The Burger Court Opinion Writing Database

Moor v. County of Alameda

411 U.S. 693 (1973)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University
Forrest Maltzman, George Washington University

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

CHAMBERS OF
THE CHIEF JUSTICE

May 3, 1973

Re: No. 72-10 - David Moor, et al v. County of Alameda, et al

Dear Thurgood:

Please join me.

Regards,

WEB

Mr. Justice Marshall

Copies to the Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

No. 72-10

Circulated: 4-18-73

Recirculated: _____

David Moor et al., Petitioners, *v.* County of Alameda et al. | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[March —, 1973]

MR. JUSTICE DOUGLAS, dissenting.

The claims in the instant actions arose out of the May 1969, People's Park disturbance, in which appellants were allegedly injured by an Alameda County deputy sheriff who was performing duties at that time on behalf of the County. Appellants brought actions against several deputies, the sheriff, and the County. The complaints against the County alleged federal causes of action under the Civil Rights Act, 42 U. S. C. §§ 1981–1988, and pendent state claims under § 810 *et seq.* of the California Government Code. Both federal and state causes of action were premised on the theory that the County could be held vicariously liable for the acts of the deputies. The County subsequently filed motions to dismiss the claims against it in each case, contending that, as to the Civil Rights Act claims, the County was not a "person" who could be sued under the Act. The trial court ultimately granted these motions and ordered that all claims against the County be dismissed. The Court of Appeals affirmed these orders of the District Court (*Moor* v *Madigan, et al.*, — F. 2d — (CA9, April 12, 1972)

42 U. S. C. § 1983 provides

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within

3 — 2, 3

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

No. 72-10

Circulated: _____

Recirculated: 4-23

David Moor et al., Petitioners, *v.* County of Alameda et al. | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[March —, 1973]

MR. JUSTICE DOUGLAS, dissenting.

The claims in the instant actions arose out of the May 1969, People's Park disturbance, in which appellants were allegedly injured by an Alameda County deputy sheriff who was performing duties at that time on behalf of the County. Appellants brought actions against several deputies, the sheriff, and the County. The complaints against the County alleged federal causes of action under the Civil Rights Act, 42 U. S. C. §§ 1981–1988, and pendent state claims under § 810 *et seq.* of the California Government Code. Both federal and state causes of action were premised on the theory that the County could be held vicariously liable for the acts of the deputies. The County subsequently filed motions to dismiss the claims against it in each case, contending that, as to the Civil Rights Act claims, the County was not a "person" who could be sued under the Act. The trial court ultimately granted these motions and ordered that all claims against the County be dismissed. The Court of Appeals affirmed these orders of the District Court (*Moor* v. *Madigan, et al.*, — F. 2d — (CA9, April 12, 1972).

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To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnqu

4th DRAFT

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

No. 72-10

Circulated: _____

Recirculated: 5-11-

David Moor et al., Petitioners, *v.* County of Alameda et al. } On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[May 14, 1973]

MR. JUSTICE DOUGLAS, dissenting.

The claims in the instant actions arose out of the May 1969, People's Park disturbance, in which appellants were allegedly injured by an Alameda County deputy sheriff who was performing duties at that time on behalf of the County. Appellants brought actions against several deputies, the sheriff, and the County. The complaints against the County alleged federal causes of action under the Civil Rights Act, 42 U. S. C. §§ 1981–1988, and pendent state claims under § 810 *et seq.* of the California Government Code. Both federal and state causes of action were premised on the theory that the County could be held vicariously liable for the acts of the deputies. The County subsequently filed motions to dismiss the claims against it in each case, contending that, as to the Civil Rights Act claims, the County was not a "person" who could be sued under the Act. The trial court ultimately granted these motions and ordered that all claims against the County be dismissed. The Court of Appeals affirmed these orders of the District Court (*Moor* v. *Madigan, et al.*, — F. 2d — (CA9, April 12, 1972).

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 16, 1973

RE: No. 72-10 Moor v. County of Alameda

Dear Thurgood:

I agree.

Sincerely,

Bill

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 16, 1973

Re: No. 72-10, Moor v. County of Alameda

Dear Thurgood,

Your proposed opinion for the Court in this interesting case strikes me as a carefully considered and very thorough piece of work. I am glad to join Parts I and III. As to II, I was and still am prepared to hold that there is no federal jurisdiction over a "pendent party," but what is said in your memorandum, and in Part II itself, unsettles me sufficiently that I would be quite willing to join Part II as now written, if that is the view of at least four others. I would be particularly interested in learning the views in this issue of Bill Brennan, the author of the Gibbs opinion.

Sincerely yours,

P.S.

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 16, 1973

Re: No. 72-10 - Moor v. County of Alameda

Dear Thurgood:

This is an important case, and I may not have full grasp of it as yet. But as presently advised, your exposition and resolution satisfy me, although I would also be content to leave more open than you do the pendant-party issue. That matter would, in any event, be a fitting subject for a statute or rule (if there is any rule-making power remaining).

Sincerely,

Byron

Mr. Justice Marshall

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 12, 1973

MEMORANDUM TO THE CONFERENCE

Re: No. 72-10 - Moor v. County of Alameda

As you will recall, this case involves three distinct issues concerning the scope of federal jurisdiction. My notes from Conference indicate that the Court decided to affirm the decision below as to petitioners' failure to state a federal cause of action against the respondent County under the Federal Civil Rights Acts, and §1988 in particular. The Court voted also to affirm the lower courts' decision not to exercise pendent jurisdiction over the state law claims against the County, but to reverse the decision in petitioner Moor's case that the County is not a citizen of California for purposes of federal diversity jurisdiction. The enclosed draft opinion is wholly consistent, I believe, with the view of the Conference insofar as the federal civil rights and diversity jurisdiction questions are concerned. But because of some uncertainty as to the basis on which the majority of the Court wished to dispose of the pendent jurisdiction issue, I am sending this memorandum along with the draft opinion.

As you will see from the draft, I have suggested we dispose of the pendent jurisdiction issue in this case on the basis that the District Court did not abuse its discretion in refusing to exercise pendent jurisdiction over petitioners' state law claims. Thus, I have not reached the question whether there would be judicial power to hear pendent claims of the type involved here. Of course, the issue of pendent jurisdiction in this case is an unusual one since petitioners are attempting not only to join a pendent state law claim--which clearly grows out of the same nucleus of operative facts as the jurisdiction-granting federal claims against the individual defendants--but in so doing also to join an entirely new party, the County.

At Conference, there was some sentiment for holding that there is never judicial power to join such a "pendent party"--a view with which initially I was not unsympathetic. But further research in preparation of the opinion has convinced me that such a holding may be neither correct nor wise. As is pointed out on pp. 19-21 in part II of the enclosed draft, the overwhelming trend of decisions in the Courts of Appeals since United Mine Workers v. Gibbs, 383 U.S. 715 (1966), which expanded the concept of pendent jurisdiction, has been to hold that there is power to join a pendent party where the pendent claim meets the Gibbs' test of "common nucleus of operative fact." Much more importantly, though, would be the strong, adverse implications of a holding that there is no judicial power to join a pendent party for the well-established doctrine of ancillary jurisdiction which plays a vital role in the joinder of new parties--as to which there is no independent basis of federal jurisdiction--in the context of compulsory counterclaims under F.R.Civ.P. 13(a) and 13(h) and in the context of third-party claims under F.R.Civ.P. 14. The existence of judicial power to join such entirely new parties is recognized in numerous lower federal court decisions, cited in part II of the draft, and has been recognized by this Court at least since its decision in Dewey v. West Fairmont Gas Coal Co., 123 U.S. 329 (1887). For purposes of judicial power, the present case bears a particularly close resemblance to a suit between two parties ~~to which has been joined under Rule 14 a third-party claim~~-- growing out of vicarious liability--against a new defendant. In short, while I recognize that there exists on the question of judicial power to join a pendent party a conflict between the Ninth Circuit, on the one hand, and the Second, Third, Fourth, Fifth, Sixth, and Eighth Circuits, on the other, I would strongly prefer to decide the pendent jurisdiction issue here simply on the basis of discretion, and to await another case free of the other issues to resolve the conflict. I recognize that the discretion argument is not necessarily as strong as we might like it to be, but it will suffice to sustain the result agreed upon by the Court.

I hope that you will agree with my proposed disposition. I look forward to hearing your views in this matter.

T.M.

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Mr. Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

From: Marshall, J.

Circulated: APR 12 1973

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 72-10

David Moor et al., Petitioners, v. County of Alameda et al.	On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[April —, 1973]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

This case raises three distinct questions concerning the scope of federal jurisdiction. We are called upon to decide whether a federal cause of action lies against a municipality under 42 U. S. C. §§ 1983 and 1988 for the actions of its officers which violate an individual's federal civil rights where the municipality is subject to such liability under state law. In addition, we must decide whether, in a federal civil rights suit brought against a municipality's police officers, a federal court may refuse to exercise pendent jurisdiction over a state law claim against the municipality based on a theory of vicarious liability, and whether a county of the State of California is a citizen of the State for purposes of the federal diversity jurisdiction.

In February 1970, petitioners Moor and Rundle [1] filed separate actions in District Court for the Northern District of California seeking to recover actual and

[1] Named as plaintiffs in the *Rundle* case in addition to petitioner William D. Rundle, Jr., were his guardian *ad litem*, William D. Rundle and Sarah Rundle. William D. Rundle and Sarah Rundle are also petitioners here, but for ease of discussion we will refer simply to petitioner Rundle.

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STYLISTIC CHANGES THROUGHOUT. AND P. 2.

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

2nd DRAFT

From: Marshall, J.

Circulated: _____

Recirculated: APR 2 0 1973

SUPREME COURT OF THE UNITED STATES

No. 72–10

David Moor et al., Petitioners, *v.* County of Alameda et al. | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[April —, 1973]

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WB

STYLISTIC CHANGES THROUGHOUT. & PP 2, 19

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

3rd DRAFT

From: Marshall, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

No. 72-10

Recirculated: APR 30 197

David Moor et al., Petitioners, *v.* County of Alameda et al.	On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[April —, 1973]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 16, 1973

MEMORANDUM FOR THE CONFERENCE

Re: Yumich v. City of Chicago, No. 71-1097 -- Petition for Rehearing heretofore held for Moor v. County of Alameda, No. 72-10

The petition for rehearing in this case was held by the Court pending disposition of Moor v. County of Alameda. This case involves an action brought by two persons to recover for injuries allegedly suffered in connection with the civil disturbances at the 1968 Democratic National Convention in Chicago. Petitioners' complaint named as defendants the City of Chicago, certain police officers of the City, the Hilton Hotels Corporation, and two Hilton Hotel employees. Among other things, the complaint purported to state a cause of action against the defendants under the Federal Civil Rights Acts for violation of the defendants' rights under the Fourth and Fourteenth Amendments of the Constitution. In advance of trial, the District Court granted the City's motion to dismiss the federal cause of action against it on the basis of Monroe v. Pape. The Court of Appeals for the Seventh Circuit affirmed, rejecting petitioners' argument that since the City is not immune from suit under state law for the tortious actions of its police officers, and since 42 U.S.C. §1988 authorizes the federal courts to apply state law in federal civil rights actions, a federal cause of action exists against the City for the injuries allegedly caused by its officers. The petition for certiorari was initially held for decision of District of Columbia v. Carter, and was denied after that case was handed down.

In Point I of petitioners' application for rehearing, they point out that this case involves essentially the same issue that was discussed in Part I of Moor -- namely,

WD

whether §1988 provides a means for holding a municipal corporation liable in damages where the corporation's common law immunity has been abolished, despite this Court's decision in Monroe v. Pape that a municipal corporation is not a "person" within the meaning of 42 U.S.C. §198 We, of course, ruled against the petitioners in Moor on this argument, and I believe our discussion there fully disposes of petitioners' argument in this case concerning municipal liability in a federal civil rights action. I therefore see no need for a remand for reconsideration in light of Moor.

I should add, however, that Point III of the petition for rehearing raises an issue distinct from those discussed in Moor. I leave that issue to your independent consideration.

T.M.

WD

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 23, 1973

Re: No. 72-10 - Moor v. County of Alameda

Dear Thurgood:

You have written a good strong opinion for this case and I am glad to join it. Your disposition of the pendent party issue, I feel, is quite appropriate. I should confess, however, that I authored one of the Court of Appeals cases cited in your footnote 29 (415 F. 2d 809, 816-817) and thus may have felt, four years ago, that Gibbs showed the way. The Eighth Circuit case might be regarded as somewhat unusual because (1) it concerned a wife's consortium claim, a claim the state courts had described as "derivative" and not independent of the husband's damage claim, and (2) the pendent party approach was only one of several factors we felt were supportive of the result reached.

Why not take this case?

Sincerely,

Harry

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 19, 1973

Re: No. 72-10 Moor v. County of Alameda

Dear Thurgood:

Although I was inclined (with Potter and Byron) to leave the "pendent party" jurisdictional issue a little more open, I think you have written an excellent and persuasive opinion and am happy to join you.

Sincerely,

Lewis

Mr. Justice Marshall

cc: The Conference

B

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 19, 1973

Re: No. 72-10 - Moor v. Alameda County

Dear Thurgood:

My sentiments in this case are similar to those expressed by Potter; I would be prepared to hold now that there is not pendent jurisdiction under the circumstances of this case, particularly in light of my perhaps hazy recollection that the Federal Rules of Civil Procedure by their terms preclude enlargement of the statutory jurisdiction of the district courts. I am perfectly willing, however, to join your present draft, which leaves the question open.

Sincerely,

WHR

Mr. Justice Marshall

Copies to the Conference