

NO. 75-1914 JANE MONELL, ET AL. v. DEPARTMENT OF SOCIAL SERVICES
OF THE CITY OF NEW YORK, ET AL.

Section 1983 of 42 U.S. Code, which originated 107
~~THIS CASE PRESENTS THE QUESTION WHETHER THE WORD "PERSON" IN~~
make liable to damages + injunctive relief
~~42 U.S. CODE SECTION 1983 INCLUDES SCHOOL BOARDS, MUNICIPALITIES~~
~~AND OTHER LOCAL GOVERNMENTAL UNITS. THAT SECTION ORIGINATED 107~~
YEARS AGO AS SECTION 1 OF THE CIVIL RIGHTS ACT OF 1871. *AS* *makes liable to*
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~~PRESENTLY PHRASED IT AUTHORIZES A CIVIL ACTION AGAINST "EVERY~~
PERSON WHO, UNDER COLOR OF ANY STATUTE, ORDINANCE, REGULATION,
CUSTOM OR USAGE, OF ANY STATE OR TERRITORY, SUBJECTS, OR CAUSES
TO BE SUBJECTED, ANY CITIZEN OF THE UNITED STATES OR OTHER PERSON
WITHIN THE JURISDICTION THEREOF TO THE DEPRIVATION OF ANY RIGHTS,
PRIVILEGES OR IMMUNITIES SECURED BY THE CONSTITUTION AND LAWS,"
~~PROVIDING IN SWEEPING LANGUAGE THAT "EVERY SUCH PERSON" SHALL BE~~
~~LIABLE TO THE PARTY INJURED IN AN ACTION AT LAW, SUIT IN EQUITY,~~
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The remedy is available to any citizen injured by violation of its
~~LIMITED TO BLACK CITIZENS.~~ *comes* IN THE WORDS OF ITS CONGRESSIONAL
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WHOSE FORMER CONDITION MAY HAVE BEEN THAT OF SLAVES, BUT ALSO TO
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This case presents the question whether the remedy is
~~CIVIL ACTIONS SEEKING REDRESS UNDER THE STATUTE WERE NOT VERY~~
available against school boards municipalities & other local
~~NUMEROUS UNTIL PERHAPS A DECADE OR TWO AGO. TODAY THE DOCKET~~
government bodies & the answer to the question turns on whether
~~OF PROBABLY EVERY FEDERAL DISTRICT COURT IN THE COUNTRY HAS SOME~~
such local bodies are "persons" within the term "Every person"
~~AND IN SOME DISTRICTS A GOOD MANY.~~
made liable under the section

THIS SUIT WAS BROUGHT BY EMPLOYEES OF THE NEW YORK CITY BOARD OF EDUCATION AGAINST THE BOARD, THE CITY OF NEW YORK AND VARIOUS BOARD AND CITY OFFICIALS SUED IN THEIR OFFICIAL CAPACITIES. THE DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK (AFFIRMED BY THE COURT OF APPEALS FOR THE SECOND CIRCUIT) HELD THAT THE EMPLOYEES' CONSTITUTIONAL RIGHTS HAD INDEED BEEN VIOLATED BY THE BOARD, THE CITY AND THE NAMED OFFICIALS BUT NEVERTHELESS DISMISSED THE EMPLOYEES SUIT. THE TWO COURTS HELD THAT THE BOARD AND THE CITY WERE NOT "PERSONS" WITHIN THE MEANING OF THE TERM "EVERY PERSON" AND THEREFORE NOT SUABLE UNDER SECTION 1983. THE COURTS HELD FURTHER THAT, ALTHOUGH THE INDIVIDUAL OFFICIALS WERE "PERSONS", THE CLAIMS FOR DAMAGES AGAINST THEM MUST ALSO BE DENIED BECAUSE SUCH DAMAGES WOULD HAVE ULTIMATELY TO BE PAID BY THE CITY OF NEW YORK, AND THEREFORE TO ALLOW DAMAGES AGAINST THE OFFICIALS WOULD BE TO CIRCUMVENT THE HOLDING THAT THE CITY WAS NOT A "PERSON" SUABLE UNDER THE STATUTE.

holding of the
THE TWO COURTS ~~HOLDING~~ THAT THE CITY AND THE BOARD WERE NOT SUABLE "PERSONS" RESTED ON THIS COURT'S HOLDING 17 YEARS AGO IN MONROE v. PAPE, REPORTED AT 365 U.S. 167. THAT WAS A SUIT UNDER SECTION 1983 AGAINST THE CITY OF CHICAGO AND 13 OF ITS POLICE OFFICERS. THE

COMPLAINT ALLEGED THAT THE 13 POLICE OFFICERS, WITHOUT A WARRANT, BROKE INTO THE PLAINTIFFS HOME IN THE EARLY MORNING, ROUTED THEM FROM BED, MADE THEM STAND NAKED IN THE LIVING ROOM, AND RANSACKED EVERY ROOM EMPTYING DRAWERS AND RIPPING MATTRESS COVERS. ALTHOUGH HOLDING THAT ^{the complaint} THIS ALLEGED FACTS CONSTITUTING A DEPRIVATION UNDER COLOR OF STATE AUTHORITY OF A RIGHT GUARANTEED BY THE FOURTEENTH AMENDMENT, THE COURT HELD THAT THE ACTION AS AGAINST THE CITY OF CHICAGO MUST BE DISMISSED STATING "WE ARE OF THE OPINION THAT CONGRESS DID NOT UNDERTAKE TO BRING MUNICIPAL CORPORATIONS WITHIN THE AMBIT OF SECTION 1983." THIS CONCLUSION WAS RESTED UPON A READING OF THE EXTENSIVE LEGISLATIVE DEBATE THAT ENSUED WHEN SENATOR SHERMAN OF OHIO INTRODUCED AN AMENDMENT TO THE PROPOSED CIVIL RIGHTS ACT OF 1871, TO ^{not an amendment to 1960} BECOME ^{a new section} SECTION 7 OF THE ACT. THAT AMENDMENT WOULD HAVE MADE THE INHABITANTS OF THE COUNTY, CITY OR PARISH IN WHICH CERTAIN ACTS OF VIOLENCE OCCURRED, LIABLE TO PAY FULL COMPENSATION TO THE PERSON DAMAGED OR HIS WIDOW OR LEGAL REPRESENTATIVE. THE AMENDMENT FAILED AND THE COURT IN MONROE v. PAPE INFERRED FROM ^{that failure} THE DEBATES THAT CONGRESS FEARED THAT THE STATUTE MIGHT BE UNCONSTITUTIONAL IF IT APPLIED TO LOCAL GOVERNMENTS. THEREFORE, THE COURT SAID, "THE RESPONSE OF THE CONGRESS TO THE PROPOSAL TO MAKE MUNICIPALITIES LIABLE FOR CERTAIN ACTIONS BEING BROUGHT WITHIN FEDERAL PURVIEW BY THE ACT OF 1871 WAS SO ANTAGONISTIC THAT WE CANNOT BELIEVE THAT THE WORD "PERSON" WAS USED IN THIS PARTICULAR ACT TO INCLUDE THEM."

WE HAVE RE-EXAMINED THE DEBATES OVER THE 1871 ACT, AND ARE SATISFIED THAT MONROE v. PAPE'S HOLDING THAT CONGRESS EXCLUDED MUNICIPALITIES FROM THE WORD "PERSON" IN SECTION 1 NOW SECTION 1983 WAS WRONG. OUR OPINION INCLUDES AN EXTENSIVE FRESH ANALYSIS OF THE DEBATES IN STATING OUR REASONS FOR THE CONCLUSION THAT MONROE v. PAPE ERRED IN THIS RESPECT. THOSE REASONS WILL NOT BE FURTHER DISCUSSED NOW. SUFFICE IT TO SAY THAT OUR RE-EXAMINATION COMPELS THE CONCLUSION THAT CONGRESS IN 1871 WOULD NOT HAVE THOUGHT SECTION 1, NOW SECTION 1983, CONSTITUTIONALLY INFIRM IF IT APPLIED TO LOCAL GOVERNMENTS; INDEED, THE HISTORY CONFIRMS THAT LOCAL GOVERNMENTS WERE INTENDED TO BE INCLUDED AMONG THE "PERSONS" TO WHICH SECTION 1983 APPLIES. ACCORDINGLY MONROE v. PAPE IS OVERRULED INsofar AS IT HOLDS THAT LOCAL GOVERNMENTS ARE NOT PERSONS WITHIN THE TERM "EVERY PERSON" IN SECTION 1983. LOCAL GOVERNING BODIES (AND LOCAL OFFICIALS SUED IN THEIR OFFICIAL CAPACITIES) CAN THEREFORE, WE HOLD, BE SUED DIRECTLY UNDER SECTION 1983 FOR MONETARY, DECLARATORY AND INJUNCTIVE RELIEF. THE JUDGMENT OF THE COURT OF APPEALS IS THEREFORE REVERSED.

BUT OUR OPINION GOES ON TO CONSIDER WHAT MUST BE PROVED TO HOLD LOCAL GOVERNMENTS AND SUCH OFFICIALS LIABLE. FIRST WE HOLD THAT THEY CANNOT BE HELD LIABLE ON A RESPONDEAT SUPERIOR THEORY - THAT IS, BE HELD LIABLE SOLELY BECAUSE THE LOCAL GOVERNING BODY EMPLOYS THE PERSON WHO CAUSES THE PLAINTIFF'S HARM. FOR EXAMPLE, A PLAINTIFF

driven by a city employee on city business

INJURED WHEN A CITY'S TRASH TRUCK DRIVER RUNS HIM DOWN, EVEN INTENTIONALLY, DOESN'T HAVE A CASE AGAINST THE CITY UNDER SECTION 1983 MERELY BECAUSE THE DRIVER WAS A CITY EMPLOYEE. WE HOLD THAT LOCAL GOVERNMENT UNITS CAN BE LIABLE UNDER SECTION 1983 ONLY WHEN IT IS PLEADED AND PROVED AS IT WAS IN THIS CASE, THAT THE ACTION ALLEGED TO BE UNCONSTITUTIONAL IMPLEMENTS OR EXECUTES A POLICY, STATEMENT, ORDINANCE, REGULATION OR DECISION OFFICIALLY ADOPTED AND PROMULGATED BY THAT UNIT'S OFFICERS. HOWEVER, ALTHOUGH THE TOUCHSTONE OF THE SECTION 1983 ACTION AGAINST A GOVERNMENT BODY IS THUS AN ALLEGATION THAT OFFICIAL POLICY IS RESPONSIBLE FOR A DEPRIVATION OF RIGHTS PROTECTED BY THE CONSTITUTION, LOCAL GOVERNMENTS, LIKE EVERY OTHER SECTION 1983 "PERSON", BY THE VERY TERMS OF THE STATUTE, MAY ALSO BE SUED FOR CONSTITUTIONAL DEPRIVATIONS VISITED PURSUANT TO GOVERNMENTAL "CUSTOM" EVEN THOUGH SUCH A CUSTOM HAS NOT RECEIVED FORMAL APPROVAL THROUGH THE BODY'S OFFICIAL DECISIONMAKING CHANNELS. CONGRESS INCLUDED CUSTOM AND USAGE IN SECTION 1983 BECAUSE OF PERSISTENT AND WIDESPREAD DISCRIMINATORY PRACTICES OF STATE OFFICIALS *practices while* -/ALTHOUGH NOT AUTHORIZED BY WRITTEN LAW, ~~SUCH PRACTICES OF APPEALS~~ COULD WELL BE SO PERMANENT AND WELL SETTLED AS TO CONSTITUTE A CUSTOM OR USAGE WITH THE FORCE OF LAW.

I SHOULD EMPHASIZE THAT OUR OPINION MAKES CLEAR THAT WE DO NOT ADDRESS TODAY WHAT THE FULL CONTOURS OF MUNICIPAL LIABILITY UNDER SECTION 1983 MAY BE. WE HAVE ATTEMPTED ONLY TO SKETCH SO MUCH OF THE SECTION 1983 CAUSE OF ACTION AGAINST A LOCAL GOVERNMENT AS IS APPARENT FROM THE HISTORY OF THE 1871 ACT AND OUR PRIOR CASES AND WE EXPRESSLY LEAVE FURTHER DEVELOPMENT OF THIS ACTION TO ANOTHER DAY. FOR EXAMPLE, SINCE THE QUESTION WHETHER LOCAL GOVERNMENT BODIES SHOULD BE AFFORDED SOME FORM OF OFFICIAL IMMUNITY WAS NOT PRESENTED AS A QUESTION TO BE DECIDED ON THE PETITION IN THIS CASE, AND WAS NOT BRIEFED BY THE PARTIES NOR ADDRESSED BY THE COURTS BELOW, WE EXPRESS NO VIEWS ON THE SCOPE OF ANY MUNICIPAL IMMUNITY BEYOND HOLDING THAT MUNICIPAL BODIES SUED UNDER SECTION 1983 ARE NOT ENTITLED TO AN ABSOLUTE ^{immunity} LIABILITY. THAT IS NECESSARILY SO, LEST TODAY'S DECISION THAT SUCH BODIES ARE SUBJECT TO SUIT UNDER SECTION 1983 BE DRAINED OF MEANING.

MR. JUSTICE STEVENS JOINS ~~ONLY~~ PARTS I, III AND V OF THE COURT'S OPINION AND HAS FILED A CONCURRING OPINION.

MR. JUSTICE REHNQUIST DISSENTS AND JOINED BY THE CHIEF JUSTICE HAS FILED A DISSENTING OPINION.