SUPREME COURT OF THE UNITED STATES

No. 96–957

MELVIN JEFFERSON, INDIVIDUALLY AND AS ADMINISTRATOR OF THE ESTATE OF ALBERTA K. JEFFERSON, DECEASED, ET AL., PETITIONERS *v.* CITY OF TARRANT, ALABAMA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

[December 9, 1997]

JUSTICE STEVENS, dissenting.

In my opinion the jurisdictional holding in *Pennsylvania* v. *Ritchie,* 480 U. S. 39 (1987), represented such a departure from our settled construction of the term "final judgment" in 28 U. S. C. §1257(a) that it should be promptly overruled, see *id.,* at 72–78. Unless and until at least four other Members of the Court share that view, however, I believe its holding governs cases such as this.

In *Ritchie* the Court held that a judgment of the Pennsylvania Supreme Court resolving a federal question was final even though the federal question could have been relitigated in the state court if the appeals had been dismissed, and even though it could have been raised in a second appeal to this Court after the conclusion of further proceedings in the state courts. The fact that law-of-the-case principles would have made it futile to relitigate the federal issue in the state courts provided a sufficient basis for this Court's decision to accept jurisdiction. Precisely

the same situation obtains in this case.[1] Either the fact that further litigation of a federal issue in the state system would be futile provides a legitimate basis for treating the judgment of the State's highest court as final– as the Court held in *Ritchie*– or it is sufficient to defeat jurisdiction, as the Court concludes today. I do not believe the Court can have it both ways.

Since *Ritchie* is still the law, I believe it requires us to take jurisdiction and to reach the merits. The federal issue is not difficult to resolve. Under 42 U. S. C. §1988, the Alabama Wrongful Death Act permits the survival of petitioners' §1983 claims. Our decisions in cases such as *Smith* v. *Wade*, 461 U. S. 30 (1983), *Newport* v. *Fact Concerts, Inc.*, 453 U. S. 247 (1981), and *Carey* v. *Piphus*, 435 U. S. 247 (1978), make it perfectly clear that the measure of damages in an action brought under 42 U. S. C. §1983 is governed by federal law. Cf. *Sullivan* v. *Little Hunting Park, Inc.*, 396 U. S. 229, 239–240 (1969) (holding that, in

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[1]Indeed, the Court's response to my dissent in *Ritchie* applies directly to the facts of this case:

"But as JUSTICE STEVENS' dissent recognizes, the Pennsylvania courts already have considered and resolved this issue in their earlier proceedings; if the Commonwealth were to raise it again in a new set of appeals, the courts below would simply reject the claim under the law-of-the-case doctrine. Law-of-the-case principles are not a bar to this Court's jurisdiction, of course, and thus JUSTICE STEVENS' dissent apparently would require the Commonwealth to raise a fruitless Sixth Amendment claim in the trial court, the Superior Court, and the Pennsylvania Supreme Court still another time before we regrant certiorari on the question that is now before us.

"The goals of finality would be frustrated, rather than furthered, by these wasteful and time-consuming procedures. Based on the unusual facts of this case, the justifications for the finality doctrine– efficiency, judicial restraint, and federalism, see *Radio Station WOW, Inc.* v. *Johnson*, 326 U. S. 120, 124 (1945); *post*, at 72– would be ill served by another round of litigation on an issue that has been authoritatively decided by the highest state court." *Pennsylvania* v. *Ritchie*, 480 U. S. 39, 49, n. 7 (1987).

a case arising under 42 U. S. C. §1982, §1988 provides "that both federal and state rules on damages may be utilized, whichever better serves the policies expressed in the federal statutes. . . . The rule of damages, whether drawn from federal or state sources, is a federal rule responsive to the need whenever a federal right is impaired"). Thus, the fact that the Alabama survival statute also purports to limit recovery to punitive damages in an action against a municipality is of no consequence. As a matter of federal law we have already decided that compensatory damages may be recovered in such a case, *Monell* v. *New York City Dept. of Social Servs.*, 436 U. S. 658 (1978); *Owen* v. *Independence,* 445 U. S. 622 (1980), and that punitive damages may not, *Newport, supra*. As long as state law allows the survival of petitioners' §1983 action– as it undoubtedly does here– additional state law limitations on the particular measure of damages are irrelevant.[2]

Accordingly, even though my preference would be to overrule *Ritchie* and to dismiss the appeal, my vote is to reverse the judgment of the Alabama Supreme Court.

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[2]*Robertson* v. *Wegmann*, 436 U. S. 584 (1978), is not to the contrary. In *Robertson*, the applicable state law provided for a survivorship claim but allowed only certain parties to bring such a claim. This Court allowed the §1983 action to abate pursuant to state law because the plaintiff was not an appropriate party to bring the suit. That holding does not bear on the question whether a state limitation on the measure of damages applies to a §1983 claim.