

VIEWS EXPRESSED IN MR. JUSTICE REHNQUIST'S SECOND DRAFT

- I. Municipal Corporations are not "persons" under §1983
- II. Board members may not be required as individuals to exercise their official authority to draw funds for payment of damages.
 - A. Board members may not have the authority to order the expenditure of funds, i.e. the Comptroller, not guilty of any wrongdoing, may refuse to pay.
 - B. A municipal corporation, like any other corporation, must be joined as an indispensable party in a suit to require payment of damages.
 - C. The fiction invoked here would frustrate the intent of Congress to protect municipal treasuries.
- III. Depending upon state law, school boards may be municipal corporations exempt from liability under §1983.
 - A. A school board may be an aggregate of persons rather than a "corporation". [but cites McQuillin that such an aggregate may simply be an agency of mun. Corp. or state].
 - B. "eight decisions" based solely on §1983 may be explained by
 1. Collection of persons "clearly suable under §1983".
 2. In all but 2, "equitable relief was sought". Cases cited by Brennan do not establish that suits against officers in their official capacities were invariably treated as suits against corporations, only contract cases. Same principle could not apply to tort cases. "injunctive relief" clearly proper against municipal officials. Because we have allowed injunctive relief requiring future

expenditures, citing Edelman and Milliken with approval, question is not all or nothing.

3. Two other cases were not well considered.

- C. Suits may be maintained against board members for injunctive relief under ~~x~~ neither §1983 or Ex Parte Young, so that Congressional authorization of attorneys' ^{fees} is not meaningful.
- D. If a school board is not an arm of a municipality, it is a subdivision of a state, so it is always immune from liability in damages.