

January 18, 1989

Mr. Justice:

Re: Will, 87-1207

A draft majority opinion has circulated in this case. Your vote is with the dissent; Justice Brennan will be circulating a dissenting opinion. You might wish to circulate a note indicating that you await the dissent. convince Justice Brennan's draft that a remand would be appropriate to permit the state court to consider all issues regarding state sovereign immunity, including whether it would apply at Deborah 1983 cases. Justice Brennan was prepared to go further than you would on that point; this way, you can join the dissenting opinion without qualification, and the narrow focus of the opinion on the issue of "states as persons" is preserved.

If you would like me to recommend any stylistic changes, please let me know. I have two in mind: the use of the word "unwisdom," and reference to the Michigan Supreme Court as a "court below."