

Muzquiz, Monell, and Thurston

1/21/77. Of the three cases involving the issue whether individuals can be sued for back pay under § 1983 and the issue whether a board is a "person" for purposes of that statute, I think that Monell would be the best one to grant. The only problem with Monell is the fact that the discussion of the § 1983 issues was premised on the nonretroactivity of Title VII. A limited grant might be the best way to make sure that the Title VII issue does not prevent the Court from reaching the § 1983 problems. The reason that I prefer Monell over Muzquiz is the fact that the Pension Board in Muzquiz might be subject to different treatment than a school board. Also, since the Muzquiz petrs lost on the merits before the CA5 panel, their briefing on the jurisdictional issue is somewhat strange--the best they could hope for would be a reinstatement of the CA5 panel's jurisdictional holding and a reconsideration of the panel's holding on the merits. The latter is probably something that the Court is not interested in.

The reason Monell is better than Thurston is because it raises the issue whether the Board is a "person." That has been a recurring problem in the lower courts, although most of them resolve the issue against the exercise of jurisdiction, but it would be good to clear it up.

GRANT Monell; HOLD other two.

DW

*Grant
to 2/28/77*