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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337.

## SUPREME COURT OF THE UNITED STATES

### Syllabus

CITY OF NEWPORT ET AL. v. FACT CONCERTS, INC.,  
ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE  
FIRST CIRCUIT

No. 80-396. Argued March 31, 1981—Decided June —, 1981

Respondents (an organization licensed by petitioner city to present certain musical concerts, and a promoter of the concerts) brought suit in Federal District Court against the city and city officials. Alleging, *inter alia*, that the city's cancellation of the license amounted to a violation of their constitutional rights under color of state law, respondents sought compensatory and punitive damages under 42 U. S. C. § 1983. Without objection, the court gave an instruction authorizing the jury to award punitive damages against each defendant, including the city. Verdicts were returned for respondents, which in addition to awarding compensatory damages also awarded punitive damages against both the individual officials and the city. The city moved for a new trial, arguing for the first time that punitive damages could not be awarded against a municipality under § 1983. Although noting that the challenge to the instruction was untimely under Federal Rule of Civil Procedure 51, the District Court considered and rejected the city's substantive legal arguments on their merits. The Court of Appeals affirmed, finding that the city's failure to object to the charge at trial, as required by Rule 51, could not be overlooked on the theory that the charge itself was plain error. The court also expressed a belief that the challenged instruction might not have been error at all, and identified the "distinct possibility" that municipalities could be liable for punitive damages under § 1983 in the proper circumstances.

#### *Held:*

1. The city's failure to object to the charge at trial does not foreclose this Court from reviewing the punitive damages issue. Because the District Court adjudicated the merits, and the Court of Appeals did not disagree with that adjudication, no interests in fair and effective trial administration advanced by Rule 51 would be served if this Court

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— Additional changes in syllabus.

HENRY C. LIND  
Reporter of Decisions



## Syllabus

refused to reach the merits. Nor should review here be limited to the restrictive "plain error" standard. The contours of municipal liability under § 1983 are currently in a state of evolving definition and uncertainty, and the very novelty of the legal issue at stake counsels unrestricted review. In addition to being novel, the punitive damages question is also important and appears likely to recur in § 1983 litigation against municipalities. Pp. 7-9.

2. A municipality is immune from punitive damages under § 1983. Pp. 9-23.

(a) In order to conclude that Congress meant to incorporate a particular immunity as an affirmative defense in § 1983 litigation, a court must undertake careful inquiry into considerations of both history and public policy. Pp. 9-11.

(b) In 1871, when Congress enacted what is now § 1983, it was generally understood that a municipality was to be treated as a natural person subject to suit for a wide range of tortious activity, but this understanding did not extend to the award of punitive damages at common law. Indeed, common law courts consistently and expressly declined to award punitive damages against municipalities. Nothing in the legislative history suggests that, in enacting § 1 of the Civil Rights Act of 1871, Congress intended to abolish the doctrine of municipal immunity from punitive damages. If anything, the relevant history suggests the opposite. Pp. 11-18.

(c) Considerations of public policy do not support exposing a municipality to punitive damages for the malicious or reckless conduct of its officials. Neither the retributive nor the deterrence objectives of punitive damages and of § 1983 would be significantly advanced by holding municipalities liable for such damages. Pp. 18-23.

626 F. 2d 1060, vacated and remanded.

BLACKMUN, J., delivered the opinion of the Court, in which BURGER, C. J., and STEWART, WHITE, POWELL, and REHNQUIST, JJ., joined. BRENNAN, J., filed a dissenting opinion, in which MARSHALL and STEVENS, JJ., joined.