

MIGRA v. WARREN CITY SCHOOL DISTRICT

No. 82-738

The issue in this case is whether a §1983 plaintiff is barred by state-law res judicata rules, made applicable by 28 U.S.C. §1738 [full faith and credit statute], from pursuing in federal court a federal civil rights claim, which could have been but in fact was not raised in a prior state court proceeding.

Although I joined Harry's dissent in Allen v. McCurry, I am willing to accept that on the facts of this case, §1738 requires the application of state res judicata principles to the §1983 action brought by petitioner in federal court. According to that view, the District Court should have applied Ohio claim preclusion doctrine to determine whether petitioner's §1983 claims were barred.

As I read its opinion, however, the District Court did not expressly consider or apply Ohio law in concluding that petitioner's claim was barred. For that reason I would vacate the judgment below and remand for a consideration of Ohio res judicata law. Such a remand seems appropriate because I see no reason for this Court to make a final determination of the state-law issue. The principal question presented in this case is whether Ohio law applies; once we have decided that it does, then it seems an imprudent use of this Court's time and resources to determine precisely how that law applies to the particular facts of this case. This is especially true when the courts below have not first considered the issue.

In addition, I see no basis in this case for fashioning a



special federal rule of res judicata that would operate to bar petitioner's claim, regardless of Ohio law. First of all, that possibility was never briefed or argued by the parties. More importantly, it would flatly contradict the language of §1738, which, as Allen tells us, requires federal courts to apply state res judicata and collateral estoppel principles, and therefore to accord prior state court judgments the same preclusive effect that a state court would give them.

VACATE AND REMAND