

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

March 1, 1988

*GVR*  
Re: 86-1049 City of Little Rock v. Williams

Hold memo for 86-772 City of St. Louis v. Praprotnik

MEMORANDUM TO THE CONFERENCE:

In this case, a municipal traffic court judge fired a court clerk after she reported him to the city police for deliberately destroying traffic tickets. CA8 affirmed a judgment holding the City liable for the judge's unconstitutional conduct. After we GVR'ed in light of Pembaur, CA8 (sitting en banc) again affirmed the judgment.

The majority noted that the district court had "specifically found that the undisputed evidence demonstrated that [the traffic court judge] had been delegated policy-making authority by the city and that he was acting pursuant to that authority." Williams v. Butler, 802 F.2d 296, 298 (CA8 1986). Stressing that the City had insisted at trial that the judge had the sole authority to hire and fire clerks, and that the City even claimed that his independence in this area was guaranteed by the state constitution, CA8 concluded:

"Even if the city did not actually delegate the authority [to hire and fire to the judge], the record amply demonstrates that the city acquiesced to it. For at least fifteen years, and probably longer, [the judge] possessed and exercised carte blanche authority with respect to employment matters in municipal court." Id., at 301.

The dissenting judges argued that the majority was mistaken in concluding "that the City has a policy of firing employees who attempt to help the City uncover corruption." Id., at 302. Relying heavily on Byron's concurring opinion in Pembaur, they argued that the traffic court judge's action was contrary to local law, and that he therefore had no authority to take such an action.

This seems to be a fairly difficult case. As the CA8 majority points out, it appears that the City left personnel decisions to the discretion of the traffic court judge, and that his exercise of that discretion was not supervised in any significant way by other city officials. This suggests that he might be considered a "final policymaker" under the tests set out in any of the Praprotnik opinions. The CA8 dissent, however, makes a strong argument in favor of concluding that the City had an implicit policy forbidding what this judge did. It appears that the city police engaged in a bona fide investigation of corruption in the traffic court, and that another court clerk was summoned before a grand jury that was investigating the matter. See 802 F.2d, at 297. To conclude that the City had an official policy of discharging employees who cooperated in the City's own official investigation of municipal corruption seems highly counterintuitive.

The Prapotnik plurality opinion says: "When an official's discretionary decisions are constrained by policies not of that official's making, those policies, rather than the subordinate's departures from them, are the act of the municipality." Slip op. 14. Although one can argue that this principle, or the principle relied on in Bill Brennan's opinion concurring in the judgment, should allow municipal liability on the facts of this case, that outcome is not clear enough that I would vote to deny the petition. I therefore recommend that we GVR in light of Prapotnik.

Sincerely,

*Sandra*