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87-1207 timely/response requested and received

Will v. Michigan Dep't of State Police, et al.

Cert to the Michigan Supreme Court

Petr filed a §1983 suit for damages in state court against Michigan Department of Civil Service, alleging that his right to due process was denied when the Civil Service refused to hear his grievance that he was denied a promotion because his brother had been a political activist. The Michigan Supreme Court held that petr's suit was barred because a state and state officials in their official capacities are not "persons" for the purpose of §1983. Although this Court has held that §1983 does not abrogate states' Eleventh Amendment immunity from suit in federal court, it has never decided whether or not a state is a "person" under the statute. This issue continues to be important in §1983 suits brought in state court (like this one) or in cases in which the state has waived its constitutional immunity. Lower federal and state courts are all over the map on this issue, although the weight of authority is against petr. The opinion by the Michigan Supreme Court spends almost 100 pages discussing the issue. This is a fairly important question, as it will determine whether plaintiffs have any forum in which to seek damages for unconstitutional actions by states. I tentatively recommend that you vote to grant, although I am concerned

that this Court will affirm and thus preclude the possibility of any relief nationwide.

JOIN 3/JOIN 4? cs April 6, 1988 April 15 Conf., p. 13

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