

*Misc news*

LFP/lab 1/9/78

2.

alleged jurisdiction under (1) 1983 and 1331, and (2) the First and Fourteenth Amendments and 1331.

CA 9 found it unnecessary to decide whether a school district could be sued under 1983 (the issue pending before us in Supell), but held that a Bivens type action was proper under 1331. This is the question on which Werry did a summer memo, and one we left open in Mt. Healthy. CA 9 relied on two prior cases in that respect for sustaining 1331 jurisdiction.

I am inclined to hold the case for Supell. If we should decide that school districts may be sued for official No. 77-688 Lowell School Dist. No. 71 v. Kerr result in this case would not be changed.

If, however, the Court in Supell concludes that school districts are not "persons" under 1983, I suppose

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decided - Werry - and we would then decide whether to grant it.

This case, as the cert memo states quite well, presents the question whether a Bivens type action may be brought directly under the Fourteenth Amendment with jurisdictional ground had been averred. Werry's memo states jurisdiction under § 1331.

That this question was not mentioned in the opinions. I The case resembles Mt. Healthy. Petr, discharged by the school district for incompetency, claims she was fired for her First Amendment activity. In her amended complaint, filed against the school district and its members individually, respondent - seeking damages -

*Clay*

alleged jurisdiction under (i) 1983 and 1343, and (2) the First and Fourteenth Amendments and 1331.

CA 9 found it unnecessary to decide whether a school district could be sued under 1983 (the issue pending before us in Monell), but held that a Bivens type action was proper under 1331. This is the question on which Nancy did a summer memo, and one we left open in Mt. Healthy. CA 9 relied on two prior cases in that circuit for sustaining 1331 jurisdiction.

I am inclined to hold the case for Monell. If we should decide that school districts may be sued for official action under 1983, I suppose the practical result in this case would not be changed.

If, however, the Court in Monell concludes that school districts are not "persons" under 1983, I suppose the 1331 issue - on which this CA 9 case was squarely decided - would remain and we could then decide whether to grant it.

There would be a question whether the \$10,000 jurisdictional amount had been averred. Bob's memo states that this question was not mentioned in the opinions. I have called for a response, which may clarify that.

*L.R.P., Jr.*