

File (only copy)

Hold for
75-1914

I still say Grant
in Monell, limited to
the 2 §1983 issues; I
don't think SE irregular
L. Fleur - so the merits in Monell
aren't frivolous

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

January 18, 1977

Memorandum for the Conference

Subject: No. 75-1723, Muzquiz v. City of Antonio
No. 75-1914, Monell v. Dept. of Social Services of
City of New York
No. 76-5224, Thurston v. Dekle

These cases appear on the January 21 Conference List,
page ten.

Introduction: The common question presented in these cases is
whether a USDC has subject matter jurisdiction over a suit for
monetary relief brought under 42 U.S.C. § 1983 against individual
members of a municipal entity in their official capacities.
In each of the cases, petitioners are aggrieved former employees.
In Muzquiz and Monell, CA 5 and CA-2 each held that the
municipal agency itself was not a "person" within the contem-
plation of § 1983; in Thurston, the suit was brought against
individuals only. The question whether the municipal entity
is a "person" under § 1983 is raised in this Court only in
Monell.

This memorandum attempts a brief sketch of each of these
cases in aid of a determination as to which, if any, is most
appropriate for plenary consideration.

No. 75-1723, Muzquiz v. City of San Antonio

Petitioners, former San Antonio police and firemen, brought
a class action to challenge the constitutionality of a Texas
statute declaring that no member of the City's Firemen's and
Policemen's Pension Fund (Pension Fund) "shall ever be entitled
to any refund from said Fund on account of the money deducted
from that amount of their pay . . . which money is in itself
declared to be public money . . ." Petitioners, alleging juris-
diction under 28 U.S.C. §§ 1343 and 1331, claimed that the no-
refund provision violated their rights to due process and equal
protection, the right to travel, the Supremacy Clause and con-
stituted a bill of attainder. The suit named as defendants

the City, the Pension Fund, and the Fund's board members and asked for damages, restitution, declaratory and injunctive relief. The DC granted summary judgment for defendants.

On appeal, petitioners abandoned their claim against the City. CA 5, like the DC, considered and rejected petitioners' claims on the merits. The CA majority also found that the Board of Trustees of the Pension Fund was not "like a municipality" and did not possess broad governmental powers. Rather, the trustees served an essentially private function which might have been discharged by a bank or insurance company without the necessity for naming public officials as trustees. Thus, the Pension Fund and its members were amenable to suit under § 1983. The dissent took another view. Criticizing the "essentially private" function of the Fund as a "dubious distinction," the dissent saw the Fund and its members as an "arm of the city." The dissent found no jurisdiction in a suit against the Fund nor against its members for relief other than declaratory and injunctive relief.

Amend

Sitting en banc, CA 5 approved the dissenting view as to the Fund. As to its individual members, the CA took the view that the suit was, in effect, not one against the nominal defendants, but, instead, one against the Fund. Under the particular facts of the case, the CA found that equitable relief -- petitioners' claim for damages had been withdrawn -- was tantamount to a money judgment for restitution (directed at the assets of the Fund) and held that all claims were barred under § 1983. The CA also found that there was no jurisdiction under § 1331 for lack of the requisite amount.

Amend

In this Court, petitioners urge not only that the individual members of the Fund are "persons" under § 1983 in a suit for equitable relief which includes restitution, but also, that jurisdiction lies for equitable relief against the Fund and its members directly under the Fifth and Fourteenth Amendments, pursuant to § 1331 without regard to the jurisdictional amount, and pursuant to § 1343 without regard to § 1983.

No. 75-1914, Monell v. Dept. of Social Services of City of New York

Petitioners, alleging jurisdiction under § 1983, (§ 1343) and Title VII, brought a class action against the Dept. of Social Services, the NYC Board of Education and certain individuals in their official capacities. Their complaint challenged certain rules and regulations of city agencies making mandatory

Grant

unpaid leave for pregnant employees at a specified point in their pregnancies without regard to medical reasons. By 1973, the challenged city policy had been discontinued. Accordingly, the DC dismissed as moot petitioners' claims for declaratory and injunctive relief. Petitioners' prayer for an award of backpay remained in the case. However, the DC, noting that in the last analysis any award would be paid by the City -- petitioners ultimately conceded that the Dept., as an agency of the City, was not a "person" -- refused to find jurisdiction to support an award of backpay in light of Monroe v. Pape, 365 U.S. 167 (1961). The DC also rejected petitioners' Title VII claim because the alleged acts of discrimination occurred before the effective date of the 1972 Amendment which broadened the definition of "person." Accordingly, the DC dismissed the complaint without reaching the merits.

The CA rejected petitioners' claim that the Board of Education constitutes an independent body and not an arm of the city. It held that the Board was not a "person" under § 1983 and that no jurisdiction existed to support a suit to recover money from the city treasury. A different result would allow a subterfuge whereby a suit against the Board itself could be maintained in the guise of a suit against its members in their official capacities and, thus, contravene the intended jurisdictional bar to suits against municipalities. The CA agreed with the DC that Title VII does not apply retroactively to permit an award of backpay in these circumstances.

numbers 482 ✓
In this Court, petitioners raise their Title VII claim in addition to the questions whether a local independent school board is a "person" under § 1983 and whether municipal officials are "persons" when relief in the form of backpay is sought against them in their official capacities.

No. 76-5224, Thurston v. Dekle

Petitioner commenced a class action under § 1983 against individual members of the Jacksonville Civil Service Board (Board) and the Director of the Jacksonville Dept. of Housing and Urban Development. The suit challenged on due process grounds certain Board regulations authorizing suspension of an employee without pay. The DC granted summary judgment for petitioner and declaratory and injunctive relief, including backpay.

CA 5 agreed with the DC that the challenged suspension and dismissal rules provided constitutionally inadequate pre-termination procedures and sustained the relief granted by the DC except for the backpay award. The CA found that, insofar

as petitioner sought restitution, the practical effect, as in Muzquiz, would be to use the individual members of the Board as conduits to the City treasury. Accordingly, the backpay award was reversed for lack of subject matter jurisdiction.

The sole question presented for review in this Court relates to the availability of subject matter jurisdiction under § 1983 in a suit for equitable relief, including backpay, against individual members of a local civil service board and the director of a municipal housing agency.

Discussion: The petitioners in Muzquiz do not rely exclusively on § 1983 as a basis for jurisdiction. Nor do they challenge the CA's ruling that the Pension Fund itself is not a "person" for § 1983 purposes.

In Muzquiz, both the nature of the municipal entity (a pension fund) and the nature of the monetary relief sought (restitution in the form of a refund of deductions from pay) are sufficiently unusual to raise some doubts about the appropriateness of this case as the one in which to decide the common question presented. For example, to the extent that the Court weighs the argument that the public officials -- defendants serve an essentially private function as opposed to exercising governmental powers, trustees of a pension fund may be distinguishable from school board members or other more typical municipal officials. Also, equitable relief in the form of a "refund" may be distinguishable from the more commonly requested relief in the form of backpay. However, insofar as the equitable relief sought here is tantamount to awarding a money judgment, the CA opinion in Muzquiz does raise the "subterfuge" argument, i.e., whether aggrieved parties may reach the municipal coffers in a suit naming as defendants individuals in their official capacities, but not in a suit naming as defendant the agency itself.

On the merits, the Muzquiz petitioners' claims are weak and have already been considered and rejected in the courts below.

In Monell, the Court may wish to limit plenary consideration to the § 1983 questions and let stand the CA holding barring petitioners' claims under Title VII. Monell is the only one of these cases to present the question whether a municipal entity, here a school board, is itself a "person" within the meaning of § 1983. CA 2, while reaching the same result as CA 5, analogized the case to the Eleventh Amendment and Edelman v. Jordan, 415 U.S. 651 (1974). In its current posture, the relief sought in Monell is limited to backpay.

Monell is the one case of the three in which the courts below did not reach the merits. Respondents argue that they are not liable for a policy adopted and maintained in good faith and without discriminatory motive before this Court announced its decision in Cleveland Board of Education v. La Fleur, 414 U.S. 632 (1974). Parenthetically, petitioners rely in part on La Fleur itself as authority for the propriety of awarding backpay in this case.

Thurston is the narrowest of the cases. It presents the question whether jurisdiction lies for a § 1983 suit for backpay against individual municipal officials acting in their official capacities. In deciding the question, the CA relied on Muzquiz. Non-monetary equitable relief was granted in the DC and affirmed by the CA; there is no cross petition.

Petitioner Thurston's constitutional claims were sustained on the merits in both courts below.

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