

May 9, 1989

Mr. Justice:

Re: Will

Justice Brennan has circulated a dissent in this case; I recommend that you join it. I had the opportunity to review an earlier draft, and was able to convince Justice Brennan's clerk 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 all in §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."

Deborah