

Supreme Court of the United States
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

January 4, 1989

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86-1088 City of Canton v. Harris

Re: 86-1088 Canton v. Harris

Dear Byron,

I would like to join your opinion if you would make one small change in Part IV. I believe that we should defer to the lower courts' findings with the case and send it back without saying that respondent should be given a new trial because at the time of her trial she had no reason to anticipate the tougher standard for municipal liability we are laying down. I therefore suggest the following revision of Part IV:

Justice White

Copies to the Conference

The final question here is whether the case should be remanded for a new trial. As petitioner suggests, we should conclude that there is no possible ground on which respondent can prevail. Tr. of Oral Arg. 57-58. Because the standard of proof the District Court imposed on respondent (which was consistent with Sixth Circuit precedent) was less than the one we lay down today, 4-389-390, we decline to adopt petitioner's suggestion. In our view, respondent should have an opportunity to prove her case under the "deliberate indifference" rule, because the evidence she adduced at trial was offered against the background of circuit precedent we now repudiate.

Sandra

If you would revise the opinion along these lines (as not attached to the file), I would be pleased to join.

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Sincerely,

Jul

Justice White

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