

Pass 2
Reverse 5
Affirm 2

75-1914 MONELL v. DEPT OF SOCIAL SERVICES

Conf. 11/4/77

The Chief Justice

Affirm or Pass
Monroe controls

Mr. Justice Brennan

Reverse

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

Can't distinguish ~~from~~ 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

Reverse (tentative) Pass (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 case makes clear that a school bd may be sued itself for its own policies that are invalid.

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

Konrada would be difficult to distinguish.

Mr. Justice White Reverse
Would not extend Monroe / Pope & 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 Morale.

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

Mr. Justice Rehnquist Affirm

Morale was wrongly decided but it is firmly established.

S/Bd is a municipal entity & can't be sued under Morale & 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. Morale probably was wrong, ~~but here the Board was~~ but it doesn't control here. We should qualify or distinguish it.

See my
most-Confidential
note to
C.G.