The Burger Court Opinion Writing Database

Mt. Healthy Board of Education v. Doyle

429 U.S. 274 (1977)

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
JUSTICE WM. J. BRENNAN, JR.

December 29, 1976

RE: No. 75-1278 Mt. Healthy City School District Board of Education v. Doyle

Dear Bill:

I am finally at rest and am happy to join your opinion.

Sincerely,

Bill

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

December 15, 1976

75-1278, Mt. Healthy v. Doyle

Dear Bill,

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

Sincerely yours,

P.S.
1.

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 29, 1976

Re: No. 75-1278 - Mt Healthy City School District v. Doyle

Dear Bill:

Please join me.

Sincerely,

Byron

Mr. Justice Rehnquist

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 13, 1976

Re: No. 75-1278, Mt. Healthy City School District Board of Education v. Doyle

Dear Bill:

I am somewhat troubled by aspects of the penultimate paragraph of your opinion. I agree, of course, that to prevail plaintiff must prove that his action in phoning the radio station was constitutionally protected. I also agree that plaintiff must prove more than that the school board was aware of this action, or that they discussed it in making the decision not to renew the contract. Rather, in my view, plaintiff must prove that his constitutionally protected activity actually played a role in (i.e., was one of the reasons for) the decision not to renew his contract. But once plaintiff meets this burden, he has established that the board acted impermissibly, and to defeat the remedy of reinstatement I believe the school board then should be required to prove that it would not have renewed the contract in any event.

This may well be what you mean to convey in the paragraph that concerns me. But the terms "substantial factor" and "significant role" are at least ambiguous, and it would be much easier for me to join if you were able to clarify the relevant paragraph along the lines I've suggested.

Sincerely,

T. M.

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 27, 1976

Re: No. 75-1278, Mt. Healthy City School District Board of Education v. Doyle

Dear Bill:

Please join me.

Sincerely,

T. M.

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 10, 1976

MEMORANDUM TO THE CONFERENCE:

Re: No. 75-1278 - Mount Healthy City School District Board v. Doyle

I am generally in accord with Bill Rehnquist, that is:

1. I, too, believe that the plaintiff-respondent has satisfied the normal test for showing jurisdictional amount.

2. I conclude that the Board cannot claim the benefit of the Eleventh Amendment. For what it is worth, Ohio law seems fairly clear that school boards do not equate with the State. They are given rights to sue and be sued. One could even espouse a theory of waiver.

3. I would be willing not to decide the § 1983 issue in this case. We certainly have little help from counsel, and I doubt if much more would be forthcoming even if reargument were ordered. I am content to rule that the issue was not properly reserved.

4. I agree that it would not be wise to dismiss as having been improvidently granted. I could participate in an approach on "but for" causation. This, in fact, might clear the atmosphere for situations that are cluttered by a secondary First Amendment claim.

H.A.B.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 13, 1976

Re: No. 75-1278 - Mount Healthy City School District Board v. Doyle

Dear Bill:

Please join me.

Sincerely,

Harry

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 13, 1976

No. 75-1278 Mt. Health City School District
v. Doyle

Dear Bill:

Please join me.

Sincerely,

L. Lewis

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 9, 1976

MEMORANDUM TO THE CONFERENCE

Re: No. 75-1278 - Mount Healthy City School District Board of Education v. Doyle

Because I took two different positions during Conference discussion of this case I submit the following with the thought that it might be at least useful for the renewal of our consideration of the case at Friday's Conference. I was quite confused at the end of our long discussion last Friday, and I may not have been the only one. I do not feel apologetic about my confusion, because I think the case virtually "bristles" with difficulties, which become more apparent on extended examination. I had originally voted with Potter to set the case down for reargument on the issue of whether 1331 jurisdiction obtained in this case, notwithstanding the fact that the jurisdictional amount was present, but the alternative view which I tentatively expressed and now set forth in more detail, is as follows:

(1) On the first question raised by the petition for certiorari, which is simply a challenge to the jurisdictional finding of $10,000 in controversy, I would find in favor of respondent, believing that he has satisfied all of the normal tests for showing jurisdictional amount.

(2) On the second question presented, I would hold that the Mount Healthy School District Board of Education is much closer to a county or municipal corporation than it is to the State of Ohio, and therefore under Thurgood's opinion in Moor v. Alameda County, 411 U.S. 693, it cannot claim the benefit of the Eleventh Amendment.

(3) I would hold with respect to the question raised in the supplemental authorities and reply brief filed by petitioner that it was not properly preserved. This is the really difficult issue in the case: whether, in view of the fact that Congress has enacted

a substantive cause of action in 42 U.S.C. § 1983, and that substantive cause of action has been held by us to exclude a municipal corporation from liability, a cause of action may nonetheless be inferred directly from the Fourteenth Amendment to the Constitution which does not contain such exclusion, and which will support jurisdiction under 28 U.S.C. § 1331. I would point out that this is not, strictly speaking, a jurisdictional question (which may be raised at any time, or even by the Court on its own motion), relying on Byron's distinction between a claim under § 1343, where absence of a § 1983 cause of action may be jurisdictional, City of Kenosha v. Bruno, 412 U.S. 507, and a § 1331 action where only a colorable claim is necessary for jurisdiction. Montana-Dakota Utilities v. Public Service Co. 341 U.S. 246; Bell v. Hood,

327 U.S. 678. I would make it clear that we are not deciding the § 1983 issue here.

(4) I would then go on to rule on the merits, and if there were a majority to follow the views advanced by the Chief, calling it "harmless error", or by Potter and me, saying that we would require a "but for" causation in order to sustain a First Amendment claim, I would vacate and remand on the merits. But if a majority is of the other view, I would still adhere to the analysis of the non-merits questions, in order to decide the case. We have already voted to dismiss as improvidently granted in Cook v. Hudson; we have affirmed Parker Seal by an equally divided Court; we have remanded Scott v. Kentucky Parole Board for consideration of mootness. I agreed with each of those dispositions, but with those

dispositions having taken place, I think we have added reason to decide this case on the merits.

Sincerely,

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

From: Mr. Justice Rehnquist

Circulated: DEC 8 1976

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1278

Mt. Healthy City School District Board of Education, Petitioner, *v.* Fred Doyle.	On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[December —, 1976]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Respondent Doyle sued petitioner Mt. Healthy Board of Education in the United States District Court for the Southern District of Ohio. Doyle claimed that the Board's refusal to renew his contract in 1971 violated his rights under the First and Fourteenth Amendments to the United States Constitution. After a bench trial the District Court held that Doyle was entitled to reinstatement with back pay. The Court of Appeals for the Sixth Circuit affirmed the judgment, and we granted the Board's petition for certiorari to consider an admixture of jurisdictional and constitutional claims.

I

Although the respondent's complaint asserted jurisdiction under both 28 U. S. C. § 1343 and 28 U. S. C. § 1331, the District Court rested its jurisdiction only on § 1331. Petitioner's first jurisdictional contention, which we have little difficulty disposing of, asserts that the $10,000 amount in controversy required by that section is not satisfied in this case.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 13, 1976

Re: No. 75-1278, Mt. Healthy City School District
Board of Education v. Doyle

Dear Thurgood:

Thank you for your letter of December 13, commenting about the penultimate paragraph of the draft opinion in this case. I do not disagree at all with the substance of the test which you state in the first paragraph of your letter, and I also realize that the draft opinion may not be a model of clarity on this point. One of the reasons for any possible confusion is that the District Court used the word "substantial factor" in its opinion, and we must necessarily at least recognize this as a historical fact. Lewis' Arlington Heights opinion has something of the same problem in it, and I understand he is making some revisions in its language. When I see what he recirculates, I will try to sharpen up the paragraph to which you refer in order to accomodate your view and make it consistent with the corresponding part of his draft.

Sincerely,

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 Stevens

From: Mr. Justice Rehnquist

Circulated: _____

Recirculated: DEC 14 1976

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1278

Mt. Healthy City School District Board of Education, Petitioner, *v.* Fred Doyle.

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

[December —, 1976]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Respondent Doyle sued petitioner Mt. Healthy Board of Education in the United States District Court for the Southern District of Ohio. Doyle claimed that the Board's refusal to renew his contract in 1971 violated his rights under the First and Fourteenth Amendments to the United States Constitution. After a bench trial the District Court held that Doyle was entitled to reinstatement with back pay. The Court of Appeals for the Sixth Circuit affirmed the judgment, and we granted the Board's petition for certiorari to consider an admixture of jurisdictional and constitutional claims.

I

Although the respondent's complaint asserted jurisdiction under both 28 U. S. C. § 1343 and 28 U. S. C. § 1331, the District Court rested its jurisdiction only on § 1331. Petitioner's first jurisdictional contention, which we have little difficulty disposing of, asserts that the $10,000 amount in controversy required by that section is not satisfied in this case.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 3, 1977

Re: No. 75-1278 - Mt. Healthy City Board of Education v. Doyle

Dear John:

I am quite willing to revise the sentence at the bottom of page 12 to carry out the suggestion contained in your letter of December 22nd, and would suggest the following revised version of that sentence:

> "Respondent having carried that burden, however, the District Court should have gone on to determine whether the Board had shown by a preponderance of the evidence that it would have reached the same decision as to respondent's re-employment even in the absence of the protected conduct."

The suggestion contained in the second paragraph of your letter of that date is, as you indicate, a little harder to incorporate into the opinion. Since by hypothesis under our analysis the District Court may order reinstatement only where it concludes that the Board would have re-employed respondent had the protected conduct not occurred, certainly a fairly strong argument may be made that reinstatement is

necessary in most such cases in order to avoid penalizing a teacher for exercising First Amendment rights. I fully agree with you, however, that federal courts should retain a good deal of flexibility in order not to reach absurd results in such cases, and if you could suggest some language which would not lose me the votes of some who have already joined, I would be glad to give it a try.

Sincerely,

WJM

Mr. Justice Stevens

Copies to the Conference

P. 4, 10, 12

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

From: Mr. Justice Rehnquist

Circulated: JAN 3 1977

Recirculated: _____

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75–1278

Mt. Healthy City School District Board of Education, Petitioner, *v.* Fred Doyle.

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

[December —, 1976]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Respondent Doyle sued petitioner Mt. Healthy Board of Education in the United States District Court for the Southern District of Ohio. Doyle claimed that the Board's refusal to renew his contract in 1971 violated his rights under the First and Fourteenth Amendments to the United States Constitution. After a bench trial the District Court held that Doyle was entitled to reinstatement with back pay. The Court of Appeals for the Sixth Circuit affirmed the judgment, and we granted the Board's petition for certiorari to consider an admixture of jurisdictional and constitutional claims.

I

Although the respondent's complaint asserted jurisdiction under both 28 U. S. C. § 1343 and 28 U. S. C. § 1331, the District Court rested its jurisdiction only on § 1331. Petitioner's first jurisdictional contention, which we have little difficulty disposing of, asserts that the $10,000 amount in controversy required by that section is not satisfied in this case.

HAB

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 21, 1977

MEMORANDUM TO THE CONFERENCE

Re: No. 75-1710 - Rankin County Board of Education v. Adams; No. 75-1797 - Commissioners of Election of Union County v. Lytle; No. 76-39-Memphis Light, Gas & Water v. Craft

These three cases were held for Mt. Healthy City Board of Education v. Doyle, No. 75-1278, and are on the Conference List for Monday. Primarily because we did not there decide whether a school board is a "person" under § 1983, our opinion in that case did not shed a great deal of light on how that kind of issue in these cases should be resolved. Both because I have not had a chance to prepare a memorandum, and because I think our judgment as to what to do with these three cases will certainly be affected by what we do with Musquiz and the two related cases which are on for Monday, I request that these three "holds" go over until the February 18th Conference. I will try to circulate a memo before that Conference, and include in the discussion some reference to the action taken in the Musquiz group of cases.

Sincerely,

WHR

HAB

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 31, 1977

MEMORANDUM TO THE CONFERENCE

Re: Cases held for No. 75-1278 - Mt. Healthy City Board of Education v. Doyle

Three cases were held for Mt. Healthy City Board of Education v. Doyle, No. 75-1278 (January 11, 1977), but largely because we did not there decide whether a school board is a "person" under § 1983, our opinion in that case did little to advance the ball in resolving any of them.

No. 75-1710, Rankin County Board of Education v. Adams, is a § 1983 action by discharged teachers against a school board and its individual members. After intervention by the United States in 1971, under 42 U.S.C. §§ 2000e-6, 2000h-2, the parties stipulated to and the District Court entered an order reinstating twenty of the plaintiffs but declining to rule on the question of back pay. On appeal the CA 5 affirmed the reinstatement, ordered the granint of back pay (apparently to come from Board funds), and remanded for its calculation.

The Board of Education challenges the decision of the CA 5 on the grounds (1) that the Board id not a person under § 1983; and (2) that the back pay award, originally part of the stipulation in the District Court, would violate the

JN

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

December 22, 1976

Re: 75-1278 - Mt. Healthy City Board of Ed. v. Doyle

Dear Bill:

If you are willing to revise the sentence at the bottom of page 12 and the final paragraph of the opinion to make it clear that the District Court is merely directed to clarify its finding, rather than to hold a new trial, I will join your opinion.

I would also like to suggest that consideration be given to adding a footnote indicating that equitable relief would not necessarily and inevitably require restatement with tenure. I should think, for example, that a chancellor could fashion a decree that would postpone the tenure decision for a year or so and give the teacher employment for that period. Perhaps such a footnote would be too advisory in character to be included in this opinion, but at least I thought I would mention the point for possible future consideration.

Respectfully,

JPS

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 3, 1977

Re: 75-1278 - Mt. Healthy City School Dist. etc.
v. Doyle

Dear Bill:

Please join me.

Respectfully,

John

Mr. Justice Rehnquist

Copies to the Conference