

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 6, 1978 ✓

MEMORANDUM TO THE CONFERENCE

Re: No. 75-1914 - Monell v. Dept. of Social Service

I have read with great interest the very helpful memoranda of our two Bills and the ensuing correspondence from others. Although I indicated at our initial conference of November 4 that I was inclined to affirm (with a question mark), that inclination was dominated by the holdings in Monroe, Kenosha, and Moor to which I felt, as is usually (although not always) the case for all of us, some sense of stare decisis deference.

I think that the research that has been done as a result of the present case has proved to be most worthwhile. I have concluded that although we should not so indulge every day, we must now concede that the decision in Monroe is questionable. My inclination is to overrule it, but perhaps I could be persuaded, as are others, not to overrule it but to "confine it to its facts," even though that device so often is a euphemism for overruling.

I prefer to refrain from deciding now any school board immunity issue although I would not at all object, as Bill Brennan suggests in his letter of February 23, to a statement that that question remains open for consideration.

In sum, I now vote to reverse.

H.A.B.
✓