

Grant: CG, WGB, BAW, Wm. Hab.
Ad. AMN
Cheng: JPS, SOC

Will v. Michigan Dept of St. Police

No. 87-1207-CSX
Feb. 26 Conf. List 1
February 18, 1988
Cert to Mich. S. Ct.
Timely
Response waived

Young Petr alleges that he was denied a position as a systems analyst with the Michigan State Police because his brother was a student activist whose file had been compiled by the police department's "Red Squad." He brought a §1983 action in state court against the state police department and its director in his official capacity. The Mich. S. Ct., relying on Monell v. Department of Social Services, 436 U.S. 658 (1978), and Quern v. Jordan, 440 U.S. 332 (1979), held that neither the state nor state officials are "persons" within the meaning of §1983, and therefore cannot be sued in state court.

Monell, of course, held that municipalities are "persons" within the meaning of §1983. The rationale underlying Monell -- that "persons" includes "bodies politic and corporate" -- seems to apply equally to states. In Quern the Court held that states that did not waive their sovereign immunity could not be sued under §1983 in federal court. Congress must clearly express its intent to abrogate sovereign immunity, and the Court held that §1983 was not clear enough. Thus, all the Court needed to conclude, and all it did conclude, was that §1983 did not clearly cover states; it never addressed whether the most natural, albeit unclear, meaning of §1983 covered states. That is the issue presented here.

That issue, of course, has little significance where, as in Quern a state which has not waived its sovereign immunity is sued in federal court. A federal court can grant prospective injunctive relief against state officials themselves under Ex Parte Young, 209 U.S. 123 (1908), without any need to name the state as a "person" under §1983, and Quern says that the Eleventh Amendment bars damages against the state unless it waives its sovereign immunity. There are, however, two situations where the issue is relevant. The first is where, as in this case, the plaintiff brings suit in state court, where the Eleventh Amendment is inapplicable; the second (and less likely) situation is where the plaintiff sues in federal court and the state waives its sovereign immunity.

The Mich S. Ct.'s conclusion that states are not covered by §1983 appears to conflict with the holdings of several state court decisions, see, e.g., Uberoi v. University of Colorado, 713 P.2d 894 (Colo. 1986); Gumbhir v. Kansas Bd. of Pharmacy, 231 Kan. 507 (1982), and three CAs, see Della Grotta v. Rhode Island, 781 F.2d 343 (CA1 1986); Gay Student Services v. Texas A&M Univ., 612 F.2d 160 (CA5), cert. denied, 449 U.S. 1034 (1980); Brogan v. Wiggins School District, 588 F.2d 409, 411 (CA10 1978). Most of those decisions post-date Quern.

I think the true meaning of "person" is an issue that is ripe to be decided. This case presents a perfect opportunity to do so, particularly because petr's lawyers seem super. I would not, however, recommend a grant without first hearing what Mich

has to say. I am quite surprised that it waived a response. I have therefore called for a response.

CFR

Joshua