

1986

## Colman v. Utah State Land Board : Unknown

Utah Supreme Court

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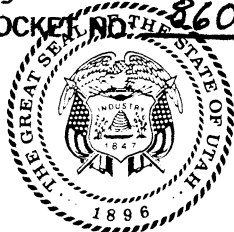
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BRIEF

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July 17, 1989

Mr. Geoffery Butler  
Supreme Court Clerk  
332 State Capitol  
SALT LAKE CITY UT 84114

Re: **Citation of New Authority,**  
Colman v. Utah State Land Board,  
Utah Supreme Court No. 860331,

Dear Mr. Butler:

Under Rule 24(j), Rules of the Utah Supreme Court, the State Respondents submit this letter to cite to the Court a new case.

The State Respondents' Supplemental Brief was filed May 22, 1989. On June 15, 1989, the United States Supreme Court decided Will v. Michigan Dept. of State Police, 109 S.Ct. 2304 (1989). Will supports the State's assertion of immunity against Colman's Fifth Amendment "takings" claim. See State Respondents' Supplemental Brief at 24-36.

In Will, the plaintiff sued the State defendants for allegedly violating the Constitution. The claim was asserted under Section 1983 in state court, 109 S.Ct. at 2305, 2306, and is therefore similar to Colman's Fifth Amendment claim asserted in state court. (As we noted in our Supplemental Brief at 30 n.20, Section 1983 itself creates no substantive rights; it simply provides a cause of action or remedy when the U.S. Constitution or other federal law is violated under color of state law. Chapman v. Houston Welfare, 441 U.S. 600, 617, 618 (1979). Therefore, analysis of state sovereign immunity is the same whether the plaintiff pleads under Section 1983 or directly under the Constitution. For both types of claims "deriv[e] from the same constitutional source." Rutherford v. State, 188 Cal.App.3d 1267 (1987).)

In Will, as in our case, state sovereign immunity was asserted. 109 S.Ct. at 2306. As Judge Banks did, the U.S. Supreme Court confirmed and enforced the State's immunity.

In our Supplemental Brief we discussed, in addition to authoritative state-court decisions, several U.S. Supreme Court

decisions that implicitly "suppor[t] the principle that states have immunity against federal claims asserted in state court." Supplemental Brief 32. We noted, however, that the Supreme Court had not addressed the precise question of whether immunity bars a federal claim asserted against a State in state court. Id. n.21. In Will, the Court now has addressed that issue, in favor of State sovereign immunity.

Will held that "neither a State nor its officials acting in their official capacities are 'persons' under [sec.] 1983." 109 S.Ct. at 2312. In so holding, the Court noted, as we had noted in our Supplemental Brief at 35, that "sovereign immunity was a familiar doctrine at common law. The principle is elementary that a State cannot be sued in its own courts without its consent. It is an established principle of jurisprudence that the sovereign cannot be sued in its own courts without its consent. We cannot conclude that [sec.] 1983 was intended to disregard the well-established immunity of a State from being sued without its consent." 109 S.Ct. at 2309-10 (citations and internal quotations omitted).

"[T]he intent of Congress to provide a remedy for unconstitutional state action does not without more include the sovereign States among those persons against whom [sec.] 1983 actions would lie." Id. at 2310.

The Court noted the Eleventh Amendment precludes such actions against States in federal courts; and States are equally immune in state court. Even though "a principal purpose behind the enactment of [sec.] 1983 was to provide a federal forum for civil rights claims against States [and States are nevertheless immune in federal court], we cannot accept petitioner's argument that Congress intended nevertheless to create a cause of action against States to be brought in state courts \* \* \*." Id. at 2309.

By Will, the Supreme Court now has explicitly shown that sovereign immunity bars federal constitutional claims asserted against State defendants in state court. We submit Will squarely controls Colman's Fifth Amendment claim. His "takings" claim is barred by the State's sovereign immunity.

Respectfully submitted.

Sincerely,



R. DOUGLAS CREDILLE  
Assistant Attorney General

RDC/ac

cc: Carol Clawson  
L. Ridd Larson