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Newport v. Fact Concerts, Inc.

453 U.S. 247 (1981)

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

December 11, 1980

Re: 80-396 - City of Newport v. Fact Concerts, Inc.

Dear Bill:

Please join me in your dissent from denial
of cert.

If the other votes are firm, this makes a
"grant".

Regards,



Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

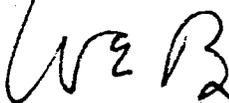
June 11, 1981

No. 80-396, City of Newport v. Fact Concerts

Dear Harry:

I join your opinion as modified by your
letter of June 10 to Potter.

Regards,

A handwritten signature in black ink, appearing to be 'W. B.', written in a cursive style.

Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

April 7, 1981

RE: No. 80-396 City of Newport v. Facts Concerts, Inc.

Dear Thurgood and John:

We three were in dissent in the above. I'll under-
take the dissent.

Sincerely,



Mr. Justice Marshall

Mr. Justice Stevens

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 8, 1981

RE: No. 80-396 City of Newport v. Fact Concerts, Inc.

Dear Harry:

As I voted at conference I'll try my hand at a dissenting opinion on the question whether the punitive damages issue is properly before us in light of the city's failure to object to the instruction at the trial.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill", written in dark ink.

Justice Blackmun

cc: The Conference

*MR
Have from Mr?
in your dissent*

City of Newport v. Fact Concerts, Inc.

No. 80-396

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

JUSTICE BRENNAN, dissenting.

From: Mr. Justice Brennan

Circulated: JUN 19 1981

Recirculated: _____

The Court today considers and decides a challenge to the District Court's jury instructions, even though petitioners failed to object to the instructions in a timely manner, as required by Rule 51 of the Federal Rules of Civil Procedure. Because this departure from Rule 51 is unprecedented and unwarranted, I respectfully dissent.

Respondents filed suit against petitioners in federal District Court under 42 U.S.C. § 1983, alleging violations of their First Amendment rights. In their complaint and amended complaint, respondents prayed for punitive damages, as well as other relief. JA 11, 12, 13, 24, 25, 26. Respondents submitted a pretrial memorandum on the issue of punitive damages and, during trial, submitted an additional Memorandum on the Availability of Punitive Damages Against a Municipal Corporation, in response to the Court's request to both parties. Brief in Opposition to Pet. for Cert., at 8. At the close of the evidence, the Court instructed the jury explicitly and in detail that it could impose punitive damages against petitioners if they had acted maliciously, wantonly, or oppressively. JA 57-58. After giving the instruction, the Court summoned the attorneys to the side bar, inviting objections or suggestions concerning the instructions. R.A. 591-A to 591-B. For reasons not revealed in the record, counsel for petitioners expressly declined to make

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STYLISTIC CHANGES THROUGHOUT.

SEE PAGES: 1, 3, 6

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

1st PRINTED DRAFT

Circulated: _____

SUPREME COURT OF THE UNITED STATES

Circulated: JUN 24 1981

No. 80-396

<p>City of Newport et al., Petitioners, v. Fact Concerts, Inc. and Marvin Lerman.</p>	}	<p>On Writ of Certiorari to the United States Court of Appeals for the First Cir- cuit.</p>
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[June —, 1981]

JUSTICE BRENNAN, with whom JUSTICE MARSHALL and JUSTICE STEVENS join dissenting.

The Court today considers and decides a challenge to the District Court's jury instructions, even though petitioners failed to object to the instructions in a timely manner, as required by Rule 51 of the Federal Rules of Civil Procedure. Because this departure from Rule 51 is unprecedented and unwarranted, I respectfully dissent.

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 8, 1981

Re: No. 80-396, City of Newport v.
Fact Concerts

Dear Harry,

Although I agree generally with your proposed opinion for the Court, I am disturbed by note 28 on page 22, and by the reference thereto in the last two lines of text on page 27. My concern is prompted by at least two reasons: (1) the situation posited in note 28 is not remotely involved in the present litigation, and (2) the footnote seems to equate taxpayers with voters.

I hope you can give favorable consideration to deleting this footnote and the resulting qualifying language in the text on page 27. If these are deleted, I shall be glad to join your opinion for the Court.

Sincerely yours,

P.S.
/

Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 10, 1981

Re: No. 80-396, City of Newport
v. Fact Concerts, Inc.

Dear Harry,

Thank you for your thoughtful consideration of my letter of June 8. I am glad to join your opinion for the Court, with the changes you have decided to make.

Sincerely yours,

P.S.
/

Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 9, 1981

Re: 80-396 - City of Newport
v. Fact Concerts

Dear Harry,

Please join me.

Sincerely yours,



Justice Blackmun

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 8, 1981

Re: No. 80-396 - City of Newport v. Fact Concerts

Dear Harry:

I await the dissent.

Sincerely,



T.M.

Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 19, 1981

Re: No. 80-396 - City of Newport v. Fact
Concerts, Inc.

Dear Bill:

Please join me in your dissent.

Sincerely,



T.M.

Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 11, 1980

Re: No. 80-396 - City of Newport v. Fact Concerts, Inc.

Dear Bill:

Please join me in your dissent.

Sincerely

H.A.B.

Mr. Justice Rehnquist

cc: The Conference

~~HAB~~
~~Lawsuit re concert~~
~~M~~

Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: JUN 5 1981

Recirculated: _____

No. 80-396, City of Newport et al. v. Fact Concerts

JUSTICE BLACKMUN delivered the opinion of the Court

In Monell v. New York City Dept. of Social Services, 436 U.S. 658 (1978), this Court for the first time held that a local government was subject to suit as a "person" within the meaning of 42 U.S.C. §1983. Aside from concluding that a municipal body was not wholly immune from civil liability, the Court had no occasion to explore the nature or scope of any particular municipal immunity under the statute. 436 U.S., at 701. The question presented by this case is whether a municipality may be held liable for punitive damages under §1983.

I
A

Respondent Fact Concerts, Inc. is a Rhode Island corporation organized for the purpose of promoting musical concerts.¹ In 1975, it received permission from the Rhode Island Department of Natural Resources to present several summer concerts at Fort Adams, a state park located in the city of Newport. In securing approval for the final concerts, to be held August 30 and 31, respondent sought and obtained an entertainment license from

¹Fact Concerts, Inc. entered into a joint venture with respondent Marvin Lerman, a promoter, to produce the jazz concerts that gave rise to this lawsuit. For convenience, we refer to the corporation as the respondent.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 10, 1981

Re: No. 80-396 - City of Newport v. Fact Concerts, Inc.

Dear Potter:

Thank you for your letter of June 8. I understand your concern. I am eliminating, on page 27, the phrase "except possibly in a most extreme situation, see n. 28, supra," and, on page 22, the second sentence of footnote 28. I would like to keep the rest of the footnote which recognizes that an "extreme situation" might exist but does not incorporate it into the rule pronounced by the opinion.

I hope that these changes will allay your concern.

Sincerely,



Mr. Justice Stewart

cc: The Conference

pp. 19, 23

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

From: Mr. Justice Blackmun

Circulated: _____

Recirculated: JUN 11 1981

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-396

City of Newport et al., Petitioners, v. Fact Concerts, Inc. and Marvin Lerman.	}	On Writ of Certiorari to the United States Court of Appeals for the First Cir- cuit.
--	---	---

[June —, 1981]

JUSTICE BLACKMUN delivered the opinion of the Court.

In *Monell v. New York City Dept. of Social Services*, 436 U. S. 658 (1978), this Court for the first time held that a local government was subject to suit as a "person" within the meaning of 42 U. S. C. § 1983. Aside from concluding that a municipal body was not wholly immune from civil liability, the Court had no occasion to explore the nature or scope of any particular municipal immunity under the statute. 436 U. S., at 701. The question presented by this case is whether a municipality may be held liable for punitive damages under § 1983.

I

A

Respondent Fact Concerts, Inc. is a Rhode Island corporation organized for the purpose of promoting musical concerts.¹ In 1975, it received permission from the Rhode Island Department of Natural Resources to present several summer concerts at Fort Adams, a state park located in the city of Newport.

¹ Fact Concerts, Inc. entered into a joint venture with respondent Marvin Lerman, a promoter, to produce the jazz concerts that gave rise to this lawsuit. For convenience, we refer to the corporation as the respondent.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 22, 1981

MEMORANDUM TO THE CONFERENCE

Re: No. 80-396 - City of Newport v. Fact Concerts, Inc.

I am adding a new footnote to be appended to the third line from the bottom of the text on page 7 of the opinion. The footnote will read:

11The District Judge, after observing that the city had failed to object in timely fashion to the punitive damages instruction, stated: "Despite [petitioner's] tardiness, a careful resolution of this novel question is critical to a just verdict in this case." App. to Pet. for Cert. B-7. This statement makes clear that that court did not reach the merits merely as an alternative ground for decision or out of an abundance of caution. The dissent's suggestion to the contrary, post, at 2, 6, is simply mistaken.

Successive footnotes will be renumbered accordingly.

HAB.
—

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 11, 1980

No. 80-396 City of Newport v. Fact Concerts, Inc.

Dear Bill:

Your opinion persuades me that the punitive damages issue is properly before us.

As I stated at Conference, I consider this an important issue - particularly since suits against municipalities, without the benefit of any immunity, are now the law of the land.

I think we should grant the case, and therefore would appreciate your adding my name to your dissenting opinion.

Sincerely,



Mr. Justice Rehnquist

Copies to the Conference

LFP/lab

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 22, 1981

80-396 City of Newport v. Fact Concerts

Dear Harry:

In view of our discussion at Conference this morning, I have decided not to recuse myself in this case.

Accordingly, I join your opinion.

Sincerely,

Lewis

Mr. Justice Blackmun

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 Stevens

From: Mr. Justice Rehnquist

Circulated: DEC 10 1980

Re: No. 80-396 City of Newport v. Fact Concerts, Inc., et al. ~~Recirculated: et al.~~

JUSTICE REHNQUIST, dissenting.

I dissent from the denial of certiorari by the Court to review the first question presented by petitioners:

"Is a Municipality liable for punitive damages in a §1983 case?" Pet., I.

As both the District Court and the Court of Appeals for the First Circuit noted, petitioners made no objection to the District Court's instructing the jury that the City of Newport might be liable for punitive damages. Rule 51 of the Federal Rules of Civil Procedure provides in pertinent part that "no party may assign as error the giving or the failure to give an instruction unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection." Thus, if the District Court had refused to consider the issue of punitive damages on

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

1st PRINTED DRAFT

Circulated: DEC 11 1980

SUPREME COURT OF THE UNITED STATES

**CITY OF NEWPORT ET AL. v. FACT CONCERTS, INC.
AND MARVIN LERMAN**

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIRST CIRCUIT

No. 80-396. Decided December —, 1980

JUSTICE REHNQUIST, with whom JUSTICE BLACKMUN and
JUSTICE POWELL join, dissenting.

I dissent from the denial of certiorari by the Court to
review the first question presented by petitioners:

“Is a Municipality liable for punitive damages in a
§ 1983 case?” Pet., I.

As both the District Court and the Court of Appeals for
the First Circuit noted, petitioners made no objection to the
District Court’s instructing the jury that the city of Newport
might be liable for punitive damages. Rule 51 of the Federal
Rules of Civil Procedure provides in pertinent part that “no
party may assign as error the giving or the failure to give an
instruction unless he objects thereto before the jury retires
to consider its verdict, stating distinctly the matter to which
he objects and the grounds of his objection.” Thus, if the
District Court had refused to consider the issue of punitive
damages on the merits in its decision denying the motion for
judgment n. o. v., the Court of Appeals could quite properly
have affirmed on that ground and petitioners would have no
properly presented federal question with respect to punitive
damages in their petition to this Court. But that is not what
happened here.

The District Court, in its opinion, stated:

“Although the policies of fairness and economy which
Rule 51 incorporates are vital . . . , this Court does not
rest its decision on this procedural ground alone. De-
fendants’ substantive legal argument do not constitute a

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 10, 1981

Re: No. 80-396 City of Newport v. Fact Concerts, Inc.

Dear Harry,

Please join me.

Sincerely,

Wm

Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 8, 1981

Re: 80-396 - City of Newport v.
Fact Concerts

Dear Harry:

If the issue discussed in your opinion had arisen in a case involving the flagrant abuse of the rights of minority citizens, I am inclined to believe that the Court would have come to the conclusion that you suggest in your reference on page 27 to footnote 28. I must confess that you write a most persuasive opinion in support of the proposition that punitive damages should not be awarded in a case that is at least a second cousin to an ordinary breach of contract action. However, if we are to decide the question whether punitive damages may ever be assessed against a municipal corporation in a § 1983 action, I will adhere to my vote to affirm. In all events, I will wait to see what Bill Brennan writes, and may add a word or two of my own.

Respectfully,



Justice Blackmun

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 19, 1981

Re: 80-396 - City of Newport v. Fact
Concerts, Inc.

Dear Bill:

Since I did not join Part II of your Monell opinion, I wonder if you would be willing to make this rather minor change in the sentence toward the end of footnote 2 on page 3 of your typed dissent?

"Only in the latter situation have we held that a municipality may be sued under § 1983, Monell"

If you can make this small change, I would like to join your dissenting opinion.

Respectfully,



Justice Brennan



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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 22, 1981

Re: 80-396 - City of Newport v. Fact Concerts

Dear Bill:

Please join me.

Respectfully,



Justice Brennan

Copies to the Conference