

Reverse 5-4

78-1779 Owen v. City of Independence

Conf. 1/11/80

The Chief Justice Affirm w D16

Only stigma was by one member of Council
— not from Council.

If 4 Justices agree no stigma, could
D16.

If reach merits, qualified immunity
probably exists as to damages

Mr. Justice Brennan Reverse

There was stigma & deprivation of
lib. interest.

~~There~~ There was a policy decision.

No immunity.

Mr. Justice Stewart Affirm

Agree with C.J. as to stigma but
the is not issue. Issue is immunity.

Prior to Civil War a municipality
had absolute immunity except as to
proprietary capacity action. But this
view has ~~be~~ been discredited.

Altho Monell left Q open, we are free
to decide. We should cut down on the
historic historic rule & apply Wood & Strickland
to both governmental & proprietary action

Would reach
immunity issue

Mr. Justice White Reverse on immunity

In view of Monell, there should be no immunity. Agree with W & B.

There is issue before us, tho there may have been no official policy. But CA 6 found there was official stigma & would not overturn this.

Mr. Justice Marshall Reverse

On address immunity - there should be none!

Mr. Justice Blackmun Reverse

CA 8 was right the first time, & over-reacted.

City Council adapted what Roberts said.

Mr. Justice Powell Affirm

The Harshhold Q is whether there was a Const. violation. Petr. alleges "stigma" that entitled him to hearing to clear name.

DC found facts that CA accepted. DC held there was no stigma because (1) City Mgr. - who alone had power to discharge - never accused Petr. of crime, & (2) G/Q cleared Petr.

But CA, on remand - & on same facts - found "stigma".

We are free to make our own decision. In my view no stigma. Mgr., - not Council - alone had right to fire. Both City Council & Mgr. had duties to ~~return~~ report over to City Atty & Petr. accepted at will employment knowing

Mr. Justice Rehnquist City Mgr. could fire

If we reach immunity issue, I'd find qualified immunity

Rehnquist - Affirm

Agree with GQ, PS & LFP

Mr. Justice Stevens Reverse

Altho close, there was impairment of lib. interest.

Municipal immunity ~~is~~ would be inappropriate. There should be absolute liability for policy or official action.