

# The Burger Court Opinion Writing Database

## *Owen v. Independence*

445 U.S. 622 (1980)

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

January 21, 1980

PERSONAL

RE: 78-1779 Owen v. City of Independence, Mo.

Dear Lewis:

Are you willing to undertake a dissent in this case?

Regards,

Mr. Justice Powell

*Received unsigned.*

*WJB in writing for Court.*

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

CHAMBERS OF  
THE CHIEF JUSTICE

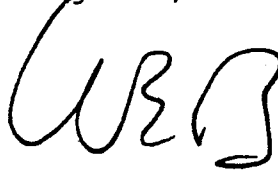
April 9, 1980

RE: 78-1779 - Owen v. City of Independence, Mo.

Dear Lewis:

I join your dissent.

Regards,

A handwritten signature in dark ink, appearing to be 'WB', written over the typed word 'Regards,'.

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

January 11, 1980

RE: No. 78-1779 Owen v. City of Independence, Mo.

Dear Chief:

I'll try my hand in the opinion for the Court in  
the above.

Sincerely,



The Chief Justice  
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: MAR 27 1980

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 78-1779

George D. Owen, Petitioner,  
v.  
City of Independence,  
Missouri, et al.

On Writ of Certiorari to the  
United States Court of Ap-  
peals for the Eighth Circuit.

[March —, 1980]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

*Monell v. New York City Dept. of Social Services*, 436 U. S. 658 (1978), overruled *Monroe v. Pape*, 365 U. S. 167 (1961), insofar as *Monroe* held that local governments were not among the "persons" to whom 42 U. S. C. § 1983 applies and were therefore wholly immune from suit under the statute.<sup>1</sup> *Monell* reserved decision, however, on the question whether local governments, although not entitled to an absolute immunity, should be afforded some form of official immunity in § 1983 suits. 436 U. S., at 701. In this action brought by petitioner in the District Court for the Western District of Missouri, the Court of Appeals for the Eighth Circuit held that respondent city of Independence, Mo., "is entitled to qualified immunity from liability" based on the good faith of its officials: "We extend the limited immunity the district court applied to the individual defendants to cover the City

<sup>1</sup> Title 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 the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

April 15, 1980

MEMORANDUM TO THE CONFERENCE

RE: CASES HELD FOR NO. 78-1779, OWEN V. CITY OF INDEPENDENCE

No. 79-593 - Blum v. Gayle McQuoid Holley, etc. et al.  
No. 79-594 - Russo v. Gayle McQuoid Holley, etc. et al.

The petitions in these cases raise nearly identical objections to the Second Circuit's decision upholding an award of retroactive welfare benefits against a County Commissioner of Social Services. Respondent, an "illegal" alien who had nevertheless received permission to remain in this country with her six children (who are all American citizens), successfully contested petitioners' failure to grant her AFDC benefits. In a ruling that is not challenged here, the Court of Appeals invalidated that provision of the New York Social Services Law which denied her the benefits because it conflicted with governing federal law. Although it ruled that the Eleventh Amendment barred an award against the State defendant (petitioner in No. 79-593), the Court held that the County defendant (petitioner in No. 79-594) should not be treated as "an arm of the State" for Eleventh Amendment purposes. In reaching its decision, the court relied not only on language from Edelman v. Jordan, Mt. Healthy City Board of Educ. v. Doyle, and Lake Country Estates, Inc. v. Tahoe Regional Planning Agency, to the effect that the Eleventh Amendment does not extend to political subdivisions such as counties and municipalities, but also examined in some depth the nature and structure of the New York Social Services system and concluded that the County agency was an independent political entity with the "ultimate responsibility" for public assistance payments, even if some portion of those payments are eventually reimbursed by state funds.

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

CHAMBERS OF  
JUSTICE POTTER STEWART

March 31, 1980

78-1779 - Owen v. City of Independence

Dear Lewis:

I am in basic agreement with your proposed  
dissenting opinion.

Sincerely yours,

P.S.  
/

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

April 7, 1980

Re: No. 78-1779 - Owen v. Independence,  
Missouri, et al.

Dear Bill,

Please join me.

Sincerely yours,



Mr. Justice Brennan

Copies to the Conference

cmc



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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

March 27, 1980

Re: No. 78-1779 - Owen v. City of Independence

Dear Bill:

Please join me.

Sincerely,

*T.M.*

T.M.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

April 1, 1980

Re: No. 78-1779 - Owen v. City of Independence

Dear Bill:

Please join me.

Sincerely,

*H.A.B.*

Mr. Justice Brennan

cc: The Conference

January 23, 1980

78-1779 Owen v. City of Independence

Dear Chief:

In accordance with your suggestion, I will be glad to undertake a dissent in this case.

Sincerely,

The Chief Justice

lfp/ss

cc: Mr. Justice Stewart  
Mr. Justice Rehnquist

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

March 27, 1980

78-1779 Owen v. City of Independence

MEMORANDUM TO THE CONFERENCE:

I will circulate, in Atex form, a draft dissent  
this afternoon.

*L.F.P.*

L.F.P., Jr.

SS

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

March 27, 1980

78-1779 Owen v. City of Independence

MEMORANDUM TO THE CONFERENCE:

Here is the draft - in Atex form - of my dissent.

As my draft necessarily was prepared in major part without benefit of the Court opinion, there will be some revisions. I believe, however, that the draft expresses generally the reasons that prompted four of us to dissent.

*L.F.P.*  
L.F.P., Jr.

SS

No. 78-1779, Owen v. City of Independence

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

From: Mr. Justice Powell

Circulated: MAR 27 1980

MR. JUSTICE POWELL, dissenting:

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

The Court today holds that the City of Independence may be liable in damages for violating a constitutional right that was unknown when the events in this case occurred. It finds a denial of due process in the city's failure to grant petitioner a hearing to clear his name after he was discharged. But his dismissal involved only the proper exercise of discretionary powers according to prevailing constitutional doctrine. The city imposed no stigma on petitioner that would require a name-clearing hearing under the Due Process clause.

On the basis of this alleged deprivation of rights, the Court interprets 42 U.S.C. § 1983 to impose strict liability on municipalities for constitutional violations. This strict liability approach inexplicably departs from this Court's prior decisions under § 1983 and runs counter to the concerns of the Forty-second Congress when it enacted the statute. The Court's ruling also ignores the vast weight of common-law precedent as well as the current state law of municipal immunity. For these reasons, and because this decision will hamper local governments unnecessarily, I dissent.

2, 4-7, 10, 11, 13, 14  
Stylistic Changes Throughout.  
18-19, 21-23, 25

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

4-3-80

From: Mr. Justice Powell

1st PRINTED DRAFT

Circulated: APR 3 1980

SUPREME COURT OF THE UNITED STATES

No. 78-1779

George D. Owen, Petitioner,  
v.  
City of Independence,  
Missouri, et al. } On Writ of Certiorari to the  
United States Court of Ap-  
peals for the Eighth Circuit.

[April —, 1980]

MR. JUSTICE POWELL, with whom MR. JUSTICE STEWART and MR. JUSTICE REHNQUIST join, dissenting.

The Court today holds that the city of Independence may be liable in damages for violating a constitutional right that was unknown when the events in this case occurred. It finds a denial of due process in the city's failure to grant petitioner a hearing to clear his name after he was discharged. But his dismissal involved only the proper exercise of discretionary powers according to prevailing constitutional doctrine. The city imposed no stigma on petitioner that would require a "name clearing" hearing under the Due Process Clause.

On the basis of this alleged deprivation of rights, the Court interprets 42 U. S. C. § 1983 to impose strict liability on municipalities for constitutional violations. This strict liability approach inexplicably departs from this Court's prior decisions under § 1983 and runs counter to the concerns of the 42d Congress when it enacted the statute. The Court's ruling also ignores the vast weight of common-law precedent as well as the current state law of municipal immunity. For these reasons, and because this decision will hamper local governments unnecessarily, I dissent.

I

The Court does not question the District Court's statement of the facts surrounding Owen's dismissal. *Ante*, at 2. It nevertheless rejects the District Court's conclusion that no

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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 Rehnquist  
Mr. Justice Stevens

1,317,23

From: Mr. Justice Powell

4-10-80

Circulated: \_\_\_\_\_

2nd DRAFT

Recirculated: APR 10 1980

## SUPREME COURT OF THE UNITED STATES

No. 78-1779

George D. Owen, Petitioner,  
v.  
City of Independence,  
Missouri, et al. } On Writ of Certiorari to the  
United States Court of Ap-  
peals for the Eighth Circuit.

[April —, 1980]

MR. JUSTICE POWELL, with whom THE CHIEF JUSTICE,  
MR. JUSTICE STEWART, and MR. JUSTICE REHNQUIST join,  
dissenting.

The Court today holds that the city of Independence may be liable in damages for violating a constitutional right that was unknown when the events in this case occurred. It finds a denial of due process in the city's failure to grant petitioner a hearing to clear his name after he was discharged. But his dismissal involved only the proper exercise of discretionary powers according to prevailing constitutional doctrine. The city imposed no stigma on petitioner that would require a "name clearing" hearing under the Due Process Clause.

On the basis of this alleged deprivation of rights, the Court interprets 42 U. S. C. § 1983 to impose strict liability on municipalities for constitutional violations. This strict liability approach inexplicably departs from this Court's prior decisions under § 1983 and runs counter to the concerns of the 42d Congress when it enacted the statute. The Court's ruling also ignores the vast weight of common-law precedent as well as the current state law of municipal immunity. For these reasons, and because this decision will hamper local governments unnecessarily, I dissent.

### I

The Court does not question the District Court's statement of the facts surrounding Owen's dismissal. *Ante*, at 2. It



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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

March 31, 1980

Re: No. 78-1779 - Owen v. City of Independence

Dear Lewis:

Please join me in your dissent in this case.

Sincerely,  
W

Mr. Justice Powell

Copies to the Conference .

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

March 31, 1980

Re: 78-1779 - Owen v. City of Independence,  
Missouri

Dear Bill:

Please join me.

Respectfully,



Mr. Justice Brennan

Copies to the Conference