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Supreme Court of the United States
Washington, D. C. 20543

June 13, 1989

CHAMBERS OF
JUSTICE BYRON R. WHITE

MEMORANDUM TO THE CONFERENCE

Re: Holds for No. 87-1207 Will v. Michigan Dept. of State Police

(1) No. 87-1445 Hampton v. Michigan

Alvin Hampton committed suicide while incarcerated in a Michigan state prison. He had been diagnosed as psychotic and had threatened or attempted suicide on a number of occasions in the past, but prison officials failed to take his belt away from him and he hanged himself. Petr, Hampton's mother as representative of his estate, filed suit against Michigan in state court under §1983. The trial court found for petr, but the Michigan Court of Appeals reversed, holding that a State is not a person under §1983. The Michigan Supreme Court denied review, having recently reached the same conclusion in Will. Because the decision of the Michigan Court of Appeals is consistent with the decision by this Court in Will, I will vote to DENY this petition.

(2) No. 87-1454 Skoblow v. Ameri-Manage, Inc.

Petr was fired from his position as a dentist at a mental hospital owned and operated by the State of Florida. Resp manages the institution pursuant to a contract with the State. The notice given petr indicated that he was fired because of "inadequate performance." Petr filed a §1983 action in state court challenging his discharge, and the trial court granted summary judgment on the ground that petr could not sue a state agency under §1983. Both the Florida Court of Appeals and the Florida Supreme Court affirmed, the latter holding that "the state [is] immune under the eleventh amendment and the common law from suits arising under ... 42 U.S.C. §1983." Obviously the Eleventh Amendment does not bar petr's state court action, and although the state courts appear to have relied on state common law sovereign immunity rather than any interpretation of "person" in §1983, the end result is consistent with Will. Therefore, I will vote to DENY this petition.

(3) No. 88-447 Vest v. Schafer

On remand from a decision of the Alaska Supreme Court invalidating a state statute providing monthly benefits to Alaska residents aged 65 or over who had domiciled in the State before statehood, petr sought damages from the State and the program administrator, in both his official and individual capacities. The state trial court denied petr damages, and the Alaska Supreme Court affirmed. The Alaska court reaffirmed its prior holdings that a State is not a "person" under §1983 and concluded that the official capacity action was in reality a suit against the State and so not permissible under §1983. The court also rejected the individual capacity action against the administrator, as well as a Bivens action against the State, refusing to imply an action under the Fourteenth Amendment. The Alaska court's §1983 holdings are consistent with Will, and the issues petr raises concerning the individual capacity and Bivens actions are not certworthy at the present. I will therefore vote to DENY the petition.

(4) No. 88-527 Bishop v. Gwaltney

Robin Bishop, petr's daughter, was raped and murdered by a California Highway Patrolman, who was subsequently convicted in federal court of depriving Bishop of her civil rights. Petr then filed suit in state court under §1983 against the patrolman, his supervisors and the California Highway Patrol. The trial court dismissed the claims, and the California Court of Appeals affirmed. The court held that a State was not a "person" under §1983 and that, even if it was, petr had failed to allege a policy sufficient to impose liability on the State. The court also concluded that petr had not sufficiently raised a Bivens claim so it did not have to consider it, and that the patrolman's criminal conviction did not render the State liable as a matter of law. The California court's holding that a State is not a person under §1983 is correct under Will, and petr's other claims are not certworthy, so I will vote to DENY the petition.

(5) No. 88-542 Jackson v. Maine

Petr applied for a position as a school bus driver with Maine School Administrative District No. 9. He also applied for a bus driver's endorsement on his driver's license but was turned down by the State Department of Motor Vehicles because he is an insulin-dependent diabetic. Without the endorsement he could not drive a school bus and so was discharged by the school district. Petr then filed suit in state court alleging that he was discriminated against in violation of the Rehabilitation Act, 29 U.S.C. §794. The trial court found that the State's denial of petr's bus endorsement violated the Rehabilitation Act and awarded injunctive relief and attorney's fees, but concluded that the Rehabilitation Act did not abrogate the State's sovereign

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immunity. The Maine Supreme Court agreed that petr had established a violation of the Rehabilitation Act but concluded that "the State may constitutionally interpose its sovereign immunity in state court as a bar to an award of damages under section 504 of the Rehabilitation Act."

To the extent Will is relevant to the reasoning of the Maine Supreme Court, it is consistent in refusing to find state liability. The holding in Will, of course, does not affect the holding in this case and the issue here is not itself certworthy: the Rehabilitation Act was amended in 1986 to abrogate state sovereign immunity expressly, so that the issue presented by this petition is of no continuing importance. Therefore I will vote to DENY the petition. ?

B.R.W.