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SUPREME COURT OF THE UNITED STATES

Syllabus

SWINT ET AL. v. CHAMBERS COUNTY COMMISSION ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 93-1636. Argued January 10, 1995—Decided March 1, 1995

In the wake of police raids on a nightclub in Chambers County, Alabama, two of the club's owners joined by an employee and a patron (all petitioners here) sued respondent Chambers County Commission, along with a municipality and three individual police officers; petitioners sought damages and other relief under 42 U. S. C. §1983 for alleged civil rights violations. The District Court denied the summary judgment motions of all five defendants, ruling, *inter alia*, that the individual officers were not entitled to qualified immunity from suit and that the sheriff who authorized the raids, although a state employee, may have been the County's final policymaker for law enforcement. The District Court stated that it would rule dispositively on the County's liability before jury deliberations. Invoking the rule that an order denying qualified immunity is appealable before trial, *Mitchell v. Forsyth*, 472 U. S. 511, 530, the individual defendants immediately appealed. The County Commission also appealed, arguing that the denial of its summary judgment motion was immediately appealable as a collateral order satisfying the test announced in *Cohen v. Beneficial Industrial Loan Corp.*, 337 U. S. 541, 546, and, alternatively, that the Eleventh Circuit had "pendent appellate jurisdiction" to decide the questions presented by the Commission. The Eleventh Circuit rejected the County Commission's first argument, but asserted pendent jurisdiction over the Commission's appeal. Determining that the sheriff was not a policymaker for the County, the Eleventh Circuit held that the County Commission qualified for summary judgment.

Held: The Eleventh Circuit lacked jurisdiction to rule on the

County Commission's liability at this interlocutory stage of the litigation and, accordingly, should have dismissed the Commission's appeal. Pp. 5-16.

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(a) The order denying the County Commission's summary judgment motion was not an appealable collateral order under *Cohen, supra*, at 546, which allows immediate appeal from decisions that are conclusive, resolve important questions separate from the merits, and are effectively unreviewable on appeal from final judgment. The order in question fails this test because it was tentative, the District Court having announced its intention to revisit its initial determination. Moreover, the order is effectively reviewable after final judgment, because the Commission's assertion that the sheriff is not its policymaker ranks solely as a defense to liability, not as an immunity from suit that is effectively lost if the case is erroneously permitted to go to trial. See *Mitchell, supra*, at 526. Pp. 5-7.

(b) There is no "pendent party" appellate jurisdiction of the kind the Eleventh Circuit purported to exercise. Although that court unquestionably had jurisdiction immediately to review the denial of the individual officers' summary judgment motions, it did not thereby gain authority to review at once the unrelated question of the County Commission's liability. The parties' arguments to the contrary drift away from the statutory instructions Congress has given to control the timing of appellate proceedings. In particular, 28 U. S. C. §1292(b) confers on district courts first line discretion to certify for immediate appeal interlocutory orders deemed pivotal and debatable; this provision grants to the court of appeals discretion to review only orders first certified by the district court. If courts of appeals had jurisdiction of the type here claimed by the Eleventh Circuit, §1292(b)'s two-tiered arrangement would be severely undermined. Furthermore, provisions Congress passed in 1990 and 1992, 28 U. S. C. §2072(c) and 28 U. S. C. §1292(e), designate the rulemaking process as the way to define or refine when a district court ruling is "final" and when an interlocutory order is appealable. These legislative provisions counsel resistance to expansion of appellate jurisdiction by court decision. *Abney v. United States*, 431 U. S. 651, 662-663, and *United States v. Stanley*, 483 U. S. 669, 676-677, securely support the conclusion that the Eleventh Circuit lacked jurisdiction to review the denial of the County Commission's summary judgment motion. Although the parties are correct that this Court has not universally required courts of appeals to confine review to the precise decision independently subject to review, the Court need not definitively or preemptively settle here whether or when it may be proper for a court of appeals with jurisdiction over one ruling to review, conjunctively, related rulings that are not themselves independently appealable. The parties do not—indeed could not—contend that the District Court's decision to deny the Commission's motion on the

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ground that the sheriff may have been a county policymaker was inextricably intertwined with that court's decision to deny the individual defendants' qualified immunity motions, or that review of the former decision was necessary to ensure meaningful review of the latter. Pp. 7-15.

5 F. 3d 1435 and 11 F. 3d 1030, vacated in part and remanded. GINSBURG, J., delivered the opinion for a unanimous Court.