

No. 09-571

In the
Supreme Court of the United States

HARRY F. CONNICK, ET AL.,
Petitioners

v.

JOHN THOMPSON,
Respondent.

**On Writ of Certiorari to the United States Court of Appeals
for the Fifth Circuit**

MOTION OF *AMICI* FOR DIVIDED ARGUMENT

Pursuant to Supreme Court Rule 28.4, *Amici* Former Federal Civil Rights Officials and Prosecutors in support of Respondent respectfully move for divided argument such that counsel for Respondent, John Thompson, would have 20 minutes of argument time and the under-signed counsel of record for *Amici* would have 10 minutes. This division of argument time would materially assist the Court because, as former federal prosecutors and high-level officials of the Department of Justice (“DOJ”), *Amici* have a unique perspective on the need for prosecutors to receive training in order to prevent violations of the rights of an accused under *Brady v. Maryland*, 373 U.S. 83 (1963). In addition, *Amici* have advanced a textual argument that is distinct, but complementary, to the arguments advanced by Respondent. Granting this motion would not necessitate expanding the total time this Court has allocated for oral argument. Counsel for Respondent has consented to this request. Petitioners take no position.

Amici are a broad, bipartisan coalition of former federal prosecutors and high-ranking officials of the Civil Rights Division of DOJ. *Amici* include former Assistant Attorneys General for the Civil Rights Division who served under Presidents of both

parties, as well as numerous other high-ranking former Justice Department officials, including a former Assistant Attorney General for the Criminal Division and numerous former United States Attorneys. Collectively, they have decades of experience making the difficult judgments required of prosecutors by *Brady*. From that experience, *Amici* understand that complying with *Brady* and its progeny is not always simple or self-evident and that training on the subject is essential for prosecutors. *Amici* are also familiar with DOJ's effort to provide training, and many had responsibility over initiating prosecutions for civil rights violations under 18 U.S.C. 242. They also recognize the important role that section 1983 claims play in encouraging all public officials, including prosecutors, to discharge the authority of the State in a way that respects the constitutional freedoms of the citizens they serve.

The unique perspective of *Amici* provides an insight into the federal government's interests and practice that would otherwise be absent given the decision of the United States not to participate as *amicus curiae*. The experience of the federal government is highly relevant to the resolution of this case, particularly in light of the DOJ's felt need to provide enhanced training in the wake of recent high-profile *Brady* violations by federal prosecutors. *See, e.g., United States v. Stevens*, No. 08-231 (D.D.C. April 7, 2009) (Dkt. No. 374); *United States v. Jones*, 620 F. Supp. 2d 163, 183 (D. Mass. 2009). Both the violations and DOJ's responsive actions underscore the importance of training and undercut Petitioners' arguments that prosecutors do not need training because they are law school graduates and professionals. Although *Amici* discuss these initiatives and other relevant aspects of the federal government experience at length in a brief filed today in support of Respondent, *Amici* believe that participation at argument to discuss these issues would be of material assistance to the Court.

In addition, *Amici* advance a textual argument concerning 42 U.S.C. § 1983 that is complementary, but not duplicative, of the arguments advanced by Respondent. This case is, at bottom, a case about the meaning of the statutory remedy Congress provided in section 1983. *Amici* believe that further development of that textual argument would be of material assistance to the Court and would be complementary to, rather than duplicative of, the arguments advanced by Respondent.

In several cases, this Court has granted divided argument motions in order to hear from *amici* in addition to counsel for a party. *See, e.g., Kennedy v. Louisiana*, 552 U.S. 1293 (2008) (*amici* supporting Louisiana granted argument time); *Intel Corp. v. Advanced Micro Devices, Inc.*, 541 U.S. 901 (2004); *FCC v. NextWave Personal Communications*, 536 U.S. 955 (2002) (*amici* creditors granted argument time). Indeed, the Court recently granted divided argument to an *amicus* over the objection of the party the *amicus* supported. *See Citizens United v. FEC*, 130 S. Ct. 31 (2009). Here, of course, Respondent has consented to this divided argument motion. Moreover, *Amici* can provide a perspective on the federal government's experience that the Court often finds helpful at oral argument, but would not otherwise be provided in this case.

This is an extremely important case. The Court's precedent with respect to section 1983 failure-to-train claims promotes respect for the rule of law by holding municipal entities to account when they demonstrate deliberate indifference to constitutional rights and cause constitutional violations. The continued availability of failure-to-train claims under section 1983 strengthens public respect for the criminal justice system, particularly against criticism that the system is indifferent (if not hostile) to the rights of those charged, especially as here those wrongfully charged, with criminal acts. There are important federal interests at stake in this case that are represented by *Amici*, and about which the Court will not otherwise hear. Because participation of *Amici*

in the oral argument will ensure that the Court has the benefit of the federal experience as well as a distinct textual argument, the proposed division of argument will materially assist the Court in its consideration of the case.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'P. D. Clement', with a long horizontal flourish extending to the right.

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August 13, 2010

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one true and correct copy of this Motion of *Amici* for Divided Argument was served via regular U.S. mail and via electronic mail on August 13, 2010 to:

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The undersigned also certifies that on August 13, 2010, the original and 3 copies of this Motion of *Amici* for Divided Argument were hand-delivered to the clerk, as addressed below:

Hon. William K. Suter, Clerk
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