

Will v. Michigan State Police

No. 87-1207

Law Clerk: Lisa

Argued: Dec. 5, 1988

For Conference Dec. 7

Vote: Reverse

I would reverse the Michigan Supreme Court's decision that §1983 does not create a cause of action in damages against states sued in their own courts. Although I dissented in Quern v. Jordan, my position in this case does not depend on the one I endorsed in Quern. Instead, it is an inevitable consequence of our holding in Atascadero that, in order to override states' Eleventh Amendment immunity from suit in federal court, Congress must make its intent to do so "unmistakably clear in the language of the statute itself." We have applied this clear-statement principle only to the question whether Congress intended to override states' Eleventh Amendment immunity, which is a question about *in which court* ~~where~~ a cause of action against a state will lie. We have never held that Congress must speak with equal clarity in creating a cause of action against a state in the first place. Thus, it seems to me that Atascadero requires us to ask two different questions when we assess a claim that a statute subjects the states to suit in federal court. The first question is whether the statute creates such a cause of action against the states, and the second is whether such a cause of action may be heard in federal court. Since we apply conventional principles of statutory construction to the question whether Congress intended that a cause of action run against the states, it is consistent with Quern to say that Congress did intend such a cause of action under §1983 and that such an action can be heard in state court.