

QUESTIONS

✓ For petrs: 1. Did the CA decide this case on the merits or under the plain error rule? How should we decide it?

2. From the standpoint of federalism concerns, why are damage awards, however sizeable, more intrusive than the comprehensive injunctive relief we have approved in prison reform and school desegregation cases?

✓ 3. What do you say to amicus ACLU's argument that the common law immunity of municipalities from punitive damages was tied to their being liable for the acts of their agents? (Is it true? Does it matter here?)

For resps: 1. Do you accept that at common law municipalities were immune from punitive damages? Does that not distinguish this case from Monell and Owen?

2. What significance, if any, do you attach to Thiboutot in this context? Does it affect your policy arguments?