

BENCH MEMO

No. 75-1914, Monell v. Department of Social Services

Cert to CA2 (Hays, Timbers, Gurfein)

This case has the potential for dealing a serious setback to civil rights litigation. The CA's decision sharply restricts the types of defendants who can be sued as "persons" under 42 U.S.C. § 1983 ("Every person who, under color of [state law], subjects . . . any citizen . . . to the deprivation of any rights, . . . shall be liable . . .").

Petitioners, female employees of New York City's Department of Social Services and Board of Education, brought suit against these entities and officials of them seeking injunctive and back pay relief. At issue were City policies requiring pregnant employees to take lengthy, unpaid leaves of absence. When the City changed its policies, the equitable claims were mooted. As to the back pay claims, the DC held that it lacked subject matter jurisdiction, and the CA affirmed, ruling that the Board of Education is not a "person" for purposes of § 1983 and that city officials -- who concededly are "persons" for purposes of injunctive relief, Ex parte Young (1908), and for purposes of allegations that they acted outside the scope of their offices, e.g., Scheuer v. Rhodes (1974) -- are not "persons" for purposes of monetary claims that will necessarily be paid out of the public treasury.

Are School Boards "Persons"?

The holding that a school board is not a person implicitly overrules a large number of cases in this Court. From Brown v. Board of Education and all of the following desegregation litigation to such other constitutional cases as Tinker v. Des Moines Independent School District (1969) (First Amendment) and Cleveland Board of Education v. LaFleur, 414 U.S. 632 (1974) (pregnancy leave issues similar to those here), this Court has ruled on the merits of § 1983 actions against school boards without once suggesting that a jurisdictional question about a board's "personhood" might be at issue. The CA met this argument by asserting that the Court's attention had not been called to the jurisdictional question in any of these cases and that, in most of them, individual defendants were named in addition to the school board. But the assumption that school boards are persons is nevertheless a longstanding one and, particularly in view of Congressional acquiescence in it, one that ought not be lightly changed.

The reasoning behind the CA's decision is somewhat uncertain. In places the opinion appears to be ruling solely on the particular characteristics of the New York City Board of Education, viewing it as a department of the City, a status that, under Monroe v. Pape (1961), would make the Board immune from § 1983 suits. Such a ruling would not affect the majority of school boards, which are entirely independent of municipal governments. In other places, however, the CA seemed to be ruling more broadly that no school board could be a person, and subsequent CA2 cases have given Monell the broader reading. This reading analogizes the functions of a school board

to the functions of a municipality and then applies Monroe. The construction of legislative history in Monroe to exclude municipalities from § 1983's ambit has been questioned, however, and there is no warrant for extending Monroe's municipality holding to other units of government, particularly in view of the longstanding assumption to the contrary.

When Are Public Officials "Persons"?

Having concluded that neither the Board of Education nor the City Department of Social Services was subject to suit under § 1983 (petitioners conceded that the latter entity's status was governed by Monroe), the CA next had to decide whether a suit for monetary relief could proceed against named officials of these organizations. The court reasoned that a back pay claim arising out of alleged unconstitutional action taken by defendants in their official capacities would necessarily be paid out of the public treasury and thus would have the same effect as a suit against the municipality or school board, which could not be sued directly because of Monroe. In an analogous area, this Court has refused to countenance damage suits against state officials when the funds would come from the state treasury and suit against the state itself would be barred by the Eleventh Amendment. The CA concluded that the intent to protect municipal treasuries that Monroe purportedly imputed to the Reconstruction Congress would be undermined if a civil rights plaintiff could win a monetary award merely by substituting the name of an official for the name of a city.

While the CA's reasoning has surface plausibility, it cannot withstand scrutiny. First, it is more than a little bizarre to hold that

the simple word "persons" in § 1983 was intended by Congress to mean that sometimes human beings are and sometimes they are not persons, with the result hinging on what relief is sought (injunctive or monetary) and the nature of the alleged deprivations (inside or outside the scope of official duties). Second, the issue is not jurisdictional, as the CA assumed, but rather goes to the remedial powers of the DC; even in the Eleventh Amendment cases on which the CA relied, there was no question of jurisdiction. Third, nothing in § 1983 or its history suggests a Congressional intent to limit remedies; to the contrary, DCs have always been given broad remedial powers in § 1983 suits.

Fourth, the remedy sought here, back pay, is nearly always an adjunct to equitable relief, as it originally was here. No one questions the DC's power to give equitable relief in a § 1983 suit against public officials. If a suit involves government policy, as here, equitable relief will be the principal focus of the suit, with monetary claims being secondary. If policy is not involved, then defendant officials will usually be alleged to be acting outside the scope of their office, and all concede that suits of this nature may proceed under § 1983, subject to the official immunity doctrines developed by this Court. Hence the CA's concern about a "subterfuge" being used to evade Monroe is misplaced, since few or no suits will be solely for damages arising from actions taken in an official capacity.

Finally, the Eleventh Amendment analogy on which the CA relied makes no sense in the § 1983 context. The prospective - retroactive line drawn in Eleventh Amendment cases is designed to reconcile that amendment

with other constitutional values. No competing constitutional values are involved in § 1983 cases, where the central purpose should be to provide a complete federal remedy for a federal wrong. The narrow Monroe holding does not affect this purpose, nor would its thrust be avoided by a ruling that monetary awards in the nature of back pay can be sought from public officials.

REVERSE

PLS/ep

9/21/77

*Monroe*  
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