Supreme Court, 7-2, Ends Immunity of Cities From Civil Rights Suits

By WARREN WEAVER Jr.
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WASHINGTON, June 6—Overruling a 1961 decision, the Supreme Court opened the door today to lawsuits against cities and other communities whose official policies have circumscribed the civil rights of their residents.

The 7-to-2 ruling swept away the absolute immunity from civil rights liability that municipalities have officially enjoyed but left unclear the extent to which they may now be subject to meeting the cost of large legal judgments.

Writing for the majority, Associate Justice William J. Brennan Jr. tried to allay the fears of public officials by declaring that a municipality should not be automatically liable for illegal or negligent acts of all of its employees unless they represented official policy.

Justice Brennan also stressed that the Court was not attempting to define "the full contours of municipal liability" for civil rights deprivations by this ruling or to express any views on the possibility that Congress might be able to legislate "some form of official immunity."

In his dissent, Associate Justice William H. Rehnquist said that the Court's 1961 declaration of immunity, which was abandoned today, "has protected municipalities and their limited treasuries from the consequences of their officials' failure to predict the course of this Court's constitutional jurisprudence."

"None of the members of this Court can foresee the practical consequences of today's removal of that protection," he continued. "Only the Congress, which has the benefit of the advice of every segment of this diverse nation, is equipped to consider the results of such a drastic change in the law. It seems all but inevitable that it will find it necessary to do so after today's decision."

Chief Justice Warren E. Burger joined in the dissent. Associate Justice John Paul Stevens agreed with the majority that municipalities were subject to civil rights suits but declined to endorse the majority's attempts to place limits on the ruling, calling them "merely advisory."

Ironically, the case (Monell v. Department of Social Services, No. 75-1914) arose in New York City, whose recent financial problems have probably made it the community least able to cope with a new source of governmental expense.

In 1971, a group of female employees of the city's Board of Education and Department of Social Services charged in Federal District Court that their civil rights had been violated by the policy of requiring unpaid pregnancy leaves before they were medically necessary.

While the case was pending, the city chaged its policy to meet the objections, eliminating that legal issue, but the trial court held that the city employees were not entitled to back pay. It cited as its reason the 1961 Supreme Court ruling that cities were exempt from damages in civil rights suits. The United States Court of Appeals for the Second Circuit affirmed.

In a sense, the high court had already overruled its 1961 decision by implication. In a series of cases in which the issue was never raised, the Justices had accepted the contention that school boards were not immune from civil rights suits, upholding injunctions and awards of damages.

1871 Rights Act Recalled

In the majority opinion, Justice Brennan undertook a loan re-examination of Congressional approval in 1871 of the civil rights statute under which the New York City employees sued. He concluded that "it beggars reason to suppose that Congress would have exempted municipalities from suit."

As a result, he said, local governments and their employees acting in the official capacity "can be sued directly for monetary, declaratory or injuctive relief where, as here, the action that is alleged to be unconstitutional implements or executes a policy statement, ordinace, regulation or decision officially adopted and promulgated by that body's officers."

The same liability applies, the majority held, when "governmental custom" has resulted in a constitutional deprivation, one never formally approved by the local legislative body. Arguing that there was not sufficient reason to reverse the 1961 grant of municipal immunity, Justice Rehnquist observed that "private parties must be able to rely upon explicitly stated holdings of this court, without being obliged to peruse both the briefs of the litigants to predict the likelihood that this court might change its mind."

An Opinion by Powell

In a concurring opinion, Associate Justice Lewis F. Powell Jr. said that the ruling raised but did not answer "difficult questions." He noted that there remained "substantial line-drawing problems in determining 'when execution of a Government's policy or custom' can be said to inflict constitutional injury such that 'Government as an entity is responsible' under the civil rights law."

In another case, the Court ruled over a sharp dissent by Justices Powell and Rehnquist that a deportation case involving a man whom the Government contends is an Italian alien should receive a full trial in Federal district court, after 11 years of Government hearings.

Justice Powell said that the defendant, Joseph V. Agosto, is a former convict who has told "fine different stories" about his nationality, "so transparently false" that no judge had yet believed him. Justice Powell declared that "there can be no case less deserving of further factual review than this one" (Agosto v. Immigration and Naturalization Service, No. 76-410).

The eight oil companies that jointly own the Trans-Alaska Pipeline lost their Supreme Court bid for higher transmission rates. First Business Page.

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Who Should Pay for Civil Wrongs?

Cities and towns received an unexpected jolt last week when the Supreme Court ruled that they were subject to lawsuits for violations of civil rights. The decision, which reversed a 1961 case, stripped away the blanket immunity long enjoyed by local governments in such cases. Previously, the only recourse for victims of misconduct by police officers or discrimination by city officials was to sue them individually. The Court's decision makes sense as a general principle of public policy. But it raises troublesome questions about municipal liability and who should bear the cost — questions that Congress must now confront.

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The Supreme Court case arose from a sex discrimination charge brought by a group of women employees of the New York City Department of Social Services. In 1971, they had been forced by the city's dated personnel policies to take unpaid pregnancy leaves before they were medically necessary. The women filed an action under the Civil Rights Act of 1871, which allowed suits against any "person" who, while acting in a governmental capacity, violated a citizen's federally protected rights. In 1961, the Warren Court ruled that Congress could not have intended a "person" to mean a municipality. Last week, the Burger Court announced that a more meticulous review of the legislative background compelled it to reach the opposite conclusion.

Will the removal of this shield of immunity deter official lawlessness? The exposure of local treasuries to damage claims should certainly help to dissuade public officials from ordering or tolerating behavior that violates citizens' rights. But the trouble with making municipalities liable is that it exposes the taxpayer to a vast array of damage claims in situations where public servants acted in good faith or where individual officials broke the law entirely on their own initiative. Some public responsibility for the conduct of public officials is desirable; it should encourage people to monitor their governments still more closely. But some limits on liability are needed to protect the taxpayer when, for instance, a police unit engages secretively in illegal wiretapping or when a local board of education is found to have violated legal principles in its allocation of funds or in its disciplinary policies.

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Should taxpayers have to pay damage claims even when all reasonable precautions have been observed in the conduct of public business? The Supreme Court's latest decision is silent on this question. The categorical doctrine of municipal immunity was bad public policy. But the issue cannot be allowed to rest where the Court left it. Federal legislation will be needed to define the degree of municipal liability in different situations. The nation's mayors have a strong interest in getting Congress to face up to a problem that everyone has been only too happy to leave to the judiciary.

Monell

Wide Application Seen for Ruling Opening Cities to Civil Right Suits

Monell
Ill

By ROGER WILKINS

When the Supreme Court decided recently that local government bodies were not immune from suits seeking money damages under one of the oldest civil rights laws in the country, civil rights and civil liberties lawyers were jubilant.

Urban Affairs

"The limitations that earlier decisions had placed on that legislation were some of the longest nails in the coffin," Drew S. Days 3d, the Assistant Attorney General for Civil Rights, said after the decision was handed down.

The history of the statute is intriguing and the implications of the decision for cities and other local governing bodies are enormous, according to lawyers who have followed the issue through the courts.

The recent case, Monell v. Department of Social Services, was brought by a group of female employees of the New York City Department of Social Services and the Board of Education. They alleged that they had been victims of unconstitutional discrimination because they had been forced to take unpaid maternity leaves before the leaves were medically necessary.

Statute Passed in 1871

The statute under which they sued, passed in 1871 to enforce the 14th Amendment, adopted three years earlier, gave people whose constitutional rights were violated the right to sue the "persons" who had violated those rights.

The plaintiffs lost at their trial and on the first level of their appeal because the courts followed a 1961 decision—ironically, written by former JJustice William O. Douglas, who was considered by civil rights forces as one of their staunchest supporters on the Court—holding that municipal governing bodies were not "persons" who could be sued for money damages for violations of constitutional rights.

One of the most remarkable things about the judicial history of the 1871 statute, according to civil rights lawyers, is that after its passage it remained virtually unused for almost three-quarters of a century.

Purpose of Legislation

It was passed to enforce the rights of newly freed slaves, but shortly after its passage, the spirit of liberalism that followed the war gave way to a long period of repression of blacks. It was not until the beginning of the civil rights movement in the 1950's that lawyers began attempting to assert the rights that the statute purported to provide.

When a case under the statute—involving police brutality in Chicago—finally did reach the Supreme Court in 1961, Justice Douglas rejected arguments that would have made the statute virtually a dead 'etter. However, he seriously undercut its force by deciding that money damages could not be awarded in such cases, according to civil rights lawyers.

These lawyers argue that the 1961 decision made constitutional-rights claimants "second-class citizens" before the common law, since money damages have been, under the common law, the established way for civil wrongs to be deterred. They say, for example, that money damages in contract and negligence law serve as powerful deterrents to behavior that injures other people or institutions.

Under the 1961 decision, the only remedy for people who said that their constitutional rights had been violated was to sue for an injunction preventing the unconstitutional behavior, unless Congress had passed special legislation providing for awards of money.

Thus, while complainants in employment discrimination cases could get back pay under Title VII of the Civil Rights Act of 1964, prisoners who had suffered "cruel and inhuman punishment" in local jails could get only whatever relief the ingenuity of a Federal district judge could provide under an injunction.

"In that situation," Eric Schnapper of the NAACP Legal Defense and Educational Fund Inc. said recently, "municipalities could engage in a long course of unconstitutional conduct until somebody sued and got a Federal judge to enjoin that conduct. Then you'd still have the problem of the local government being able to continue a course of unconstitutional conduct just outside the exact borders of the injunction."

Mr. Schnapper also said that though the 1961 decision did permit plaintiffs to seek damages against individuals acting in behalf of the municipality, that remedy was an ineffective brake on municipal behavior and was often an unsatisfactory means of providing redress for the victim of discrimination.

Victims Could Not Recover

Thus, if the official who had been responsible for the violation had no money, had left the jurusdiction or could not be identified, the victim could not recover for losses he or she had suffered.

The Monell case changes all that. Unconstitutional harms inflicted on citizens under the official policy of a city or a county or other local governing body will now subject that body to financial liability.

Justice William J. Brennan Jr. was careful, however, to distinguish between conduct carried out under the policy of the local government, which would subject that government to liability, and the unauthorized conduct of a single employee.

An Exception Is Noted

In announcing the decision from the bench, he said, that no municipality would be liable, for example, for damages inflicted by an ambulance driver who drove on the sidewalk and hit a pedestrian.

The decision would cover, according to William Caldwell of the Lawyers' Committee for Civil Rights Under Law, the kinds of violations of prisonbers' rights that forced the closing of the Tombs and of similar violations of rights that have frequently been found to occur in public mental institutions.

"This case will be of tremendous importance in nonracial cases," Mr. Schnapper of the Legal Defense Fund said. "People will be able to get redress for violations of the First Amendment rights or for illegal searches and seizures conducted by local police in violation of the Fourth Amendment or for violations of the Eighth Amendment prohibition of cruel and unusual punishment.

"And I don't think any mayor will lightly issue the kinds of 'shoot to kill' orders that Mayor Daley did during the peace demonstrations in Chicago in 1968."