To: The Chief Justice
Justice Brennan
Justice Marshall
Justice Blackmun
Justice Stevens
Justice O'Connor
Justice Scalia
Justice Kennedy

From: Justice White

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4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 87-1207

RAY WILL, PETITIONER *v.* MICHIGAN DEPARTMENT OF STATE POLICE ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF MICHIGAN

[May ——, 1989]

JUSTICE WHITE delivered the opinion of the Court.

This case presents the question whether a State, or an official of the State while acting in his or her official capacity, is a "person" within the meaning of 42 U. S. C. § 1983.

Petitioner Ray Will filed suit in Michigan Circuit Court alleging various violations of the United States and Michigan Constitutions as grounds for a claim under § 1983.[1] He alleged that he had been denied a promotion to a data systems analyst position with the Department of State Police for an improper reason, that is, because his brother had been a student activist and the subject of a "red squad" file maintained by respondent. Named as defendants were the Department

[1] Section 1983 provides as follows:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, 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. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia." 42 U. S. C. § 1983.

of State Police and the Director of State Police in his official capacity, also a respondent here.[2]

The Circuit Court remanded the case to the Michigan Civil Service Commission for a grievance hearing. While the grievance was pending, petitioner filed suit in the Michigan Court of Claims raising an essentially identical § 1983 claim. The Civil Service Commission ultimately found in petitioner's favor, ruling that respondents had refused to promote petitioner because of "partisan considerations." App. 46. On the basis of that finding, the state court judge, acting in both the Circuit Court and the Court of Claims cases, concluded that petitioner had established a violation of the United States Constitution. The judge held that the Circuit Court action was barred under state law but that the Claims Court action could go forward. The judge also ruled that respondents were persons for purposes of § 1983.

The Michigan Court of Appeals vacated the judgment against the Department of State Police, holding that a State is not a person under § 1983, but remanded the case for determination of the possible immunity of the Director of State Police from liability for damages. The Michigan Supreme Court granted discretionary review and affirmed the Court of Appeals in part and reversed in part. The Supreme Court agreed that the State itself is not a person under § 1983, but held that a State official acting in his or her official capacity also is not such a person.

The Michigan Supreme Court's holding that a State is not a person under § 1983 conflicts with a number of state and federal court cases that hold to the contrary.[3] We granted certiorari to resolve the conflict. 485 U. S. —— (1988).

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[2] Also named as defendants were the Michigan Department of Civil Service and the State Personnel Director, but those parties were subsequently dismissed by the state courts.

[3] The following courts have taken the position that a State is a person under § 1983. See *Della Grotta* v. *Rhode Island*, 781 F. 2d 343, 349 (CA1 1986); *Gay Student Services* v. *Texas A&M University*, 612 F. 2d 160,

Prior to *Monell* v. *New York City Dept. of Social Services*, 436 U. S. 658 (1978), the question whether a State is a person within the meaning of § 1983 had been answered by this Court in the negative. In *Monroe* v. *Pape*, 365 U. S. 167, 187–191 (1961), the Court had held that a municipality was not a person under § 1983. "[T]hat being the case," we reasoned, § 1983 "could not have been intended to include States as parties defendant." *Fitzpatrick* v. *Bitzer*, 427 U. S. 445, 452 (1976).

163–164 (CA5), cert. denied, 449 U. S. 1034 (1980); *Uberoi* v. *University of Colorado*, 713 P. 2d 894, 900–901 (Colo. 1986); *Stanton* v. *Godfrey*, 415 N. E. 2d 103, 107 (Ind. App. 1981); *Gumbhir* v. *Kansas State Bd. of Pharmacy*, 231 Kan. 507, 512–513, 646 P. 2d 1078, 1084 (1982), cert. denied, 459 U. S. 1103 (1983); *Rahmah Navajo School Bd., Inc.* v. *Bureau of Revenue*, 104 N. M. 302, 310, 720 P. 2d 1243, 1251 (App.), cert. denied, 479 U. S. 940 (1986).

A larger number of courts have agreed with the Michigan Supreme Court that a State is not a person under § 1983. See *Ruiz* v. *Estelle*, 679 F. 2d 1115, 1137, modified on other grounds, 688 F. 2d 266 (CA5 1982), cert. denied, 460 U. S. 1042 (1983); *Toledo, P. & W. R. Co.* v. *Illinois*, 744 F. 2d 1296, 1298–1299, and n. 1 (CA7 1984), cert. denied, 470 U. S. 1051 (1985); *Harris* v. *Missouri Court of Appeals*, 787 F. 2d 427, 429 (CA8), cert. denied, 479 U. S. 851 (1986); *Aubuchon* v. *Missouri*, 631 F. 2d 581, 582 (CA8 1980) *(per curiam)*, cert. denied, 450 U. S. 915 (1981); *State* v. *Green*, 633 P. 2d 1381, 1382 (Alaska 1981); *St. Mary's Hospital & Health Center* v. *State*, 150 Ariz. 8, 11, 721 P. 2d 666, 669 (App. 1986); *Mezey* v. *State*, 161 Cal. App. 3d 1060, 1065, 208 Cal. Rptr. 40, 43 (1984); *Hill* v. *Florida Dept. of Corrections*, 513 So. 2d 129, 132 (Fla. 1987), cert. denied, 484 U. S. —— (1988); *Merritt ex rel. Merritt* v. *State*, 108 Idaho 20, 26, 696 P. 2d 871, 877 (1985); *Woodbridge* v. *Worcester State Hospital*, 384 Mass. 38, 44–45, n. 7, 423 N. E. 2d 782, 786, n. 7 (1981); *Bird* v. *State Dept. of Public Safety*, 375 N. W. 2d 36, 43 (Minn. App. 1985); *Shaw* v. *City of St. Louis*, 664 S. W. 2d 572, 576 (Mo. App. 1983), cert. denied, 469 U. S. 849 (1984); *Fuchilla* v. *Layman*, 109 N. J. 319, 323–324, 537 A. 2d 652, 654, cert. denied, 488 U. S. —— (1988); *Burkey* v. *Southern Ohio Correctional Facility*, 38 Ohio App. 3d 170, 170–171, 528 N. E. 2d 607, 608 (1988); *Gay* v. *State*, 730 S. W. 2d 154, 157–158 (Tex. App. 1987); *Edgar* v. *State*, 92 Wash. 2d 217, 221, 595 P. 2d 534, 537 (1979), cert. denied, 444 U. S. 1077 (1980); *Boldt* v. *State*, 101 Wis. 2d 566, 584, 305 N. W. 2d 133, 143–144, cert. denied, 454 U. S. 973 (1981).

But in *Monell*, the Court overruled *Monroe*, holding that a municipality was a person under § 1983. 436 U. S., at 690. Since then, various members of the Court have debated whether a State is a person within the meaning of § 1983, see *Hutto* v. *Finney*, 437 U. S. 678, 700–704 (1978) (BRENNAN, J., concurring); *id.*, at 708, n. 6 (Powell, J., concurring in part and dissenting in part), but this Court has never expressly dealt with that issue.[4]

Some courts, including the Michigan Supreme Court here, have construed our decision in *Quern* v. *Jordan*, 440 U. S. 332 (1979), as holding by implication that a State is not a person under § 1983. See *Smith* v. *Department of Pub. Health*, 428 Mich. 540, 581, 410 N. W. 2d 749, 767 (1987). See also, *e. g.*, *State* v. *Green*, 633 P. 2d 1381, 1382 (Alaska 1981); *Woodbridge* v. *Worcester State Hospital*, 384 Mass. 38, 44–45, n. 7, 423 N. E. 2d 782, 786, n. 7 (1981); *Edgar* v. *State*, 92 Wash. 2d 217, 221, 595 P. 2d 534, 537 (1979), cert denied, 444 U. S. 1077 (1980). *Quern* held that § 1983 does not override a State's Eleventh Amendment immunity, a holding that the concurrence suggested was "patently dicta"

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[4]Petitioner cites of number of cases from this Court that he asserts have "assumed" that a State is a person. Those cases include ones in which a State has been sued by name under § 1983, see, *e. g.*, *Maine* v. *Thiboutot*, 448 U. S. 1 (1980); *Martinez* v. *California*, 444 U. S. 277 (1980), various cases awarding attorney's fees against a State or a State agency, *Maine* v. *Thiboutot*, *supra*; *Hutto* v. *Finney*, 437 U. S. 678 (1978), and various cases discussing the waiver of Eleventh Amendment immunity by States, see, *e. g.*, *Kentucky* v. *Graham*, 473 U. S. 159, 167, n. 14 (1985); *Edelman* v. *Jordan*, 415 U. S. 651 (1974). But the Court did not address the meaning of person in any of those cases, and in none of the cases was resolution of that issue necessary to the decision. Petitioner's argument evidently rests on the proposition that whether a State is a person under § 1983 is "jurisdictional" and "thus could have been raised by the Court on its own motion" in those cases. Brief for Petitioner 25, n. 15. Even assuming that petitioner's premise and characterization of the cases is correct, "this Court has never considered itself bound [by prior *sub silentio* holdings] when a subsequent case finally brings the jurisdictional issue before us." *Hagins* v. *Lavine*, 415 U. S. 528, 535, n. 5 (1974).

to the effect that a state is not a person, 440 U. S., at 350 (BRENNAN, J., concurring in judgment).

Petitioner filed the present § 1983 action in Michigan state court, which places the question whether a State is a person under § 1983 squarely before us since the Eleventh Amendment does not apply in state courts. *Maine* v. *Thiboutot*, 448 U. S. 1, 9, n. 7 (1980). For the reasons that follow, we reaffirm today what we had concluded prior to *Monell* and what some have considered implicit in *Quern*: that a State is not a person within the meaning of § 1983.

We observe initially that if a State is a "person" within the meaning of § 1983, the section is to be read as saying that "every person, including a State, who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, ..." That would be a decidedly awkward way of expressing an intent to subject the States to liability. At the very least, reading the statute in this way is not so clearly indicated that it provides reason to depart from the often-expressed understanding that "'in common usage, the term 'person' does not include the sovereign, [and] statutes employing the [word] are ordinarily construed to exclude it.'" *Wilson* v. *Omaha Indian Tribe*, 442 U. S. 653, 667 (1979) (quoting *United States* v. *Cooper Corp.*, 312 U. S. 600, 604 (1941)). See also *United States* v. *Mine Workers*, 330 U. S. 258, 275 (1947).

This approach is particularly applicable where it is claimed that Congress has subjected the States to liability to which they had not been subject before. In *Wilson* v. *Omaha Indian Tribe*, *supra*, we followed this rule in construing the phrase "white person" contained in 25 U. S. C. § 194, enacted as Act of June 30, 1834, 4 Stat. 729, as not including the "sovereign States of the Union." 442 U. S., at 667. This common usage of the term "person" provides a strong indication that person as used in § 1983 likewise does not include a

State.[5]

The language of § 1983 also falls far short of satisfying the ordinary rule of statutory construction that if Congress intends to alter the "usual constitutional balance between the States and the Federal Government," it must make its intention to do so "unmistakably clear in the language of the statute." *Atascadero State Hospital* v. *Scanlon*, 473 U. S. 234, 242 (1985); see also *Pennhurst State School and Hospital* v. *Halderman*, 465 U. S. 89, 99 (1984). *Atascadero* was an Eleventh Amendment case, but a similar approach is applied in other contexts. Congress should make its intention "clear and manifest" if it intends to pre-empt the historic powers of the States, *Rice* v. *Santa Fe Elevator Corp.*, 331 U. S. 218, 230 (1947), or if it intends to impose a condition on the grant of federal moneys, *Pennhurst State School and Hospital* v. *Halderman*, 451 U. S. 1, 16 (1981); *South Dakota* v. *Dole*, 483 U. S. 203, —— (1987). "In traditionally sensitive areas, such as legislation affecting the federal balance, the require-

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[5] *Jefferson County Pharmaceutical Assn.* v. *Abbott Laboratories*, 460 U. S. 150 (1983), on which petitioner relies, is fully reconcilable with our holding in the present case. In *Jefferson County*, the Court held that States were persons that could be sued under the Robinson-Patman Act, 15 U. S. C. §§ 13(a) and 13(f). 460 U. S., at 155–157. But the plaintiff there was seeking only injunctive relief and not damages against the State defendant, the Board of Trustees of the University of Alabama; the District Court had dismissed the plaintiff's damages claim as barred by the Eleventh Amendment. *Id.*, at 153, n. 5. Had the present § 1983 action been brought in federal court, a similar disposition would have resulted. Of course, the Court would never be faced with a case such as *Jefferson County* that had been brought in a state court because the federal courts have exclusive jurisdiction over claims under the federal antitrust laws. 15 U. S. C. §§ 15 and 26. Moreover, the Court in *Jefferson County* was careful to limit its holding to "state purchases for the purpose of competing against private enterprise . . . in the retail market." 460 U. S., at 154. It assumed without deciding "that Congress did not intend the Act to apply to state purchases for consumption in traditional governmental functions," *ibid.*, which presents a more difficult question because it may well "affec[t] the federal balance." See *United States* v. *Bass*, 404 U. S. 336, 349 (1971).

ment of clear statement assures that the legislature has in fact faced, and intended to bring into issue, the critical matters involved in the judicial decision." *United States* v. *Bass*, 404 U. S. 336, 349 (1971).

Our conclusion that a State is not a person within the meaning of § 1983 is reinforced by Congress' purpose in enacting the statute. Congress enacted § 1 of the Civil Rights Act of 1871, 17 Stat. 13, the precursor to § 1983, shortly after the end of the Civil War "in response to the widespread deprivations of civil rights in the Southern States and the inability or unwillingness of authorities in those States to protect those rights or punish wrongdoers." *Felder* v. *Casey*, 487 U. S. ——, —— (1988). Although Congress did not establish federal courts as the exclusive forum to remedy these deprivations, *ibid.*, it is plain that "Congress assigned to the federal courts a paramount role" in this endeavor, *Patsy* v. *Board of Regents of Florida*, 457 U. S. 496, 503 (1982).

Section 1983 provides a federal forum to remedy many deprivations of civil liberties, but it does not provide a federal forum for litigants who seek a remedy against a State for alleged deprivations of civil liberties. The Eleventh Amendment bars such suits unless the State has waived its immunity, *Welch* v. *Texas Dept. of Highways and Public Transportation*, 483 U. S. 468, —— (1987) (plurality opinion), or unless Congress has exercised its undoubted power under § 5 of the Fourteenth Amendment to override that immunity. That Congress, in passing § 1983, had no intention to disturb the States' Eleventh Amendment immunity and so to alter the Federal-State balance in that respect was made clear in our decision in *Quern*. Given that a principal purpose behind the enactment of § 1983 was to provide a federal forum for civil rights claims, and that Congress did not provide such a federal forum for civil rights claims against States, we cannot accept petitioner's argument that Congress intended nevertheless to create a cause of action against States to be brought in state courts, which are pre-

cisely the courts Congress sought to allow civil rights claimants to avoid through § 1983.

This does not mean, as petitioner suggests, that we think that the scope of the Eleventh Amendment and the scope of § 1983 are not separate issues. Certainly they are. But in deciphering congressional intent as to the scope of § 1983, the scope of the Eleventh Amendment is a consideration, and we decline to adopt a reading of § 1983 that disregards it.[6]

Our conclusion is further supported by our holdings that in enacting § 1983, Congress did not intend to override well-established immunities or defenses under the common law. "One important assumption underlying the Court's decisions in this area is that members of the 42d Congress were familiar with common-law principles, including defenses previously recognized in ordinary tort litigation, and that they likely intended these common-law principles to obtain, absent specific provisions to the contrary." *Newport* v. *Fact Concerts, Inc.*, 453 U. S. 247, 258 (1981). *Stump* v. *Sparkman*, 435 U. S. 349, 356 (1978); *Scheuer* v. *Rhodes*, 416 U. S. 232, 247 (1974); *Pierson* v. *Ray*, 386 U. S. 547, 554 (1967); and *Tenney* v. *Brandhove*, 341 U. S. 367, 376 (1951), are also to this effect. The doctrine of sovereign immunity was a familiar doctrine at common law. "The principle is elementary that a State cannot be sued in its own courts without its consent." *Railroad Co.* v. *Tennessee*, 101 U. S. 337, 339 (1880). It is an "established principle of jurisprudence" that the sovereign cannot be sued in its own courts without its consent. *Beers* v. *Arkansas*, 20 How. 527, 529 (1858). We cannot conclude that § 1983 was intended to disregard the well-

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[6] Petitioner argues that Congress would not have considered the Eleventh Amendment in enacting § 1983 because in 1871 this Court had not yet held that the Eleventh Amendment barred federal question cases against States in federal court. This argument is no more than an attempt to have this Court reconsider *Quern* v. *Jordan*, 440 U. S. 332 (1979), which we decline to do.

established immunity of a State from being sued without its consent.[7]

The legislative history of § 1983 does not suggest a different conclusion. Petitioner contends that the congressional debates on § 1 of the 1871 Act indicate that § 1983 was intended to extend to the full reach of the Fourteenth Amendment and thereby to provide a remedy "'against all forms of official violation of federally protected rights.'" Brief for Petitioner 16 (quoting *Monell*, 436 U. S., at 700–701). He refers us to various parts of the vigorous debates accompanying the passage of § 1983 and revealing that it was the failure of the States to take appropriate action that was undoubtedly the motivating force behind § 1983. The inference must be drawn, it is urged, that Congress must have intended to subject the States themselves to liability. But the intent of Congress to provide a remedy for unconstitutional state action does not without more include the sovereign States among those persons against whom § 1983 actions would lie. Construing § 1983 as a remedy for "official violation of federally protected rights" does no more than confirm that the section is directed against state action—action "under color of" state law. It does not suggest that the State itself was a person that Congress intended to be subject to liability.

Although there were sharp and heated debates, the discussion of § 1 of the Bill, which contained the present § 1983, was

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[7] Our recognition in *Monell* v. *New York City Dept. of Social Services*, 436 U. S. 658 (1978), that a municipality is a person under § 1983, is fully consistent with this reasoning. In *Owen* v. *City of Independence*, 445 U. S. 622 (1980), we noted that by the time of the enactment of § 1983, municipalities no longer retained the sovereign immunity they had previously shared with the States. "[B]y the end of the 19th century, courts regularly held that in imposing a specific duty on the municipality either in its charter or by statute, the State had impliedly withdrawn the city's immunity from liability for the nonperformance or misperformance of its obligation," *id.*, at 646, and, as a result, municipalities had been held liable for damages "in a multitude of cases" involving previously immune activities, *id.*, at 646–647.

not extended. And although in other respects the impact on State sovereignty was much talked about, no one suggested that § 1 would subject the States themselves to a damages suit under Federal law. *Quern*, 440 U. S., at 343. There was complaint that § 1 would subject State officers to damages liability, but no suggestion that it would also expose the States themselves. Cong. Globe, 42d Cong., 1st Sess. 366, 385 (1871). We find nothing substantial in the legislative history that leads us to believe that Congress intended that the word "person" in § 1983 included the States of the Union. And surely nothing in the debates rises to the clearly expressed legislative intent necessary to permit that construction.

Likewise, the Act of Feb. 25, 1871, § 2, 16 Stat. 431 (the "Dictionary Act"),[8] on which we relied in *Monell*, 436 U. S., at 688–689, does not counsel a contrary conclusion here. As we noted in *Quern*, that Act, while adopted prior to § 1 of the Civil Rights Act of 1871, was adopted after § 2 of the Civil Rights Act of 1866, from which § 1 of the 1871 Act was derived. 440 U. S., at 341, n. 11. Moreover, we disagree with the dissent that at the time the Dictionary Act was passed "the phrase 'bodies politic and corporate' was understood to include the States." *Post*, at 8. Rather, an examination of authorities of the era suggests that the phrase was used to mean corporations, both private and public (municipal), and not to include the States.[9] In our view, the

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[8] The Dictionary Act provided that

"in all acts hereafter passed . . . the word 'person' may extend and be applied to bodies politic and corporate . . . unless the context shows that such words were intended to be used in a more limited sense." Act of Feb. 25, 1871, § 2, 16 Stat. 431.

[9] See *United States* v. *Fox*, 94 U. S. 315, 321 (1877); 1 B. Abbott, Dictionary of Terms and Phrases Used in American or English Jurisprudence 155 (1879) ("most exact expression" for "public corporation"); W. Anderson, A Dictionary of Law 127 (1893) ("most exact expression for a public corporation or corporation having powers of government"); Black's Law Dictionary 143 (1891) ("body politic" is "term applied to a corporation,

Dictionary Act, like § 1983 itself and its legislative history, fails to evidence a clear congressional intent that States be held liable.

Finally, *Monell* itself is not to the contrary. True, prior to *Monell* the Court had reasoned that if municipalities were not persons then surely States also were not. *Fitzpatrick* v. *Bitzer*, 427 U. S., at 452. And *Monell* overruled *Monroe*, undercutting that logic. But it does not follow that if municipalities are persons then so are States. States are protected by the Eleventh Amendment while municipalities are not, *Monell*, 436 U. S., at 690, n. 54, and we consequently limited our holding in *Monell* "to local government units which are not considered part of the State for Eleventh Amendment purposes," *ibid.* Conversely, our holding here does not cast any doubt on *Monell*, and applies only to States or governmental entities that are considered "arms of the State" for Eleventh Amendment purposes. See, *e. g.*, *Mt. Healthy City School Dist. Bd. of Ed.* v. *Doyle*, 429 U. S. 274, 280 (1977).

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which is usually designated as a 'body corporate and politic'" and "is particularly appropriate to a *public* corporation invested with powers and duties of government"); 1 Burrill, A Law Dictionary and Glossary 212 (2d ed. 1871) ("body politic" is "term applied to a corporation, which is usually designated as a *body corporate and politic*"). A public corporation, in ordinary usage, was another term for a municipal corporation, and included towns, cities, and counties, but not States. See 2 Abbott, *supra*, at 347; Anderson, *supra*, at 264–265; Black, *supra*, at 278; 2 Burrill, *supra*, at 352.

The dissent appears to confuse this precise definition of the phrase with its use "in a rather loose way," see Black, *supra*, at 143, to refer to *the* state (as opposed to *a* State). This confusion is revealed most clearly in the dissent's reliance on the 1979 edition of Black's Law Dictionary, which defines "body politic or corporate" as "[a] social compact by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good." *Post*, at 8. To the extent the dissent's citation of other authorities does not suffer from the same confusion, those authorities at best suggest that the phrase is ambiguous, which still renders the Dictionary Act incapable of supplying the necessary clear intent.

Petitioner asserts, alternatively, that state officials should be considered "persons" under § 1983 even though acting in their official capacities. In this case, petitioner named as defendant not only the Michigan Department of State Police but also the Director of State Police in his official capacity.

Obviously, state officials literally are persons. But a suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office. *Brandon* v. *Holt*, 469 U. S. 464, 471 (1985). As such, it is no different from a suit against the State itself. See, *e. g.*, *Kentucky* v. *Graham*, 473 U. S. 159, 165–166 (1985); *Monell*, supra, at 690, n. 55. We see no reason to adopt a different rule in the present context, particularly when such a rule would allow petitioner to circumvent congressional intent by a mere pleading device.[10]

We hold that neither a State nor its officials acting in their official capacities are "persons" under § 1983. The judgment of the Michigan Supreme Court is affirmed.

It is so ordered.

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[10] Of course a State official in his or her official capacity, when sued for injunctive relief, would be a person under § 1983 because "official-capacity actions for prospective relief are not treated as actions against the State." *Kentucky* v. *Graham*, 473 U. S. at 167, n. 14; *Ex parte Young*, 209 U. S. 123, 159–160 (1908).