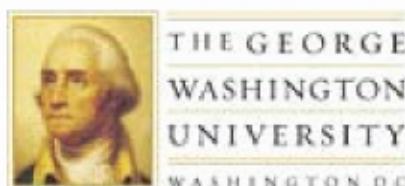


The Burger Court Opinion Writing Database

*American Motorists Insurance Co. v.
Starnes*

425 U.S. 637 (1976)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



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

CHAMBERS OF
THE CHIEF JUSTICE

April 26, 1976

PERSONAL

Re: 74-1481 - American Motorists Insurance Co.
v. Starnes

Dear Bill:

I write you individually to expose my views on this case. I have put it in opinion form because it is simpler than to write it out as a memo. This is close to being what John Harlan called a "pee-wee" but it could have important ramifications.

1 Regards,

WB

Mr. Justice Brennan

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

CHAMBERS OF
THE CHIEF JUSTICE

April 28, 1976

Re: 74-1481 - American Motorists Insurance Co. v. Starnes

MEMORANDUM TO THE CONFERENCE:

I will have a separate writing in your hands by
Monday.

Regards,

W.B

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

CHAMBERS OF
THE CHIEF JUSTICE

April 29, 1976

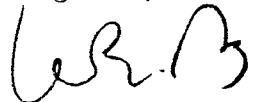
PERSONAL

Re: 74-1481 - American Motorists Insurance
Co. v. Starnes

Dear Bill:

Thank you for your memorandum in
the above. However, with some clarifying
change I will circulate my separate opinion.

Regards,



Mr. Justice Brennan

To: Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice O'Connor

From: The Clerk of the Supreme Court

MAY 3 1976
Circulated:

Recipients:

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1481

American Motorists Insurance Company,
Appellant,
v.
Virgil B. Starnes. } On Appeal from the Court of
Civil Appeals of Texas for the
Tenth Supreme Judicial District.

[May —, 1976]

MR. CHIEF JUSTICE BURGER, concurring in the judgment.

Like the Court, I am "unable to say that the treatment of foreign corporations effected by Exception 27 constitutes discrimination repugnant to the Equal Protection Clause." I reach this conclusion, however, for somewhat different reasons from those the Court sets out.

A plaintiff may sue a foreign or domestic corporation in Texas without proving up a cause of action at a preliminary hearing, by a preponderance of the evidence or by making out a *prima facie* case. The only "discrimination" between the two types of corporations is that a foreign corporation may be sued without such proof wherever it has "an agency or representative." Tex. Rev. Civ. Stat. Ann. art. 1995 (27) (1950). In my view, this does not amount to a denial of equal protection. "It is not . . . the mere tribunal into which a person is authorized to proceed by a state which determines whether the equal protection of the law has been afforded, but whether in the tribunals which the state has provided equal laws prevail." *Cincinnati St. R. Co. v. Snell*, 193 U. S. 30, 37 (1904). To the extent that the

PP. 1,3

To: Mr. Justice BREWSTER
 Mr. Justice STEWART
 Mr. Justice WHITE
 Mr. Justice MARSHALL
 Mr. Justice BLACKMUN
 Mr. Justice POWELL
 Mr. Justice REHNQUIST
 Mr. Justice THOMAS

From: The Clerk of Justice

Circulated: [redacted]

Recirculated: MAY 6 1976

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1481

American Motorists Insurance Company, Appellant,
 v.
 Virgil B. Starnes. } On Appeal from the Court of Civil Appeals of Texas for the Tenth Supreme Judicial District.

[May —, 1976]

MR. CHIEF JUSTICE BURGER, with whom MR. JUSTICE REHNQUIST joins, concurring in the judgment.

Like the Court, I am "unable to say that the treatment of foreign corporations effected by Exception 27 constitutes discrimination repugnant to the Equal Protection Clause." I reach this conclusion, however, for somewhat different reasons from those the Court sets out.

A plaintiff may sue a foreign or domestic corporation in Texas without proving up a cause of action at a preliminary hearing, by a preponderance of the evidence or by making out a *prima facie* case. The only "discrimination" between the two types of corporations is that a foreign corporation may be sued without such proof wherever it has "an agency or representative." Tex. Rev. Civ. Stat. Ann. art. 1995 (27) (1950). In my view, this does not amount to a denial of equal protection. "It is not . . . the mere tribunal into which a person is authorized to proceed by a state which determines whether the equal protection of the law has been afforded, but whether in the tribunals which the state has provided equal laws prevail." *Cincinnati St. R. Co. v. Snell*, 193 U. S. 30, 37 (1904). To the extent that the

8.1.3.

Dear Harry

I am sending you the 2nd draft of
"Court's opinion" but I have
not yet written the "Conclusion".

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: [Redacted] 1976

No. 74-1481

Circled: [Redacted] 1976

American Motorists In-
surance Company,
Appellant,
v.
Virgil B. Starnes.

On Appeal from the Court of
Civil Appeals of Texas for the
Tenth Supreme Judicial Dis-
trict.

[May —, 1976]

MR. CHIEF JUSTICE BURGER, with whom MR. JUSTICE REHNQUIST joins, concurring in the judgment.

Like the Court, I am "unable to say that the treatment of foreign corporations effected by Exception 27 constitutes discrimination repugnant to the Equal Protection Clause." I reach this conclusion, however, for somewhat different reasons from those the Court sets out.

A plaintiff may sue a foreign or domestic corporation in Texas without proving up a cause of action at a preliminary hearing, by a preponderance of the evidence or by making out a *prima facie* case. The only "discrimination" between the two types of corporations is that a foreign corporation may be sued without such proof wherever it has "an agency or representative." Tex. Rev. Civ. Stat. Ann. art. 1995 (27) (1950). In my view, this does not amount to a denial of equal protection. "It is not . . . the mere tribunal into which a person is authorized to proceed by a state which determines whether the equal protection of the law has been afforded, but whether in the tribunals which the state has provided equal laws prevail." *Cincinnati St. R. Co. v. Snell*, 193 U. S. 30, 37 (1904). To the extent that the

W.B. *123*

To: The Chief Justice
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Brennan

Distributed: *4/23/76*

Distributed: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1481

American Motorists Insurance Company, Appellant,
v.
Virgil B. Starnes. } On Appeal from the Court of Civil Appeals of Texas for the Tenth Supreme Judicial District.

[May —, 1976]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Appellant, American Motorists Insurance Company, is an Illinois corporation authorized to do business in Texas with its principal office in Dallas County. As such, it is a "person" and an "inhabitant" of Texas having its "domicile" in Dallas County for the purposes of Texas' general venue statute, Tex. Rev. Civ. Stat. Ann. art. 1995 (1950). *Snyder v. Pitts*, 241 S. W. 2d 136 (1951). Article 1995 provides that, with specified exceptions, "No person who is an inhabitant of this State shall be sued out of the county in which he has his domicile" The exceptions pertinent to this case are Exceptions 23 and 27 of Art. 1995. Under Exception 23, suits against domestic corporations may be brought outside the county where the cause of action arose or the county in which the Texas corporation's principal office is located only upon proof by the plaintiff at a preliminary venue hearing, not only that the Texas corporation has an agency or representative in the county of suit and that plaintiff resided in or near such county at the time his cause of action arose, but also, by proof by a preponderance of

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 27, 1976

RE: No. 74-1481 American Motorists Insurance Company v. Starnes

Dear Chief:

Thank you so much for your pertinent comment in the above. After reviewing it I still feel that there is in effect no real difference between the treatment accorded appellant in this case and that accorded a domestic corporation. This, therefore, still leaves me with the conviction that we ought dispose of it by holding that actually no equal protection problem is presented for resolution.

I wonder whether we have a disagreement on an important fact. Note 1 and page 3 of your memorandum seem to state that appellant was not sued in McClellan County. My reading of the record is that in fact it was - hence the last paragraph of my opinion.

Again I read your note 1 as suggesting a limitation of equal protection analysis to the situations where the compared entities are similarly situated. My approach has been that equal protection at bottom is concerned with justifying differences in treatment.

Finally, your memorandum at page 1 states that the only discrimination here present occurs with respect to where corporate defendants may be sued, recognizing that no discrimination arises as a consequence of the requirement of proof of the cause of action. Isn't my reliance on allegations by counsel during oral argument consistent? I rely on that colloquy as necessarily establishing that no discrimination results as a consequence of the requirement of proof of the cause of action.

Sincerely,

The Chief Justice

✓ —
P/7
To: The Chief Justice
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

Mr. Justice Brennan

4/30/76

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1481

American Motorists In-
surance Company, }
Appellant, }
v. } On Appeal from the Court of
Virgil B. Starnes. } Civil Appeals of Texas for the
Tenth Supreme Judicial Dis-
trict.

[May —, 1976]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Appellant, American Motorists Insurance Company, is an Illinois corporation authorized to do business in Texas with its principal office in Dallas County. As such, it is a "person" and an "inhabitant" of Texas having its "domicile" in Dallas County for the purposes of Texas' general venue statute, Tex. Rev. Civ. Stat. Ann. art. 1995 (1950). *Snyder v. Pitts*, 241 S. W. 2d 136 (1951). Article 1995 provides that, with specified exceptions, "No person who is an inhabitant of this State shall be sued out of the county in which he has his domicile . . ." The exceptions pertinent to this case are Exceptions 23 and 27 of Art. 1995. Under Exception 23, suits against domestic corporations may be brought outside the domiciliary county upon proof by the plaintiff at a preliminary venue hearing, not only that the Texas corporation has an agency or representative in the county of suit and that plaintiff resided in or near such county at the time his cause of action arose, but also, by proof by a preponderance of the evidence, that he has a cause of action. *Victoria Bank & Trust Co. v. Monteith*, 158 S. W. 2d 63 (Tex. Comm'n App. 1941). Exception 27, on the other

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 26, 1976

Re: No. 74-1481, Amer. Motorists v. Starnes

Dear Bill,

At the Conference I expressed the view that the judgment in this case was not final. I shall, however, acquiesce in your proposed opinion for the Court if nobody else writes separately.

Sincerely yours,

P.S.

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R WHITE

April 29, 1976

Re: No. 74-1481 - American Motorists Insurance
Co. v. Starnes

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 27, 1976

Re: No. 74-1481, American Motorist Insurance Company v.
Virgil B. Starnes

Dear Bill:

Please join me.

Sincerely,



T. M.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 28, 1976

Re: No. 74-1481 - American Motorists Insurance Co.
v. Starnes

Dear Bill:

I shall go along.

Sincerely,



Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 27, 1976

No. 74-1481 American Motorists Insurance
Company v. Starnes

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

1fp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 5, 1976

Re: No. 74-1481 - American Motorists Insurance Co.
v. Starnes

Dear Chief:

Please join me in your concurring opinion in this case.

Sincerely,

W.H.R.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 5, 1976

Re: No. 74-1481 - American Motorists Insurance
Co. v. Starnes

Dear Chief:

As I indicated at the Conference this afternoon, I believe I will have to change my vote from "dismiss for want of a final judgment" to "affirm" because I am presently unable to articulate a satisfactory distinction of Langdeau, 371 U.S. 555.

If the Court decides either to overrule Langdeau or can explain a satisfactory basis for distinguishing it, I could then join a dismissal.

Respectfully,



The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 26, 1976

Re: 74-1481 - American Motorists Insurance Co. v.
Starnes

Dear Bill:

Please join me.

Sincerely,

J. P. S.

Mr. Justice Brennan

Copies to the Conference