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2. FACTS AND DECISION BELOW: In 1979 petr was offered a contract by respo for employment as the supervisor of elementary education for respo's school district. After petr had tendered a letter of acceptance, respo decided to withdraw the offer. Petr filed suit in Ohio state court alleging that respo had breached her contract, had acted in violation of state law to vote on withdrawing her contract, and had conspired to deprive her of contractual rights. Petr sought compensatory and punitive damages. After a trial, the state court ruled in favor of petr on the first two claims, ordering that she be reinstated and awarded compensatory damages. The trial court "reserved" the conspiracy issue and later dismissed it without prejudice at petr's request.

Following the state court proceedings, petr filed suit in the N.D. Ohio (Manos), seeking relief under §1983 and §1985, alleging that respo v

PRELIMINARY MEMORANDUM

January 7, 1983 Conference
List 1, Sheet 3

No. 82-738

MIGRA

Cert to CA6 (Edwards, Kennedy, Celebrezze) (Order)

v.

OK

WARREN CITY BD. OF EDUCATION, et al. Federal/Civil Timely

1. SUMMARY: Petr contends that a state court action involving the same parties and same operative facts is not res judicata for a subsequent §1983 action for constitutional claims that were not litigated in the prior state court case.

*Denny
RK*

2. FACTS AND DECISION BELOW: In 1979 petr was was offered a contract by resps for employment as the supervisor of ~~education~~ elementary education for resps' school district. After petr had tendered a letter of acceptance, resps decided to withdraw the offer. Petr filed suit in Ohio state court alleging that resps had breached her contract, had met in violation of state law to vote on withdrawing her contract, and had conspired to deprive her of contractual rights. Petr sought compensatory and punitive damages. After a trial, the state court ruled in favor of petr on the first two claims, ordering that she be reinstated and awarded compensatory damages. The trial court "reserved" the conspiracy issue and later dismissed it without prejudice at petr's request. ~~and that all of petr's claims were raised in~~

~~state~~ Following the state court proceedings, petr filed suit in the N.D. Ohio (Manos), seeking relief under §1983 and §1985, alleging that resps withdrew her offer in retaliation for petr's exercising First Amendment rights, that resps acted arbitrarily and contrary to state law in violation of the Due Process Clause of the Fourteenth Amendment, and that resps had defamed her by circulating rumors about her private life. The DC found that res judicata barred all of petr's claims. The DC found that the due process claims had been litigated in the state court and that the state court ruled in petr's favor in finding that resps had met in violation of state law to vote on her contract. While the First Amendment claim was not litigated, the DC said that the law of the CA6 is that a final judgment in state court is res ~~CA2 and~~ judicata to all the issues which might have been presented in

that court, so long as the case involved the same parties and same underlying facts. The DC ruled likewise on the defamation claim, also finding that the claim was barred by a one-year statute of limitations. The CA6 affirmed by order for the reasons given by the DC.

3. CONTENTIONS: Petr argues that under Allen v. McCurry, 449 U.S. 90 (1980), a plaintiff must have had a "full and fair opportunity" to litigate claims in an earlier suit before that earlier suit will be res judicata in a subsequent §1983 action. Petr argues that she did not have a "full and fair opportunity" to litigate where no constitutional issues were raised in the state court proceeding.

Resps contend that all of petr's claims were raised in state court except the First Amendment claim. As to the First Amendment claim, resps argue that the majority of the Circuits who have ruled on the issue have determined that res judicata applies to constitutional claims that could have been raised in the prior litigation.

4. DISCUSSION: This petn raises the same issue presented to the Court in Castorr v. Brundage, No. 82-48, cert. denied (Dec. 1982). In dissenting from denial of the CA6 case in Castorr, JUSTICE WHITE pointed out that a conflict exists on the question of "whether constitutional claims not actually litigated in earlier state proceedings are barred in a subsequent federal suit" brought pursuant to §1983. The CA1, CA5, CA8, CA9, and CA10 agree with the CA6 that such claims are barred. The CA2 and

