

# The Burger Court Opinion Writing Database

## *Aldinger v. Howard*

427 U.S. 1 (1976)

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



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

CHAMBERS OF  
THE CHIEF JUSTICE

June 14, 1976

Re: 74-6521 - Aldinger v. Howard

Dear Bill:

I join your May 21 proposed opinion.

Regards,

WBS

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

May 25, 1976

RE: No. 74-6521 Aldinger v. Howard, etc. et al.

Dear Bill:

In due course I shall circulate a dissent in  
the above.

Sincerely,

*Bill*  
*W*

Mr. Justice Rehnquist

cc: The Conference

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

From: Mr. Justice Brennan

Circulated: 6/17/76

Recirculated: \_\_\_\_\_

Monica Aldinger v. Merton Howard, et al.

On Writ of Certiorari to the United States Court of Appeals for the  
 Ninth Circuit

No. 74-6521

Decided June \_\_, 1976

MR. JUSTICE BRENNAN, dissenting.

United Mine Workers v. Gibbs, 383 U.S. 715, 725-726 (1966),

held:

"Pendent jurisdiction, in the sense of judicial power, exists whenever there is a claim 'arising under [the] Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority . . . , ' U.S. Const., Art. III, § 2, and the relationship between that claim and the state claim permits the conclusion that the entire action before the court comprises but one constitutional 'case.' The federal claim must have substance sufficient to confer subject matter jurisdiction on the court . . . . The state and federal claims must derive from a common nucleus of operative fact. But if, considered without regard to their federal or state character,

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

U.S. Supreme Court

6/22/76

Revised: 6/22/76

1st DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 74-6521

Monica Aldinger, Petitioner, } On Writ of Certiorari to  
 v. } the United States Court  
 Merton L. Howard, etc., et al. } of Appeals for the  
 Ninth Circuit.

[June —, 1976]

MR. JUSTICE BRENNAN, dissenting.

*United Mine Workers v. Gibbs*, 383 U. S. 715, 725-726  
 (1966), held:

"Pendent jurisdiction, in the sense of judicial power, exists whenever there is a claim 'arising under [the] Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority . . .,' U. S. Const., Art. III, § 2, and the relationship between that claim and the state claim permits the conclusion that the entire action before the court comprises but one constitutional 'case.' The federal claim must have substance sufficient to confer subject matter jurisdiction on the court . . . . The state and federal claims must derive from a common nucleus of operative fact. But if, considered without regard to their federal or state character, a plaintiff's claims are such that he would ordinarily be expected to try them all in one judicial proceeding, then, assuming substantiality of the federal issues, there is power in federal courts to hear the whole.

"That power need not be exercised in every case in which it is found to exist. It has consistently been recognized that pendent jurisdiction is a doctrine of discretion, not of plaintiff's right. Its justi-

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

CHAMBERS OF  
JUSTICE POTTER STEWART

May 21, 1976

No. 74-6521, Aldinger v. Howard

Dear Bill,

I am glad to join your opinion for  
the Court in this case.

Sincerely yours,

P.S.  
/

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 24, 1976

Re: No. 74-6521 - Aldinger v. Howard

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquist

Copies to Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

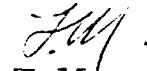
June 22, 1976

Re: No. 74-6521 -- Aldinger v. Howard

Dear Bill:

Please join me in your dissent.

Sincerely,

  
T. M.

Mr. Justice Brennan

cc: The Conference



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

✓

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 18, 1976

Re: No. 74-6521 - Aldinger v. Howard

Dear Bill:

Please add my name to your dissenting opinion in this case.

Sincerely,

A handwritten signature in cursive script, appearing to read "Larry", with a long, sweeping underline.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 26, 1976

No. 74-6521 Aldinger v. Howard

Dear Bill:

Please join me.

Sincerely,

*Lewis*

Mr. Justice Rehnquist

lfp/ss

cc: 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

FILED MAY 21 1976

1st DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 74-6521

Monica Aldinger, Petitioner,	} On Writ of Certiorari to	
v.		the United States Court
Merton L. Howard, etc., et al.		of Appeals for the
		Ninth Circuit.

[June —, 1976]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

This case presents the "subtle and complex question with far-reaching implications," alluded to but not answered in *Moor v. County of Alameda*, 411 U. S. 693, 715 (1973), and *Philbrook v. Glodgett*, 421 U. S. 707, 720 (1975): whether the doctrine of pendent jurisdiction extends to confer jurisdiction over a party as to whom no independent basis of federal jurisdiction exists. In this action, where jurisdiction over the main, federal claim against various officials of Spokane County, Wash., was grounded in 28 U. S. C. § 1343 (3), the Court of Appeals for the Ninth Circuit held that pendent jurisdiction was not available to adjudicate petitioner's state law claims against Spokane County, over which party federal jurisdiction was otherwise nonexistent. While noting that its previous holdings to this effect were left undisturbed by *Moor*, which arose from that circuit, the Court of Appeals "was not unaware of the widespread rejection" of its position in almost all other federal circuits. 513 F. 2d 1257, 1261 (1973). We granted certio-

Wait for  
W.S.B. dissent

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 18, 1976

Re: No. 74-6521 - Aldinger v. Howard

Dear Bill:

In response to your dissenting opinion, I propose to add a new footnote at the end of the first full paragraph on page 16 of my opinion which will read as follows:

"The floor debates on the statute which became § 1983, relied upon by our Brother Brennan, insofar as any common understanding may be distilled from their diverse strains, indicate a recognition of the authority of United States courts to entertain suits against municipal corporations under their then existing diversity jurisdiction. It is of course a fair inference from this theme that nothing in § 1983 or § 1343 was intended to disturb such jurisdiction, and it seems scarcely necessary to add that nothing we say in this opinion disturbs it in the slightest. All that we hold is that where the asserted basis of federal jurisdiction over a municipal corporation is not diversity of citizenship, but is a claim of jurisdiction pendent to a suit brought

- 2 -

against a municipal officer under § 1343, the refusal of Congress to authorize suits against municipal corporations under the cognate provisions of § 1983 is sufficient to defeat the asserted claim of pendent party jurisdiction."

Sincerely,

A handwritten signature, likely "W. M.", in dark ink, positioned to the right of the word "Sincerely,".

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 21, 1976

Re: 74-6521 - Aldinger v. Howard, etc., et al.

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquist

Copies to the Conference