

City of St. Louis v. Praprotnik No. 86-772

Argued: Oct. 7, 1987

For Conference Oct. 9, 1987

Vote: Reverse the Eighth Circuit and Remand

I vote to reverse the Eighth Circuit's determination that respondent's transfer was a policy decision within the meaning of Monell. Assuming that respondent's transfer amounted to a constructive discharge in violation of his first amendment rights, Frank Hamsher's decision to effect this transfer was simply an exercise of managerial discretion and, as I suggested in Pembaur, could not, without more, give rise to municipal liability. The "final authority" test employed by the Eighth Circuit here is inconsistent with Pembaur. As I stated there, a city is not liable merely because an official has the authority to act on behalf of the city; rather, the official must have the authority to establish policy for the city -- an authority that Mr. Hamsher did not possess here. Because the test announced in Pembaur is sufficient to dispose of this case, I see no reason to depart from it in favor of the "ultimate authority" test advanced by petitioner -- an overly restrictive test which in my view is fraught with difficulty because it allows municipalities to insulate themselves from liability for the decisions of all but a few, or possibly just one, official.



I also think it unnecessary for the Court to address the inconsistent verdicts issue. The Eighth Circuit in no way suggested that the record supported a finding that the mayor or any of his cabinet members were tainted by Hamsher's unlawful motivation. Whether the jury verdict is sustainable on this theory is simply not a question for this Court to resolve in the first instance. I would therefore remand for further proceedings consistent with our opinion.

Law Clerk: Joe