**[Blackmun Notes Before Oral Argument 12/1/88 - HAB519F80051-52][[1]](#footnote-1)**

**[Page 1 – Image HAB519F80051]**

87-1207 Will v. Michigan Dept

1983 – Whether a state and its officials (so sued) are “persons”

Sit versus Michigan Department and its director

Trial Court: 1. State is the real party in interest – It is

 2. Does 11th Amendment bar a damages award?

Not here because state statute gives Court of Claims jurisdiction and determines all claims. Therefore waiver.

3. 150 [illegible][[2]](#footnote-2) *damages[[3]](#footnote-3)*

Michigan Court of Appeals reversed

1. Court of Claims has jurisdiction

2. But State is not a person under 1983. Supreme Court did not resolve in Quern v. Jordan 440/332 (did reach per dictum – I joined). Would be so only if Congress meant to abolish sovereign immunity, or State consents

3. Officials are “persons,” but remand to consider immunity

Michigan Supreme Court affirms and reverses [illegible]

I. Neither state nor official is a “person” – Quern did not resolve the question.

This will be affirmed,

 of course 6-3 or 5-4

Had Congress so intended, it would have set up a federal court remedy.

Dissent WJB said states are “persons.”

 Sovereign immunity does not bar 1983 when fundamental federal constitutional rights are at issue

No question of jurisdiction

I would reverse

Question is open. Quern did not say a state is not a person.

 Court then was driven by a concern for State Treasuries.

Court had said before State could be sued under 1983 if it waived immunity under 11th Amendment.

This implies a State is a “person” for 1983

Straight construction → State as a person. No hard and fast line

Dictionary Act ’71 says “persons” included bodies politic and corporate.

But *1871retroactive change[[4]](#footnote-4)* is bothersome. Yet not absolute.

I go for broad reading.

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Legislative history of little consequence.

Enough here to say State is a person, therefore reverse.

Question of immunity remains.

I would leave this for the State court on remand.

Reverse 1 December 1988

1. Words added by the editor for clarity are enclosed in brackets as are editor comments. All footnotes have been added by the editor. Interpretations of which the editor is particularly uncertain are indicated in italics and alternative interpretations may be indicated in footnotes. Items in small caps were printed or typed in the original rather than handwritten. Underlining, arrows, and words in the left margin are in roughly the same locations and colors as in the manuscript. If slanted, they were slanted in the manuscript. Double underlining indicates that the word was underlined in the text color and then underlined again in the indicated color. [↑](#footnote-ref-1)
2. Possibly “thousand” [↑](#footnote-ref-2)
3. This word could also be “claims.” [↑](#footnote-ref-3)
4. This word could be “rationale.” [↑](#footnote-ref-4)