

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 20, 1989

Re: 88-1566 City of Little Rock v. Williams

Hold Memo for 87-2084) Jett v. Dallas Independent School Dist.

88-214) Dallas Independent School Dist. v. Jett

MEMORANDUM TO THE CONFERENCE:

This litigation began in 1981, when William Butler, an elected municipal judge for the traffic court of Little Rock, Arkansas, discharged respondent Debbie Williams from her position as chief clerk of the traffic court. Respondent had seen Judge Butler destroy traffic tickets and after she reported this fact to the police she was discharged. Respondent then filed a § 1983 action against Judge Butler in his official capacity alleging that he had violated her First Amendment rights. Judge Butler filed a third-party complaint against the City of Little Rock, alleging that it was liable for any damages awarded against him in respondent's suit. Before the case was submitted to the jury, the trial judge ruled as a matter of law that the city was liable for any damages assessed against Judge Butler. The case was tried to a jury, which found for respondent and awarded \$40,000 in compensatory damages. Based on its earlier ruling, the trial court entered judgment against the city. In finding that the city was responsible for Judge Butler's decision, the trial court made extensive findings to the effect that under local law Judge Butler was the chief administrative officer of his court and that he did not consult with and was not bound by municipal personnel authorities in making employment decisions.

On appeal, a divided panel of the CA8 affirmed the finding of municipal liability. The judgment was then vacated for rehearing en banc, and affirmed by an equally divided en banc court. We then vacated the judgment below and remanded for reconsideration in light of our intervening decision in Pembaur v. Cincinnati. On remand, the en banc court again affirmed the finding of municipal liability by a vote of 7-5. We again vacated and remanded, this time for reconsideration in light of Saint Louis v. Praprotnik.

On remand from this Court, the en banc Eighth Circuit affirmed its finding of municipal liability under Praprotnik, by a

vote of 6-5. The en banc majority recognized that Praprotnik stands for the proposition that the location of final policymaking authority is a question of state law. In this case, the court found that "under state law, Butler was exercising final policymaking authority in his court." The en banc majority noted that the city had made numerous discovery admissions to the effect that Butler had sole and unreviewable authority to hire and fire court employees, and that this authority was not constrained by higher city officials or city policy. The court also noted that a state statute specifically vested authority for personnel actions in the municipal judge. The concurring judge emphasized that this statute, independent of any delegation from municipal officials, rendered Judge Butler the final policymaker as to employment decisions within his own court. The dissenters argued that the majority had failed to distinguish between the final discretionary authority of a municipal employee and the kind of final policymaking authority which Pembaur and Praprotnik require to make an individual's decisions constitute "municipal policy." The city's petition for certiorari argues that Judge Butler did not have final authority to make municipal policy as to personnel decisions, and that the firing of respondent constituted an isolated incident of retaliation for which the city cannot be held liable.

Jett adds nothing new to our decision in Praprotnik which was available to and applied by the CA8. Thus I do not think a GVR is appropriate. At bottom this case presents an application of Praprotnik to a particular fact situation. It may be that as a matter of state law city officials did not even have the power to review or set policy regarding the municipal judge's hiring and removal practices. In earlier stages of this litigation, the city made numerous admissions to the effect that Judge Butler possessed plenary authority over his court and that he was unconstrained by municipal employment policy. As the response points out, the city has now shifted its position to contend that under local law the municipal court judge was bound by city employment policy. Thus the petition may present nothing more than a struggle over the meaning of state law. There is no real conflict of authority on this issue, and I do not think the petition offers this Court the opportunity to announce any new principles of law in this area. For these reasons I shall vote to deny the petition for certiorari.

Sincerely,

