No. 95-1100

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

THE BOARD OF THE COUNTY COMMISSIONERS OF BRYAN COUNTY, OKLAHOMA,

Petitioner,

v.

JILL BROWN,

Respondent.

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

BRIEF OF
NOW LEGAL DEFENSE AND EDUCATION FUND,
CALIFORNIA WOMEN LAWYERS,
CONNECTICUT WOMEN'S EDUCATION AND LEGAL FUND, INC.,
EQUAL RIGHTS ADVOCATES,
NATIONAL COALITION OF 100 BLACK WOMEN, INC.,
NATIONAL ORGANIZATION FOR WOMEN FOUNDATION,
NORTHWEST WOMEN'S LAW CENTER,
WOMEN EMPLOYED,
WOMEN'S EQUAL RIGHTS LEGAL DEFENSE AND EDUCATION FUND,
WOMEN'S LAW PROJECT, AND
WOMEN'S LEGAL DEFENSE FUND
AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

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July 24, 1996

QUESTIONS PRESENTED

1. Does § 1983 impose municipal liability on a county for a single policy decision by a final policymaker that is deliberately indifferent to the public's welfare and that causes the violation of constitutional rights?

2. Does § 1983 impose municipal liability on a county for a hiring policy that is deliberately indifferent to the public's welfare and that causes the violation of constitutional rights?

3. Is it consistent with principles of federalism to impose § 1983 municipal liability on a county for a hiring policy that is deliberately indifferent to constitutional rights?

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INTERESTS OF *AMICI*

Amici, the organizations described below, champion women's constitutional rights and join in this brief because they recognize that those rights are particularly susceptible to infringement by acts of municipalities. *Amici* accordingly have strong interests in the decision of this Court, interests which will unquestionably suffer if there were to be a reversal of the judgment below. Vindication of women's rights requires municipal liability for the kind of constitutional violation committed here by a municipality's final policymaker.[1]

1. Descriptions of the individual *amici* organizations are set forth in the attached appendix. The written consents of the parties to the submission of this brief have been lodged with the Clerk pursuant to Rule 37.2.

STATEMENT OF THE CASE

In the early morning hours of May 12, 1991, Oklahoma's Bryan County Sheriff's department set up a police checkpoint near the Oklahoma-Texas border. J.A. 30a.[2] Deputy Sheriff Stacy Burns ("Burns") was serving at the checkpoint when a pickup truck driven by Todd Brown ("Mr. Brown") and Jill Brown ("Mrs. Brown") approached. J.A. 31a. Burns had been recently hired by Sheriff B.J. Moore ("Sheriff Moore"), the final policymaker for the department and Burns' great uncle. J.A. 30a, 110a. Before hiring Burns, Sheriff Moore found in a background check that Burns, age 21, had several misdemeanor arrests and convictions. J.A. 114a-15a. His "rap sheet" included assault and battery, resisting arrest, drunk driving, driving with a suspended license, possession of false identification, and nine moving traffic violations. J.A. 41a. Sheriff Moore did not inquire into any of these charges. J.A. 115a. Nor did Sheriff Moore notice that there was an outstanding warrant for Burns' arrest at the time he hired Burns. J.A. 116a.

Mr. and Mrs. Brown were heading home to Bryan County, Oklahoma, from Grayson County, Texas, when they approached the police checkpoint. *Brown* v. *Bryan County*, 67 F.3d 1174, 1177 (5th Cir. 1995), *cert. granted*, 116 S. Ct. 1540 (1996). Not wanting to be delayed at the checkpoint, Mr. Brown decided to make a U-turn and return to Texas. *Id.* Burns, along with Deputy Sheriff Morrison ("Morrison"), pursued the Browns into Texas and pulled them over. *Id.* The jury found that the police pursuit was without probable cause. J.A. 134a.

2. All references to "J.A." are to the Joint Appendix submitted to this Court by the parties.

When the Browns' truck stopped, Morrison exited his squad car and pointed his drawn gun at the Browns' vehicle, ordering them to raise their hands. *Brown*, 67 F.3d at 1178. Burns, acting without direction from Morrison, approached the passenger side of the truck where Mrs. Brown was sitting. J.A. 96a. After commanding Mrs. Brown to leave the truck, Burns forcibly pulled Mrs. Brown from her seat and threw her to the pavement. *Brown*, 67 F.3d at 1178. Burns then pinned Mrs. Brown to the ground on her knees, and handcuffed her hands behind her. *Id.* Mrs. Brown remained that way from thirty minutes to an hour without being charged with any crime. *Id.*

Burns' actions severely injured Mrs. Brown. *Id.* As a direct result of Burns' conduct, Mrs. Brown has undergone four knee operations. *Id.* She requires total knee replacements. *Id.*

Mrs. Brown brought claims against Bryan County, Burns, Morrison, and Sheriff Moore under 42 U.S.C. § 1983 (1996). J.A. 20a. She alleged that Burns used excessive force on her, unlawfully arrested her, and falsely imprisoned her in violation of her constitutional rights. *Id.*

Mrs. Brown's claims were tried before a jury in the United States District Court for the Eastern District of Texas. The jury found in Mrs. Brown's favor on all counts, and the district court entered judgment on the verdict against both Burns and Bryan County. J.A. 134a-35a.[3] The jury found that the hiring policy of Bryan County in Burns' case was "so

3. The district court dismissed claims against Morrison and Sheriff Moore, J.A. 19a, and granted judgment notwithstanding the jury's verdict with respect to plaintiff's claim for loss of past income or future earning capacity. *Brown*, 67 F.3d at 1177.

inadequate as to amount to deliberate indifference to the constitutional needs'' of Mrs. Brown. J.A. 135a. Respondent's expert testified that Burns' arrest record showed a ''blatant disregard for the law'' and raised questions about his fitness to be a police officer. *Brown*, 67 F.3d at 1184. The expert stated that at a ''minimum,'' Sheriff Moore should have inquired further into the charges against Burns. *Id.* Petitioner's own expert agreed that Burns' criminal history should have triggered further review and, when asked if he would have hired Burns, replied ''doubtful.'' J.A. 84a.

The United States Court of Appeals for the Fifth Circuit affirmed the district court's decision, 67 F.3d 1174, holding that the jury could have ''reasonably inferred that Sheriff Moore 'closed his eyes' to Burns' background when hiring him.'' *Brown*, 67 F.3d at 1183. This Court granted Bryan County's petition for certiorari on April 22, 1996. 116 S. Ct. 1540 (1996).

SUMMARY OF ARGUMENT

Congress enacted § 1983 to protect individuals' civil rights from abuse by ''persons'' acting under color of state law and to provide remedies for constitutional violations. Section 1983 and the evolution of this Court's precedent mandate that a municipality, as a person within the meaning of § 1983, be liable for a single act by a final policymaker when a fact-finder finds both deliberate indifference to constitutional rights and that the policy has proximately caused constitutional injury. *See infra* Parts I(A) and I(B).

The standard established by this Court's prior decisions for municipal liability has clearly been met in the instant case. Bryan County's single act was to hire Burns without giving any consideration to his criminal record. Sheriff Moore, who made the hire, was the final policymaker for the municipality and, thus, acted as the municipality. As the jury found, Sheriff Moore was deliberately indifferent to the public's

constitutional rights when he deliberately failed to investigate Burns' criminal background before he hired him. Mrs. Brown's constitutional injury was a direct result of Sheriff Moore's indifference. The Fifth Circuit's decision on appeal properly affirmed the judgment of the district court and the underlying jury findings on the issues of deliberate indifference and causation. *See infra* Part I(C).

Affirming the decision below is fully consistent with the federal principles embodied in the Constitution, for which § 1983 has provided remedies in federal courts for 125 years. The decision below does not eviscerate any legitimate independent state or municipal interests. Rather, it fosters the *constitutional* interests that *both* the state and federal governments are committed to uphold. *See infra* Part I(D).

Finally, the practical importance of this application of § 1983 to the minority interests that § 1983 was enacted to protect, is amply illustrated by reference to instances where women's civil and constitutional rights have been violated by the single act of a municipal policymaker. *See infra* Part II.

ARGUMENT

I. MUNICIPAL LIABILITY UNDER § 1983 FOR A SINGLE ACT OF A MUNICIPAL POLICYMAKER THAT CAUSES THE VIOLATION OF CONSTITUTIONAL RIGHTS IS MANDATED BY THIS COURT'S PRECEDENTS AND THE PURPOSES UNDERLYING § 1983.

A. Section 1983 was enacted to protect citizens from constitutional abuses by municipalities.

Section 1 of the Civil Rights Act of 1871, now codified as 42 U.S.C. § 1983, was enacted to protect citizens from consti-

tutional abuses by state authorities.[4] *See Monroe* v. *Pape*, 365 U.S. 167 (1961), *overruled in part or other grounds by Monell* v. *Dept. of Social Services*, 436 U.S. 658 (1978). At the time of its enactment, Congress sought to protect citizens from state acquiescence in civil rights transgressions such as Ku Klux Klan activity. *Id.* at 174; *Monell* v. *Dept. of Social Services*, 436 U.S. 658, 665 (1978). Section 1983 was designed to override the enforcement by those acting under color of state law, or discriminatory local laws and regulations, to provide a remedy where state remedies were inadequate or non-existent, and to afford a remedy in federal court where state laws were adequate in theory "but not available in practice." *Monroe*, 365 U.S. at 173-74. By imposing civil liability on state actors, § 1983 deters unconstitutional uses of state power and compensates victims. *Owen* v. *City of Independence*, 445 U.S. 622, 651 (1980).

In *Monell*, this Court held that liability for constitutional violations pursuant to § 1983 extended to municipal governments and their policymakers. 436 U.S. at 690. "So long as federal courts were vindicating the Federal Constitution," this Court explained in its review of the legislative history, "they were providing the 'positive' government action required to protect constitutional rights . . . ." *Id.* at 680-81. In enacting § 1983, Congress "intended to give a broad

4. Section 1983 provides in relevant part: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." 42 U.S.C. § 1983.

remedy for violations of federally protected civil rights," including violations by municipalities.[5] *Id.* at 685. That principle of § 1983 jurisprudence is beyond peradventure.

B. This Court's precedents provide that under § 1983 a municipality is liable for a single act by a final policymaker that shows deliberate indifference to constitutional rights and causes constitutional injury.

In *Monell*, the Court held that municipalities were liable "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 [constitutional] injury . . . ." *Monell*, 436 U.S. at 694 (emphasis added).[6] The mandatory pregnancy leave at issue in *Monell* "unquestionably involve[d] official policy as the moving force of the constitutional violation . . . ." *Id.* Thus, the Court held that liability attached because the policy was deliberate, and in so deciding drew a line which still stands today: municipal liability requires deliberate "policy" and a municipality will not be found vicariously liable through the application of the doctrine of *respondeat superior*.

5. *See also Owen*, 445 U.S. at 647-48 ("[T]he municipality's 'governmental' immunity is obviously abrogated by the sovereign's enactment of a statute making it amenable to suit. Section 1983 was just such a statute. By including municipalities within the class of 'persons' subject to liability for violations of the Federal Constitution and laws, Congress — the supreme sovereign on matters of federal law — abolished whatever vestige of the State's sovereign immunity the municipality possessed.") (footnote omitted).

6. In *Monell*, the Court found a municipality liable for its official policy of forcing pregnant employees to take unpaid leaves of absence, a policy that violated the constitutional right to equal protection. *Id.*

In the aftermath of *Monell*, the Court has refined the contours of municipal liability in several decisions. In *Oklahoma City* v. *Tuttle*, 471 U.S. 808, 821-24 (1985), the Court considered the question whether a single isolated incident of the use of excessive force by a police officer established an "official policy" or practice of the municipality sufficient to render it liable under the test established in *Monell*. In this context, where the policy relied upon was not itself unconstitutional, the Court held that liability could still attach but that "considerably more proof than the single incident will be necessary in every case to establish both the requisite fault on the part of the municipality, and the causal connection between the 'policy' and the constitutional deprivation." *Id.* at 824 (plurality opinion) (footnotes omitted).

Tuttle involved the constitutionality of police training when a low-level, non-policymaking police officer shot and killed an unarmed robbery suspect. Although there was expert testimony that the training was inadequate, the jury was instructed that the "municipality could be held liable for a 'policy' of 'inadequate training' *based merely* upon evidence of a single incident of unconstitutional activity." *Id.* at 813 (emphasis added). The *Tuttle* plurality rejected these jury instructions as erroneous, holding that "the instructions allowed the jury *to infer* a thoroughly nebulous 'policy' of 'inadequate training' on the part of the municipal corporation from a single incident . . . ." *Id.* 823 (emphasis added). This Court rejected allowing a § 1983 plaintiff to establish municipal liability without submitting proof of a single action taken by a municipal policymaker. *Id.* at 821.

In *Pembaur* v. *City of Cincinnati*, 475 U.S. 469 (1986), the Court again considered whether a municipality is liable for a single unconstitutional act by a final policymaker and attempted to resolve questions left unanswered by the *Tuttle* plurality. *Pembaur* involved a municipal policymaker ordering police to enter a physician's clinic to serve *capiases* on third parties. 475 U.S. at 472. The unwarranted search violated the physician's Fourth and Fourteenth Amendment

rights to due process of law. *Id.* at 484. A plurality of this Court held the municipality liable for the final policymaker's "deliberate choice" of ordering this unconstitutional action. *Id.* at 483. The Court explained that "[m]unicipal liability attaches only where the decisionmaker possesses final authority to establish municipal policy with respect to the action ordered." *Id.* at 481. Unlike *Tuttle*, the single incident in *Pembaur*, was directly attributable to a final policymaker and, thus, represented municipal policy. "In ordering the Deputy Sheriffs to enter petitioner's clinic," the Court explained, "the County Prosecutor was acting as the final decisionmaker for the county, and the county may therefore be held liable under § 1983." *Id.* at 485. A majority of the Court specifically held that a single act could be sufficient for municipal liability. *Id.* at 481.

Three years later, in *City of Canton* v. *Harris*, 489 U.S. 378 (1989), this Court considered whether a municipality can be liable under § 1983 for a "policy" of inadequate police training. In *City of Canton*, a police officer acted indifferently to the medical needs of a person brought into police custody, thereby violating her Fourteenth Amendment right to due process. 489 U.S. at 381. The Court found that "[o]nly where a failure to train reflects a 'deliberate' or 'conscious' choice by the municipality can the failure be properly thought of as an actionable city 'policy.'" *Id.* at 389. The failure to train must amount to "deliberate indifference to the rights" of the public. *Id.* at 388. In remanding the case to determine whether the need for further police training was "plainly obvious," this Court explained:

> "it may happen in light of the duties assigned to specific officers or employees 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."

Id. at 390. The Court further held that the injured party "must still prove that the deficiency in training actually caused the police officers' indifference to her medical needs." *Id.* at 391.

Amici submit that through these decisions a consistency as to the scope of § 1983 liability has emerged that bears directly on the case at bar. Broadly, § 1983 and this Court's precedent establish that a municipality is liable if its policy *or* a single act by its final policymaker is made with deliberate indifference to the public welfare and causes a violation of constitutional rights. Since Congress intended the "persons" who are subject to § 1983 liability to include "municipalities," *Monell*, 436 U.S. at 690, § 1983 applies to "single acts by a final policymaker" because, in appropriate circumstances, they constitute final municipal "policy." *Pembaur*, 475 U.S. at 485. Such circumstances were clearly proven at trial in this case.

C. The Fifth Circuit correctly affirmed the district court judgment holding Bryan County liable under § 1983 for hiring a police officer with deliberate indifference to the applicant's criminal record and for causing a constitutional violation.

The conditions for imposing § 1983 liability are met by the facts in this case. Sheriff Moore's single hiring decision constituted municipal "policy." Although Bryan County now attempts to argue that Sheriff Moore was not a final policymaker, Pet'r. Br. at 19, Petitioners had conceded throughout the litigation that he was "*the* policy maker for Bryan County regarding the Sheriff's Department." J.A. 30a (Excerpted Stipulation) (emphasis added). Nor did Petitioner list Sheriff Moore's policymaking status as a disputed fact in the joint pretrial order. Joint Pre-Trial Order at 10-11, filed March 26, 1993. Nor did Petitioner take issue with Sheriff Moore's policymaking role in either the trial or the appeal. *Brown*, 67 F.3d at 1182. Finally, Petitioner did not object to the jury instructions which referred to Sheriff Moore as the final policymaker, thereby waiving the issue. *Brown*, 67 F.3d at 1182 n. 17; *see also City of Springfield* v. *Kibbe*, 480 U.S. 257, 259 (1987) (holding that the rule against deciding questions not raised in the lower courts has "special force where the party seeking to argue the issue has failed to object to a jury instruction"). Accordingly, the Court of Appeals properly found that "Bryan County stipulated that Sheriff Moore was the final policymaker for the Sheriff's Department." *Brown*, 67 F.3d at 1182.[7]

As final policymaker, a single decision by Sheriff Moore subjects Bryan County to liability under this Court's precedent. *Pembaur*, 475 U.S. at 481:

> "If the decision to adopt that particular course of action is properly made by that government's authorized decisionmakers, it surely represents an act of official government 'policy' as that term is understood. More importantly, where action is directed by those who establish governmental policy, the

7. Indeed, Petitioner's own words implied that Sheriff Moore's decision represented municipal policy. *See, e.g.*, Petition for a Writ of Certiorari at 13, *Brown* v. *Bryan County*, 67 F.3d 1174 (5th Cir.), *cert. granted*, 116 S. Ct. 1540 (1996) (No. 95-1100) ("[w]hat used to be *constitutional* county policy — Oklahoma's vesting county's [sic] with discretion to hire peace officers"). Even in its brief, Petitioner neither confirms nor denies that the sheriff is the final policymaker. Petitioner has been much clearer in the past in admitting that Sheriff Moore was the final policymaker for Bryan County. *See* Petition for a Writ of Certiorari at 14, *Brown* (No. 95-1100) ("[U]nder Oklahoma law, the legislature has ceded to sheriffs the discretion to determine whether to employ individuals with prior misdemeanor convictions."). Even Sheriff Moore admitted that he is the "decision maker" for Bryan County's Sheriff's Department. *See* J.A. 114a.

municipality is equally responsible whether that action is to be taken only once or to be taken repeatedly.''

In the instant case, Oklahoma vested final policymaking authority with the individual sheriffs' departments in matters relating to the police department. *See* Pet'r. Br. at 14. Accordingly, Sheriff Moore made final employment policy for the Bryan County police department. During his four years as sheriff, he hired at least six deputies. J.A. 106a. Likewise, the decision to hire Burns fell within the scope of his delegated authority. Therefore, Sheriff Moore's decision represented the final policy of Bryan County under the rationale of *Pembaur*.[8]

1. The standards of fault and causation established in *City of Canton* under a ''failure to train'' theory should also apply to municipal hiring policies.

A municipality should be held to the same standard of liability whether it fails to train or recklessly hires its law enforcement personnel. Indeed, there is no meaningful distinction between the two. When a municipality hires a police

8. *Tuttle*, 471 U.S. 808, is clearly distinguishable. In *Tuttle*, the jury improperly *inferred* the existence of an unconstitutional training policy based on a single unconstitutional act by a low-level police officer. In this case, the jury did not simply ''infer'' an inadequate hiring policy but found one based on the facts. J.A. 135a (interrogatory no. 7). As previously stated, Petitioner conceded that Sheriff Moore made final employment policy. Plaintiffs also produced evidence that Sheriff Moore paid no attention to Burns' criminal record, that experts believed that Burns' criminal record indicated a potential problem, and that Sheriff Moore was deliberately indifferent to the consequences of his hiring Burns. *See infra* Part (I)(B)(1)(a).

officer it implicitly asks the public to trust that officer's decisionmaking abilities and authority. Citizens, in turn, trust the municipality to use sound selection practices in hiring the individuals who will obtain extraordinary power over citizens' lives.

This Court holds municipalities liable in failure to train cases in situations in which the municipality's failure ''amounts to deliberate indifference to the rights of persons with whom the police come into contact.'' *City of Canton*, 489 U.S. at 388. This same standard should apply when a plaintiff sues a municipality under an inadequate hiring claim. *See, e.g., Simpkins* v. *Bellevue Hospital*, 832 F. Supp. 69, 75 (S.D.N.Y. 1993) (''The Supreme Court's holding in *City of Canton* with respect to training of police is equally applicable to claims concerning training of medical personnel and hiring and supervision of medical personnel.''). This standard ensures that municipalities will be found liable under § 1983 for hiring decisions only when the relevant policymakers should have foreseen the risks and dangers caused by the hiring decision. *Cf. Gonzalez* v. *Ysleta Indep. Sch. Dist.*, 996 F.2d 745, 762 (5th Cir. 1993) (reversing a jury verdict because the evidence established that the school district investigated sexual abuse allegations against an employee before deciding to retain him, thus precluding a finding of deliberate indifference).

a. Deliberate Indifference

The trial judge here properly instructed the jury that it must find deliberate indifference in order to hold the municipality liable. *See* J.A. 123a. The instructions read:

> ''Sheriff B.J. Moore would have acted with deliberate indifference in adopting an otherwise constitutional hiring policy for a deputy sheriff if the need for closer

> scrutiny of Stacy Burns' background was so obvious and the inadequacy of the scrutiny given so likely to result in violations of constitutional rights, that Sheriff B.J. Moore can be reasonably said to have been deliberately indifferent to the constitutional needs of the Plaintiff.''

Id. Thus, as long as a reasonable jury could find deliberate indifference, the verdict below must stand. The jury reasonably concluded that Sheriff Moore's hiring decision was deliberately indifferent to the constitutional rights of the municipality's inhabitants. The question of deliberate indifference properly rests with the jury. *See Wood* v. *Ostrander*, 879 F.2d 583, 588 n.4 (9th Cir. 1989), *cert. denied*, 498 U.S. 938 (1990) (noting that, because deliberate indifference is decided by a jury, ''the district court will face the difficult task of defining for the jury the term[] . . . 'deliberate indifference'''); *see also Gregory* v. *City of Rogers*, 921 F.2d 750, 757 (8th Cir. 1990) (reversing order for summary judgment in part on the ground that deliberate indifference is an issue of fact to be decided by a jury).

The jury heard sufficient evidence to conclude that Sheriff Moore's hiring decision amounted to deliberate indifference. Sheriff Moore failed to notice several violations contained within the arrest record, including an arrest for assault and battery, false identification, and resisting arrest. *See, e.g.*, J.A. 115a. Moreover, Sheriff Moore admitted that he made no attempt to investigate the disposition or circumstances of any of the criminal charges against Burns, including the ones that he did observe on the arrest record. *See* J.A. 115a-116a.[9]

9. Petitioner describes Burns' various offenses in significant detail, offering context to the crimes. Pet'r. Br. at 3-4. Sheriff Moore, however, saw only a cursory description of the offenses before him—''false identification,'' ''resisting arrest,'' ''assault and battery,'' not the elaborate narrative in Petitioner's brief. J.A. 114a-15a. These signals gave Sheriff Moore substantial notice that Burns had a propensity to commit a constitutional wrong, but Sheriff Moore made no effort to investigate the circumstances of the offenses or their dispositions.

The evidence also showed that an investigation would have revealed that Burns had repeatedly violated probation, and that a warrant had been issued for his arrest. *See* J.A. 41a. The jury also knew that most of Burns' arrests had occurred within two and one-half years of his use of excessive force on Mrs. Brown. J.A. 50a.

Expert testimony considered by the jury emphasized the importance of screening out applicants who would join the force with improper motives. *Brown*, 67 F.3d at 1184. Respondent's expert testified that Burns' arrest record should have made the sheriff suspicious of his qualifications and competency as an officer, and that it should have resulted, at a minimum, in a follow-up investigation. *Id.* Even Bryan County's expert told the jury that Burns' criminal history was a cause for concern that should have resulted in further review by the sheriff's department. J.A. 78a-79a. He also told the jury that at least one of Burns' offenses could be classified as a crime of moral turpitude, and therefore violative of Oklahoma state laws regarding police hires. *See id.* In fact, Petitioner's expert, when asked if he would have hired Burns, replied that it was ''doubtful.'' *Id.* at 84a. Thus, as the Court of Appeals noted, the jury reasonably inferred that Sheriff Moore ''closed his eyes'' to Burns' background and failed to evaluate his fitness. *Brown*, 67 F.3d at 1184.

Petitioner asserts that Mrs. Brown failed to demonstrate that Bryan County knew to a ''moral certainty'' that Burns

would have committed a constitutional wrong. Pet'r. Br. at 22. However, this Court need not pause to consider whether Bryan County knew to a moral certainty that Burns would have violated constitutional rights, since such a test has no basis in this Court's § 1983 precedent. Knowledge to a moral certainty that a constitutional violation will occur may be sufficient to establish deliberate indifference, but it is not necessary. To the contrary, the Court has recently defined deliberate indifference as:

> "[An] official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference."

Farmer v. *Brennan*, 114 S. Ct. 1970, 1979 (1994). *See also Doe* v. *Hillsboro Indep. Sch. Dist.*, 81 F.3d 1395, 1403 (5th Cir. 1996) ("A hiring process demonstrates 'deliberate indifference,' when it constitutes such recklessness or gross negligence as to amount to conscious indifference to the plaintiff's constitutional rights.") (citation omitted); *Berry* v. *City of Muskogee*, 900 F.2d 1489, 1495-96 (10th Cir. 1990) (to prove deliberate indifference, there must be evidence demonstrating a higher degree of fault than negligence, but less than that required to demonstrate intentional and malicious intent).

The jury reasonably concluded that Sheriff Moore's behavior met the standard for deliberate indifference: he was aware of facts — Burns' numerous infractions of the law and his recent altercations with police — showing that Burns, if hired as a peace officer, could cause serious harm and yet he deliberately ignored the danger and hired Burns without further investigation. Consistent with the trial court's instruction, the jury properly concluded that "the need for closer scrutiny of Stacy Burns' background was so obvious and the inadequacy of the scrutiny given so likely to result in

violations of constitutional rights, that Sheriff B.J. Moore can be reasonably said to have been deliberately indifferent to the constitutional needs of the Plaintiff." *See* J.A. 123a.[10]

b. Causation

A rational jury could also properly find that Moore's decision to hire Burns caused the constitutional violation at issue. *City of Canton* established that there must be a direct causal link between a municipal policy or custom and the alleged constitutional deprivation to maintain a § 1983 action. 489 U.S. at 385-86. In the Court's words, the policy must be shown to have been the "moving force." *Monell*, 436 U.S. at 694.

Section 1983 causation requires a determination that the municipality had notice of a strong potential for unconstitutional behavior by the employee. *Cf. City of Canton*, 489 U.S. at 393 (O'Connor, J., concurring in part and dissenting in part) (Section 1983 causation requires more than "but for"

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10. The National Association of Counties ("NAC"), as *Amici* in support of Petitioner, attempts to describe Respondent's position as a blanket prohibition against hiring individuals with misdemeanor arrests. *See* Brief of NAC, *et al.*, as *Amici Curiae* in Support of Petitioner at 7, *Brown* (No. 95-1100). Respondent, however, takes no such position. The Constitution demands only that a municipality evaluate the offenses that an applicant has previously committed and undertake to avoid hiring those individuals who are likely to commit future constitutional violations. This is a standard upon which even the NAC *Amici* appear to concur. *See id.* (admitting that "most States treat such convictions as simply a factor to be evaluated," suggesting that to meet constitutional standards an evaluation of some sort must occur). Municipalities cannot turn a blind eye to highly likely future constitutional violations, because to do so places the citizenry at risk.

causation). If the policymaker acting in the name of the municipality could foresee or should reasonably have foreseen a danger, a duty to guard against constitutional violations by investigating the circumstances before proceeding with the hire, at the very least, arises. This responsibility becomes especially critical when municipalities appoint individuals in final decisionmaking roles imbued with police power and license to make forcible arrests.

The facts of this case support the jury's finding of causation.[11] Together, the jury charges and interrogatories made causation and its relationship to municipal liability sufficiently clear to the jury. *See, e.g., Carvalho* v. *Raybestos-Manhattan, Inc.*, 794 F.2d 454, 455 (9th Cir. 1986) ("Taken as a whole, the instructions and interrogatories must fairly present the issues to a jury. If the issues are fairly presented, the district court has broad discretion regarding the precise wording of the instructions and interrogatories."); Fleming James, Jr. and Geoffrey C. Hazard, Jr., *Civil Procedure* § 7.14 at 359-60 (3rd ed. 1985). The trial judge explicitly instructed the jury that Bryan County could be found liable only if the inadequate hiring or training policy directly caused Mrs. Brown's injury. J.A. 122a. The jury specifically determined "from a preponderance of the evidence" that Respondent should be "fairly and reasonably compensated . . . for . . . damages proximately caused by . . . the defendant . . . Bryan County acting through its policymaker Sheriff B.J. Moore." Petition for a Writ of Certiorari at 41a-42a, *Brown* (No.95-1100) (interrogatory no. 10).

Bryan County created a constitutional danger by adopting a hiring policy that was completely indifferent to prior illegal

11. Causation in a § 1983 action is a fact-intensive determination, which is committed to the finder of fact. *See City of Canton*, 489 U.S. at 391.

conduct. Sheriff Moore had notice of the danger from Burns' lengthy record. Sheriff Moore may not have known the details of Burns' various crimes, but he knew *of* them, yet he made no further investigation of the circumstances before deciding to hire Burns. His deliberate indifference to a potential danger was properly found by the jury to have caused the resulting offense.[12] Liability in this case thus rests on Sheriff Moore's total failure to investigate Burns' troubled background, not merely from the employment relationship alone. *See City of Canton*, 489 U.S. at 394 (O'Connor, J., concurring in part and dissenting in part).

D. Imposing municipal liability for single acts that are deliberately indifferent to the constitutional rights of the public is consistent with principles of federalism.

Bryan County asserts that the Fifth Circuit's holding violates basic federalism principles by sanctioning excessive federal interference with local concerns. *See* Pet'r. Br. at 15. There is, of course, a tension between federal interests and municipalities in the sphere of municipal law administration. *See Monroe*, 365 U.S. at 241-42 (Frankfurter, J., dissenting in part). Petitioner, however, oversimplifies the nature of our federal system. The Constitution is not just the blueprint for the federal government. It is a solemn contract — the

12. The causation finding draws support from the fact that it contains a cognitive element. *See Kibbe*, 480 U.S. at 269 (O'Connor, J., dissenting) ("Analogy to traditional tort principles . . . shows that the law has been willing to trace more distant causation when there is a cognitive component to the defendant's fault than when the defendant's conduct results from simple or heightened negligence."); *Restatement (Second) of Torts* § 501 cmt. a (1965).

supreme law of the land — *among* the states and, to the extent of the powers conferred by the states, governs them just as much as the federal government.

Although municipalities therefore have an important role in the constitutional structure, federalism is not a euphemism for unchecked municipal power. It is, instead, the principle that "under our federal system, the States possess sovereignty concurrent with that of Federal Government, subject only to limitations imposed by the Supremacy Clause." *Gregory* v. *Ashcroft*, 501 U.S. 452, 457 (1991) (quoting *Tafflin* v. *Levitt*, 493 U.S. 455, 458 (1990)). This sharing of power is so crucial to our form of government that this Court recently wrote, "[i]n the tension between federal and state power lies the promise of liberty." *Id.* at 459.

One of the cornerstones of the federal system embodied in the Constitution is that courts and an independent judiciary, both state and federal, are expected to remedy constitutional violations. *See, e.g., Howlett* v. *Rose*, 496 U.S. 356, 367 (1990) ("[T]he Constitution and laws passed pursuant to it are as much laws in the States as laws passed by the state legislature."); *Testa* v. *Katt*, 330 U.S. 386, 391 (1947) (holding that the States are obligated to enforce the Constitution). Here, consistent with the very purposes behind § 1983 which this Court has repeatedly articulated, constitutional interests enforced through the federal courts serve as a check on state policy. The federalist notion of carefully delegated powers to a central government "assumes that we have a system of checks and balances . . . [and] utilizing the power vested in [a federal] court to check an abuse of state or municipal power is, in effect, consistent with the separation of powers principle." *Hawkins* v. *Town of Shaw*, 437 F.2d 1286, 1292 (5th Cir. 1971).

Contrary to the warnings voiced by Petitioner and its *amici*, the Fifth Circuit's decision does not in any way sweep away

the determination by many states that a misdemeanor conviction should not automatically disqualify a candidate for a state or local law enforcement position. The decision simply determines that it was entirely consistent with the purposes behind § 1983 and this Court's precedents to impose municipal liability when a final policymaker turns a deliberately blind eye to the fact that a law enforcement job applicant has a long and troubling record of recent arrests for violent and disruptive conduct. This does not offend federal principles. It promotes them.

The straightforward answer to Petitioner's question — how are States to predict what will pass constitutional muster, Pet'r. Br. at 30 — is found in this Court's precedents interpreting the purpose and scope of § 1983: a municipality will be and should be liable for its hiring decisions if they are "deliberately indifferent" to the constitutional rights of citizens. It was the rule prior to *Brown* and it is unchanged by the Fifth Circuit's decision here.

II. SINGLE DECISIONS BY FINAL MUNICIPAL POLICYMAKERS CAN HAVE A PROFOUND EFFECT ON WOMEN'S CONSTITUTIONAL RIGHTS AND MUNICIPALITIES SHOULD REMAIN LIABLE FOR SUCH DECISIONS.

Amici, groups devoted to preserving women's civil rights under the Constitution, urge this Court to reaffirm the law imposing municipal liability under § 1983 for single acts that are deliberately indifferent to constitutional rights. Section 1983 single act liability plays a critical role in protecting the constitutional rights of all citizens, especially protected groups such as women and girls. Regardless of whether the Court has questions about § 1983's application to the facts of this case, which *amici* believe was appropriate, the Court should recognize that § 1983 liability for single acts of municipalities is well-established and essential to protecting civil

rights. *Amici* illustrate below the importance of this application of § 1983 in cases where women's civil and constitutional rights have been violated by the single act of a municipal policymaker.

A. Rights to Bodily Integrity.

This Court recognizes a woman's constitutional right to bodily integrity. *See Planned Parenthood* v. *Casey*, 505 U.S. 833, 869, 915 (1992) (The "constitutional interest in liberty . . . [includes] a right to bodily integrity, a right to control one's own person" and the right of a woman "to retain . . . ultimate control over her . . . body.")[13] Sexual abuse of women and girls by municipal actors and the consequent violation of their right to bodily integrity occurs with unfortunate frequency.[14]

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13. *Cf. Doe* v. *Taylor Indep. Sch. Dist.*, 15 F.3d 443, 451 (5th Cir.) (en banc), *cert. denied*, 115 S. Ct. 70 (1994) (recognizing the right to bodily integrity in a § 1983 case); *Dang Vang* v. *Vang Xiong X. Toyed*, 944 F.2d 476, 479 (9th Cir. 1991) (recognizing that rape is a violation of a constitutional right).

14. Since 1989, at least seventeen judges, police officers, correctional officers, and border patrol agents have been prosecuted and sentenced under 18 U.S.C. § 242 (1996), the criminal counterpart to § 1983, for improperly using their positions to rape and sexually assault women. Motion for Leave to File Brief *Amici Curiae* and Brief *Amici Curiae* of the Southern Poverty Law Center, *et al.*, in Support of the Petition for Writ of Certiorari at 8, *U.S.* v. *Lanier*, 73 F.3d 1380 (6th Cir.) (No. 95-1717), *cert. granted*, 1996 U.S. LEXIS 3915 (U.S. 1996) (citing Department of Justice Statistics, U.S. Department of Justice, Civil Rights Division, Criminal Section); *see also United States* v. *Price*, 383 U.S. 787, 794 n.7 (1966) (stating that the civil counterpart of § 242 is § 1983).

Likewise, incidents of sexual abuse in schools have been described by courts as "epidemic." *Doe* v. *Estes*, 926 F. Supp. 979, 988 (D. Nev. 1996). *See also* William W. Watkinson, Jr., Note, *Shades of DeShaney: Official Liability Under 42 U.S.C. 1983 for Sexual Abuse in the Public Schools*, 45 Case W. Res. L. Rev. 1237, 1238-41 (1995) (discussing the problem of sexual abuse in public schools).

Section 1983 single act liability serves as a powerful tool to protect this civil right.

In *Hillsboro Indep. Sch. Dist.*, 81 F.3d at 1404, for example, the Fifth Circuit upheld a § 1983 claim, on a motion to dismiss, against a county school district for its hiring policy that caused a violation of a girl's right to bodily integrity. A school official hired a school custodian without investigating his criminal background. 81 F.3d at 1399. The custodian subsequently grabbed and raped a thirteen-year old girl in the school. *Id.* "Just as the histories of prospective police officers must be scrutinized routinely for violence or unlawful conduct in the interest of the public's safety," the court wrote, "the criminal histories of prospective school employees must be scrutinized in the interest of students' safety." *Id.* at 1403. "Common sense recommends — and state law demands — ," the court continued, "that, in the interest of the safety of school children, school officials investigate the criminal histories of prospective school employees." *Id.* The court held that the alleged hiring inadequacies "reveal[ed] a deliberate indifference to Doe's welfare." *Id.*[15]

Similarly, the district court in *Doe* v. *Estes*, 926 F. Supp. 979, 988 (D. Nev. 1996), denied the school district's motion for summary judgment where the plaintiff, a student who had been sexually molested by a school teacher, presented evidence that the school was deliberately indifferent and failed to

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15. The court found that the school district's hiring policies were inadequate because it had hired a custodial staff, one third of which consisted of convicted criminals. *Id.* at 1403. The court also stated that "[s]urely the District's hiring and giving the schoolhouse keys to even one convicted murderer constitutes the hiring of an applicant with 'seriously deficient character.'" *Id.*

prevent the attack. The court stated that the "last fifteen years have seen . . . shocking incidents [of sexual attacks by teachers on students] repeated in dozens of communities across this country" and that "[s]chool children are particularly vulnerable to mistreatment at the hands of adults, especially where those adults are cloaked with the authority of the state." *Id.* at 987-88. The court thus found that the risk of sexual abuse in school was "so obvious" that a school district's failure to take preventive action constitutes deliberate indifference. *Id.* at 988. *See also Bolon* v. *Rolla Public Schools*, 917 F. Supp. 1423, 1430-31 (E.D. Mo. 1996) (Section 1983 claim relating to Rolla Public Schools' policy of failing to train with respect to students' rights to bodily integrity held sufficient to withstand defendant's motion for summary judgment).

Courts have also found § 1983 municipal liability in cases where school officials were aware of an employee's attacks on school children but failed to do anything to prevent future attacks. For example, in *Stoneking* v. *Bradford Area Sch. Dist.*, 882 F.2d 720, 722 (3d Cir. 1989), *cert denied*, 493 U.S. 1044 (1990), a female high school student who had been sexually abused by the school band director over a period of five years brought a claim against the school district under § 1983 for failing to prevent the abuse. She alleged that the school's principal maintained a file on the band director which contained reports of female band students' complaints of sexual misconduct and that the principal and other school officials knew the risk the band director posed to female students, but did nothing to protect the female student body. 882 F.2d at 722. The court held that the student's § 1983 claim was viable based on evidence that the school officials "with deliberate indifference to the consequences, established and maintained a policy . . . which directly caused her constitutional harm." *Id.* at 725. *See also Doe* v. *Bd. of Educ.*, 833 F. Supp. 1366, 1379-80 (N.D. Ill. 1993) (Section 1983 claim against school district held sufficient where school district knew of and failed

to report instances of sexual abuse committed by teacher against minor female students thus allowing teacher to abuse the plaintiff).

Section 1983 liability also protects adult women from single municipal acts that violate their right to bodily integrity. In *Parker* v. *Williams*, 862 F.2d 1471, 1481 (11th Cir. 1989), for example, the Eleventh Circuit remanded for retrial the following issue of causation: whether an inadequate hiring policy caused constitutional injuries to a woman. In that case, the former sheriff and final policymaker of Macon County, Alabama, hired a chief jailer without investigating his background. 862 F.2d at 1480. The jailer subsequently raped a female criminal suspect. *Id.* at 1473. The chief jailer's background revealed that he had been convicted of indecent exposure, had undergone treatment for mental problems, including memory lapses, talking to himself, and multiple personality experiences, and had a history of drug use. *Id.* at 1477.[16]

B. Rights to the Equal Protection of the Law.

Section 1983 has played a vital role in enforcing a woman's constitutional right to equal protection of the law. The right to equal protection forbids discrimination against women. *See Reed* v. *Reed*, 404 U.S. 71, 73 (1971); *U.S.* v. *Virginia*, 116 S. Ct. 2263, 1996 WL 345786 at *11 (1996) ("[T]he Court has repeatedly recognized that neither state nor federal

16. *See also Women Prisoners* v. *Dist. of Columbia*, 877 F. Supp. 634, 667 (D.D.C. 1994) (District held liable under § 1983 for violation of women prisoners' Eighth Amendment rights where prisoners endured sexual assault, in part, as the result of the district's failure to train officers with respect to sexual harassment).

government acts compatibly with the equal protection principle when a law or official policy denies to women, simply because they are women . . . equal opportunity to . . . participate in and contribute to society based on their individual talent and capacities.'').

Sexual harassment by a state actor violates a woman's right to equal protection.[17] Women who have been sexually harassed by municipal actors have prevailed in § 1983 claims against the municipalities. In *Starrett* v. *Wadley*, 876 F.2d 808, 819 (10th Cir. 1989), the municipality was held liable under § 1983 for the discriminatory acts of the county assessor. The county assessor had final policymaking authority over hiring and firing personnel and fired an employee who had spurned his advances. 876 F.2d at 818. Prior to the firing, he ''began scrutinizing her work more carefully than the work of other employees, singling out her work for special review and making changes on her work cards.'' *Id.* at 815. The Tenth Circuit ruled that ''[b]ased upon the evidence . . . we hold that the jury reasonably could have concluded that [the assessor's] conduct toward plaintiff discriminated against her because of her sex and thereby deprived her of the right to equal protection of the laws.'' *Id.*

17. *See, e.g., Saville* v. *Houston County Healthcare Auth.*, 852 F. Supp. 1512, 1531-32 (M.D. Ala. 1994) and cases cited therein (holding sexual harassment violates the Equal Protection Clause). *See also Williams* v. *Dist. of Columbia*, 916 F. Supp. 1, 6 (D.D.C. 1996) (District could be held liable for supervisor's sexual harassment if supervisor had final policymaking authority and there was a nexus between the authority and the conduct); *Hubbard* v. *City of Middletown*, 782 F. Supp. 1573, 1579 (S.D. Ohio 1990) (city could be held liable for final policymaker's sexual harassment of female plaintiff).

In *Reynolds* v. *Borough of Avalon*, 799 F. Supp. 442, 446 (D.N.J. 1992), the court found that plaintiff had stated a § 1983 claim against a municipality for its failure to stop harassment in the workplace. The court held that ''a reasonable jury might find that the risk of sexual harassment in the workplace is so obvious that an employer's failure to take action to prevent or stop it from occurring — even in the absence of actual knowledge of its occurrence — constitutes deliberate indifference, where the employer has also failed to take any steps to encourage the reporting of such incidents.'' 799 F. Supp. at 447.

Similarly, in *Poulsen* v. *City of N. Tonawanda*, 811 F. Supp. 884 (W.D.N.Y. 1993), the court held that material issues of fact precluded summary judgment as to whether the municipality had a policy which led to a hostile work environment for female police officers. 811 F. Supp. at 897. The court noted that a municipality may be subject to § 1983 liability on the basis of a policy that tolerates unconstitutional acts by its employees. *Id.* at 896. In *Poulsen*, the court determined that the police chief ''was well aware of the incidents of sexual harassment and that his failure to do more than investigate and attempt to segregate the alleged harasser from his victim constituted knowing and deliberate indifference to withstand a motion for summary judgment on this issue.'' *Id.* at 897.[18]

18. *See also Saville*, 852 F. Supp. at 1534-35 (institution could be held liable for a director's act of appointing to a student's evaluation team an instructor whom the student had previously accused of sexual harassment); *Fuchilla* v. *Prockop*, 682 F. Supp. 247, 260-61 (D.N.J. 1987) (university could be held liable for agents' single act of refusing to provide female plaintiff with an appropriate position after she accused university employee of sexual harassment).

A further example of § 1983's single act application is in the area of domestic violence. Municipalities that treat complaints of domestic violence less seriously than other equally violent crimes may be liable under § 1983 for discriminatory treatment. In *Smith* v. *City of Elyria*, 857 F. Supp. 1203, 1207 (N.D. Ohio 1994), for example, police inattention to repeated calls for help resulted in the complainant being killed by her ex-husband. In numerous calls to the police about the domestic violence, including calls from the complainant's nine-year old daughter, the police dispatcher's responses ranged from "this is not a police matter" to "[t]hese people are . . . making me mad!" 857 F. Supp. at 1207. When the police finally arrived, the woman had been stabbed twelve times by her ex-husband. *Id.* at 1205. In rejecting the municipality's motion for summary judgment, the court found that "[t]he record contains considerable evidence that the police department treated domestic disputes differently than non-domestic disputes, and this had a disproportionately adverse impact on women because women are victims of domestic violence more frequently than men." *Id.* at 1212.[19]

19. Similarly, in *Balistreri* v. *Pacifica Police Dept.*, 901 F.2d 696 (9th Cir. 1988), the plaintiff argued that the police department's treatment of her calls caused her to suffer physical injuries and emotional distress at the hands of her husband. After being severely beaten by her husband, police officers who responded to her request for assistance were "rude, insulting and unsympathetic" and refused to place her husband under arrest. 901 F.2d at 698. One of the officers stated that "he did not blame plaintiff's husband for hitting her, because of the way she was 'carrying on.'" *Id.* at 701. The court denied the defendant's motion to dismiss, stating that the department's actions "strongly suggest an intention to treat domestic abuse cases less seriously than other assaults, as well as an animus against abused women." *Id.*

Navarro v. *Block*, 72 F.3d 712 (9th Cir. 1996), illustrates yet another instance in which a municipality's inaction toward a woman's emergency plea for police protection resulted in her death at the hands of her batterer. In *Navarro*, the court reversed and remanded a summary judgment ruling to determine whether a municipality had a policy of classifying domestic violence calls as non-emergencies and, if so, whether this violated the Equal Protection Clause. 72 F.3d at 717. In *Navarro*, a woman had called "911" to request emergency assistance because she had learned that her estranged husband "was on his way to kill her." *Id.* at 713. The police dispatcher responded that "[w]e can't have a unit sit there to wait and see if he comes over." *Id.* Fifteen minutes later, the woman's estranged husband arrived at her home and shot and killed her and four other people. *Id.* at 714.[20]

Single act liability under § 1983 thus plays a critical role in protecting the civil and constitutional rights of women. This case does not present the Court with any grounds, factual or constitutional, to overturn its precedents under § 1983.

20. *See also Watson* v. *City of Kansas*, 857 F.2d 690, 696 (10th Cir. 1988) (district court erred in granting summary judgment to the city where female plaintiff provided sufficient evidence that the city followed a policy of affording less protection to domestic violence victims, that the city acted with a discriminatory motive in pursuing this policy, and that her injuries were a result of this policy); *Cellini* v. *City of Sterling Heights*, 856 F. Supp. 1215, 1221 (E.D. Mich. 1994) (denial of defendant's motion for summary judgment where plaintiff presented sufficient evidence of a policy of treating domestic assaults differently than other assaults and that this unexplained discrepancy could give rise to an inference that the police department acted with discriminatory motive).

CONCLUSION

For the foregoing reasons, the judgment of the United States Court of Appeals for the Fifth Circuit should be affirmed.

Dated: July 24, 1996

Respectfully submitted,

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APPENDIX

NOW Legal Defense and Education Fund

NOW Legal Defense and Education Fund ("NOW LDEF") is a national non-profit civil rights organization that performs a broad range of legal and educational services supporting women's efforts to combat gender-based discrimination and secure equal rights. Founded as an independent organization in 1970 by leaders of the National Organization for Women, NOW LDEF works on many fronts to eliminate gender-motivated violence. Most significantly, NOW LDEF chaired the national task force instrumental in passing the historic Violence Against Women Act and continues to track legal developments under that Act. NOW LDEF has participated as counsel and as *amicus curiae* in many cases supporting the rights of women victims of domestic and other gender-motivated violence by both private and governmental actors.

California Women Lawyers

California Women Lawyers ("CWL") is a statewide bar association representing the interests of approximately 25,000 women lawyers, judges, law professors, and law students in California. CWL has both individual members and thirty local affiliates throughout the state. Since its inception in 1975, CWL has sought to improve the legal climate for women, through both the legislative and judicial process. Specifically, CWL is committed to securing the enforcement of women's civil rights against violence, harassment, and discrimination by public or private actors.

Connecticut Women's Education and Legal Fund, Inc.

The Connecticut Women's Education and Legal Fund, Inc. (''CWEALF'') is a non-profit women's rights organization with more than 1,400 members. Incorporated in 1973, CWEALF's mission is to work through legal and public policy strategies and community education to end sex discrimination and to empower all women to be full and equal participants in society.

Equal Rights Advocates

Equal Rights Advocates (''ERA'') is a San Francisco-based public interest law center dedicated to the empowerment of women through the establishment of their economic, social, and political equality. Since its inception over twenty years ago, ERA has specialized in litigating cases and pursuing public policy initiatives designed to assure women equal access to all of society's benefits including employment, education, and public accommodations.

National Coalition of 100 Black Women, Inc.

The National Coalition of 100 Black Women, Inc. (''NCBW'') is a non-profit, volunteer organization dedicated to community service, leadership development, and the enhancement of career opportunities through networking and programming. It has sixty-one chapters in twenty-four states, with a growing membership of more than 6,000 women. The NCBW works to empower Black women through various programs, which, among other things, do the following: provide a network among Black women; establish links between the organization and the corporate and political sectors; make Black women a visible force in the economic and political arenas; provide role models, mentors, and guidance to young women; and recognize the historic and current achievements of Black women.

National Organization for Women Foundation

The National Organization for Women Foundation (''NOW Foundation'') is a non-profit organization devoted to furthering women's rights through education and litigation. The NOW Foundation is affiliated with the National Organization for Women, the largest women's rights organization in the United States, with a membership of over 200,000 women and men in more than 600 chapters in all fifty states and the District of Columbia. Since its inception in 1986, one goal of NOW Foundation has been to ensure that the constitutional rights of individuals are not violated by local, state, or federal authorities.

Northwest Women's Law Center

The Northwest Women's Law Center (''NWLC'') is a non-profit public interest organization that works to advance the legal rights of women through litigation, education, legislation, and the provision of legal information and referral services. Founded in 1978, NWLC is dedicated to challenging barriers to gender equality and ensuring that victims of all forms of discrimination are able to obtain appropriate relief. Toward that end, NWLC has participated in cases throughout the country to ensure the availability of legal remedies for plaintiffs in numerous cases involving issues such as sexual harassment and discrimination, domestic violence, and enforcement of local ordinances that protect access to health care facilities.

Women Employed

Founded in 1973, Women Employed is a national organization of working women, numbering 2,000. Based in Chicago, the organization has assisted thousands of working women with problems of sex discrimination. Women Employed

works to empower women to improve their economic status and to remove barriers to economic equity through advocacy, direct service, and public education. The organization has a long history of monitoring the performance of equal employment opportunity enforcement agencies, specifically the Department of Labor's Office of Federal Contract Compliance Programs and the Equal Employment Opportunity Commission. Women Employed analyzes Equal Employment Opportunity policies and develops specific, detailed proposals for improving enforcement and litigation efforts.

Women's Equal Rights Legal Defense and Education Fund

Founded in 1978, the Women's Equal Rights Legal Defense and Education Fund (''WERLDEF'') is a California based non-profit corporation organized to ensure that women will be treated equally under the law. WERLDEF vindicates women's rights both by educating them about their legal rights and by providing them access to the courts.

Women's Law Project

The Women's Law Project (''WLP'') is a non-profit, feminist legal advocacy organization located in Philadelphia. Founded in 1974, WLP works to abolish discrimination and injustice and to advance the legal and economic status of women and their families through litigation, public education, and individual counseling. WLP's activities have included challenges to gender discrimination in employment, education, insurance, and health care. WLP has also engaged in extensive advocacy and public education in family matters relating to custody, support, domestic violence, and divorce.

Women's Legal Defense Fund

Founded in 1971, the Women's Legal Defense fund is a national advocacy organization that promotes policies to help

women achieve equal opportunity, quality health care, and economic security for themselves and their families. The organization has participated as *amicus curiae* in numerous Supreme Court cases concerning women's rights and interests.