $14 Million Judgment Against Orleans DA's Office, Assoc. Press, Aug. 11, 2009. Indeed, the office has been forced to consider bankruptcy to prevent the asset seizure that may result from enforcement of the judgment. See Financial Woes Could Halt Justice System, WDSU.com, Jan. 7, 2009, http://www.wdsu.com/money/18426227/detail.html.

That financial imposition is being visited, moreover, on an office whose resources are already stretched to the breaking point. It was in New Orleans that the phrase "misdemeanor murder" was coined in the aftermath of Hurricane Katrina and the overwhelming strains that disaster placed upon the city. Newspapers reported that suspected murderers were being released after 60 days because the district attorney's office lacked the resources to investigate and indict within the statutorily required 60-day period. See La. Code Crim. Proc. art. 701 (2006).[4] Thousands of felony suspects were released due to failure to prosecute—in 2006, nearly 3,000 of these 60-day releases occurred in hard hit Orleans Parish. See Anderson Cooper 360 Degrees, Murder City USA:

[4] That 60-day requirement was subsequently amended to 120 days.

24 Hours in New Orleans, CNN Transcript Aired Feb. 8, 2007, http://transcripts.cnn.com/TRANSCRIPTS/0702/08/acd.02.html; see also Brown, New Orleans Murder Rate for Year Will Set Record, Guardian News and Media, Ltd., Nov. 6, 2007, http://www.guardian.co.uk/world/2007/nov/06/usa.

While not all of those were murders, media sources reported that there are a number of examples of murder suspects who were released based on failures to indict after only 60-days in jail—which is the same amount of time a misdemeanor offender could spend in prison. See, *e.g.*, Filosa, Crime Thrives Under 60-Day Rule, The Times Picayune, Feb. 12, 2007, http://www.nola.com/news/t-p/frontpage/index.ssf?/base/news-7/11712631133140.xml&coll=1.

The New Orleans District Attorney's office is already financially in extremis, much like many other offices around the country. See Anderson Cooper 360 Degrees, Murder City USA: 24 Hours in New Orleans, CNN Transcript Aired Feb. 8, 2007, http://transcripts.cnn.com/TRANSCRIPTS/0702/08/acd.02.html ("A New Orleans judge . . . predicts 7,000 will walk [in 2007] because the justice system is still so overwhelmed."). Saddling that office with liability for the bad acts of a rogue prosecutor (or two) conducted decades ago, without requiring a stringent showing that those acts were *caused* by a failure to train, will go a long way towards destroying its ability to do justice in a swift, effective, and fair manner.

Second, the judgment will second-guess, and retrospectively condemn, the management decisions of a district attorney who greatly innovated and improved the office. As the petitioner's brief explains, the tenure of District Attorney Connick was notable for his innovative and effective approach to updating and improving prosecutor training and office procedures. Br. 3-6. Yet the judgment below will punish the New Orleans District Attorney's office for not having a formal *Brady* training program, superseding District Attorney Connick's experienced judgment about the most effective way to administer the office to make use of its very scarce resources and ensure that prosecutors are monitored and guided to prevent constitutional violations.

District Attorney Connick's management will be second-guessed, moreover, without strong evidence that the harm done to Thompson was caused by the lack of formal training, or that the lack of such training was due to Connick's deliberate indifference to *Brady* violations, as opposed to a calculated, executive decision that there were better, more efficient, and more effective ways to educate prosecutors on their duties. Br. 42-45. Misconduct that was most likely intentional prosecutorial wrongdoing will become the basis to punish and reduce the discretion of the District Attorney to manage the office in a way best designed to promote the effective, efficient, and fair administration of justice. Prospectively, the New Orleans District Attorney's discretion to manage his office's limited

resources and innovate in attorney training will, understandably, be greatly chilled.

CONCLUSION

For these reasons, the NDAA and CDAA urge the Court to retain the heightened burden for municipal liability and reverse the district court.

Respectfully submitted,

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