

No. 75-1914  
MONELL v. DEPARTMENT OF SOCIAL SERVICES

A reply brief has been filed by petitioners. It seeks to make only two points.

1. The first point advanced concerns an odd misreading of one of the issues at stake. Petrs contend that resps are relying on good faith immunity under §1983. Apparently this is directed to the Eleventh Amendment analogy used by CA 2 below and renewed by resps here: that is, since New York City itself cannot be sued, its officials cannot be sued for damages that would have to come out of the city treasury. The exception to this rule is that damages can be awarded against city officials for actions that are not taken under color of law or that are motivated by bad faith. Petrs' curious allusion to this doctrine in their reply brief reflects only a misunderstanding of a large part of what this case is about.

2. Petrs' second argument is of more substance. They claim that at the same time the resp Board of Education has been arguing here that it is "nothing but another department" of the City of New York (Resp's Br. at 18), it has been litigating a monetary claim against the City. Board of Education v. City of New York, 41 N.Y. 2d 535 (.977).

Furthermore, petrs claim that in recent months Mayor Beame of New York City has sought the abolition of the Beard of Education and its replacement with a commissioner appointed by him. During this time, petrs claim that the Mayor complained

of the School Board's independence. However, petrs concede that the total Board of Education budget for FY 1976 was \$2,758,169,809 and that more than half of this was provided by the city. (The remainder came from the State and from the federal government.)

Petrs do succeed in casting some doubt on the correctness of the CA 2's holding that the Board of Education is a department of the city. Yet, on balance and in view of the various precedents relied on by CA 2 in reaching its conclusion, I think that it has the better of the argument. An award of money damages would be an award against the city treasury in the sense that it is to the city that the Board of Education must look for <sup>most of its</sup> funding. Of course, this Court may choose to look on this as a question of fact and remand the case to DC for further development of the record on the question whether the Board of Education is an autonomous unit so as to be suable for damages or, conversely, whether it is more accurately viewed as a branch of the city government. As I suggested in my bench memo, the answer to this question will likely vary from city to city since each tends to have a relationship with its school board that is, in some measure, unique.

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