

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

Justice White
Justice Marshall
Justice Blackmun
Justice Stevens
Justice O'Connor
Justice Scalia
Justice

From: Justice Brennan

Circulated: FEB 6 1988

Recirculated:

Please join me in your concurring opinion

1st DRAFT

February 5, 1988

SUPREME COURT OF THE UNITED STATES

No. 86-772

Re: No. 86-772-City of St. Louis v. Praprotnik

JAMES H. PRAPROTNIK

Dear Bill:

Please join me in your concurring opinion.

(February 5, 1988)

Sincerely,

JUSTICE BRENNAN, concurring:

Despite its somewhat confusing procedural history, this case at bottom presents a relatively straightforward question: whether respondent's supervisor at the Community Development Agency, Frank Hamsher, possessed the authority to establish final employment policy for the City of St. Louis such that the City can be held liable under § 1983 for Hamsher's allegedly unlawful decision to transfer respondent to a dead-end job. Applying the test set out two Terms ago by the plurality in *Pembaur v. City of Cincinnati*, 475 U. S. 15, I conclude that Hamsher did not possess such authority and I therefore concur in the Court's judgment regarding Hamsher's decision below. I write separately, however, because I believe that the commendable desire of today's plurality to "define more precisely when a decision on a single occasion may be enough" to subject a municipality to § 1983 liability, ante, at —, has led it to embrace a theory of municipal liability that is both unduly narrow and unrealistic, and one that ultimately would permit municipalities to insulate themselves from liability for the acts of all but a small minority of actual city policymakers.

JMB
T.M.

Justice Brennan

cc: The Conference

Respondent James H. Praprotnik worked for petitioner City of St. Louis for 15 years. A licensed architect, he