

Power 2
Reverie 5
Affairs 2

75-1914 MONELL v. DEPT OF SOCIAL SERVICES Conf. 11/4/77

The Chief Justice Affairs or Power
Monroe control

Mr. Justice Brennan Reverie

We deal with a school board - & we have sustained suits vs school boards for years.

Can't distinguish ~~Monroe~~ Monroe. Here we deal with a policy adopted by board itself. This is different type of state action from Monroe.

S/Bd is a "person" under 1983

Mr. Justice Stewart Reverie (Hatchcock) Power (on 2nd vote)

No 11th amend. problem here.

Have concluded tentatively that a city can't be sued under theory of respondent superior. Now, as Sherman amend made clear, may there be vicarious liability.

Our school bd cases make clear that a school bd may be sued itself for its own policies that are invalid.

In this case there probable would be a good Wood v Strickland defense. The policy here was adapted prior to Le Flaut

Monroe would be difficult to distinguish.

Mr. Justice White

Reverse

Would not extend Monroe v Pape & would not have joined it - in all probability.

1983 did intend to impose liability on a city when its policies violate Court.

Don't reach Q of liab. of individual members.

Quite close to P.S. - but not with them all way. Fact that we have S/Board may make this unique.

Mr. Justice Marshall

Reverse

Somewhere in between Byrum & Potter (I don't understand)

Mr. Justice Blackmun

Affirm

Not at rest.

Monroe was mistaken as to leg. history of 1983. If we leave Monroe 100% intact we must affirm. Congress has accepted Monroe. Other remedies are now available under Title VII

Mr. Justice Powell Reverse (tentative)

I am inclined to try to work this out along lines stated by Potter. I think F. F. was right in Morse.

But I am not at rest and will have to see how this writer. I do not want to extend Morse. I could open it up for this type of case and tighten it with respect to the Morse v. Pope factual situation.

Mr. Justice Rehnquist Affair

Morse was wrongly decided but it is firmly established.

S/Bd is a municipal entity & can't be sued under Morse & its progeny.

Can't sue individuals - this would be an "end run."

Mr. Justice Stevens Reverse

Two reasons:

1. S/Bds have been held to be persons many times.

2. Morse probably was wrong, ~~but here the Board was~~ but it doesn't control here. We should qualify or distinguish it.

See my
note - compare
C.F.