

# The Burger Court Opinion Writing Database

## *Stafford v. Briggs*

444 U.S. 527 (1980)

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



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

From: The Chief Justice

Circulated: **DEC 14 1979**

Recirculated: \_\_\_\_\_

**1st DRAFT**

## **SUPREME COURT OF THE UNITED STATES**

Nos. 77-1546 AND 78-303

William H. Stafford, Jr., et al., Petitioners, 77-1546                    v. John Briggs et al.	}	On Writ of Certiorari to the United States Court of Ap- peals for the District of Columbia Circuit.
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William E. Colby and Vernon A. Walters, Petitioners, 78-303                    v. Rodney D. Driver et al.	}	On Writ of Certiorari to the United States Court of Ap- peals for the First Circuit.
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[January —, 1980]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari in these cases to decide whether the venue provisions contained in § 2 of the Mandamus and Venue Act of 1962, 28 U. S. C. § 1391 (e), apply to actions for money damages brought against federal officials in their individual capacities.

### **I**

No. 77-1546

*Stafford et al. v. Briggs et al.*

In 1972, petitioner William Stafford was United States Attorney for the Northern District of Florida, and petitioner Stuart Carrouth was an Assistant United States Attorney. Guy Goodwin was an attorney in the Department of Justice.<sup>1</sup> Together they conducted grand-jury proceedings in Florida, inquiring into the possibility that various individuals

<sup>1</sup> Goodwin is not a party in the case before this Court.

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

CHANGES AS MARKED:

From: The Chief Justice

Circulated: \_\_\_\_\_

2nd DRAFT

Recirculated: JAN 2 1980

## SUPREME COURT OF THE UNITED STATES

Nos. 77-1546 AND 78-303

William H. Stafford, Jr., et al., Petitioners, 77-1546 <i>v.</i> John Briggs et al.	}	On Writ of Certiorari to the United States Court of Ap- peals for the District of Columbia Circuit.
William E. Colby and Vernon A. Walters, Petitioners, 78-303 <i>v.</i> Rodney D. Driver et al.	}	On Writ of Certiorari to the United States Court of Ap- peals for the First Circuit.

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To: Mr. Justice Brennan  
 Mr. Justice Stewart  
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 Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist  
 Mr. Justice Stevens

From: The Chief Justice

Circulated: \_\_\_\_\_

Recirculated: JAN 8 1980

STYLISTIC CHANGES 4/10/8

3rd DRAFT

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Nos. 77-1546 AND 78-303

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

From: The Chief Justice

Circulated: \_\_\_\_\_

Recirculated: ~~FEB~~ 15 1980

4th DRAFT

## SUPREME COURT OF THE UNITED STATES

Nos. 77-1546 AND 78-303

William H. Stafford, Jr., et al., Petitioners, 77-1546                    v. John Briggs et al.	}	On Writ of Certiorari to the United States Court of Ap- peals for the District of Columbia Circuit.
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William E. Colby and Vernon A. Walters, Petitioners, 78-303                    v. Rodney D. Driver et al.	}	On Writ of Certiorari to the United States Court of Ap- peals for the First Circuit.
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[February —, 1980]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari in these cases to decide whether the venue provisions contained in § 2 of the Mandamus and Venue Act of 1962, 28 U. S. C. § 1391 (e), apply to actions for money damages brought against federal officials in their individual capacities.

### I

No. 77-1546

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

December 14, 1979

RE: Nos. 77-1546 & 78-303 William H. Stafford, Jr.  
v. John Briggs, et al.  
William E. Colby and Vernon Walters v. Driver

Dear Chief:

I will await the dissent in the above.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill", is written in dark ink.

The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

February 5, 1980

RE: Nos. 77-1546 & 78-303 Stafford v. Briggs, et al.  
Colby and Waters v. Driver

Dear Potter:

Please join me in the dissent you have prepared  
in the above.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill", is written below the word "Sincerely,".

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

December 14, 1979

Re: 77-1546, 78-303 - Stafford v. Briggs, et al.

Dear Chief:

I plan to circulate a dissenting opinion  
in these cases in due course.

Sincerely yours,

P.S.  
/

The Chief Justice

Copies to the Conference



Mr. Chief Justice  
 Mr. Justice Brennan  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Rehnquist  
 Mr. Justice Stewart  
 Mr. Justice O'Connor

From: Mr. Justice Stewart

Circulated: 4 FEB 1980

1st DRAFT

Recirculated: \_\_\_\_\_

## SUPREME COURT OF THE UNITED STATES

Nos. 77-1546 AND 78-303

William H. Stafford, Jr., et al., Petitioners, 77-1546      v. John Briggs et al.	}	On Writ of Certiorari to the United States Court of Ap- peals for the District of Columbia Circuit.
William E. Colby and Vernon A. Walters, Petitioners, 78-303      v. Rodney D. Driver et al.	}	On Writ of Certiorari to the United States Court of Ap- peals for the First Circuit.

[February —, 1980]

MR. JUSTICE STEWART, dissenting.

The Court today holds that in a suit against a federal officer for allegedly wrongful actions under color of legal authority, the venue provisions of § 2 of the Mandamus and Venue Act of 1962, 28 U. S. C. § 1391 (e), are applicable only if the officer is simply a nominal defendant, and the plaintiff's real grievance is against the government. I disagree. It is my view that § 1391 (e) also applies to a suit for damages against a federal officer for his own wrongdoing.

### I

When Congress enacted § 1391 (e) in 1962, this Court had recognized two types of suits against federal officers acting under color of legal authority.<sup>1</sup> See *Larson v. Domestic & Foreign Corp.*, 337 U. S. 682. The first of these two types of suits was based on a legal fiction designed to circumvent the doctrine of sovereign immunity. This fiction enabled an aggrieved party to obtain equitable relief in a case nominally

<sup>1</sup> For purposes of brevity, I hereafter refer to "suits against federal officers acting under color of legal authority" simply as "suits against federal officers."

Mr. Justice Brennan  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Stevens  
Mr. Justice Stewart

1, 3, 10

From: Mr. Justice Stewart

Circulated: 7 FEB 1980

2nd DRAFT

Recirculated:

# SUPREME COURT OF THE UNITED STATES

Nos. 77-1546 AND 78-303

William H. Stafford, Jr., et al., } On Writ of Certiorari to the  
Petitioners, } United States Court of Ap-  
77-1546 v. } peals for the District of  
John Briggs et al. } Columbia Circuit.

William E. Colby and Vernon } On Writ of Certiorari to the  
A. Walters, Petitioners, } United States Court of Ap-  
78-303 v. } peals for the First Circuit.  
Rodney D. Driver et al. }

[February —, 1980]

MR. JUSTICE STEWART, with whom MR. JUSTICE BRENNAN joins, dissenting.

The Court today holds that in a suit against a federal officer for allegedly wrongful actions under color of legal authority, the venue provisions of § 2 of the Mandamus and Venue Act of 1962, 28 U. S. C. § 1391 (e), are applicable only if the officer is simply a nominal defendant, and the plaintiff's real grievance is against the government. I disagree. It is my view that § 1391 (e) means what it says, and therefore, that it applies as well to a suit for damages against a federal officer for his own wrongdoing.

## I

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Mr. Justice Brennan  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Stevens  
 Mr. Justice O'Connor

0. 1, 10

From: Mr. Justice Stewart

Circulated: 12 FEB 1980

Recirculated: \_\_\_\_\_

3rd DRAFT

# SUPREME COURT OF THE UNITED STATES

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[February —, 1980]

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## I

When Congress enacted § 1391 (e) in 1962, this Court had recognized two types of suits against federal officers acting under color of legal authority.<sup>1</sup> See *Larson v. Domestic & Foreign Corp.*, 337 U. S. 682. The first of these two types of suits was based on a legal fiction designed to circumvent the doctrine of sovereign immunity. This fiction enabled an

<sup>1</sup> For purposes of brevity, I hereafter refer to "suits against federal officers acting under color of legal authority" simply as "suits against federal officers."

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

January 17, 1980

Re: No. 77-1546 - Stafford v. Briggs  
No. 78-303 - Colby v. Driver

Dear Chief:

According to my records, I should be  
marked out in these two cases.

Sincerely,

*Jm* -  
T.M.

The Chief Justice

cc: The Conference

December 31, 1979

Re: No. 77-1546 - Stafford v. Briggs  
No. 78-303 - Colby v. Driver

Dear Chief:

In a separate note I am joining your opinion for these cases. I think it is a good and effective opinion.

I personally think, however, that the Second Circuit's case of Blackburn v. Goodwin deserves a cite. At least, it would demonstrate that another court of appeals basically disagreed with the First and District of Columbia Circuits.

I must confess that I was dismayed at the conference of April 27, after the original argument, that every vote down to mine, was to affirm these judgments. I was gratified, of course, to have Lewis, Bill Rehnquist, and John support my inclination towards reversals. I just could not give these cases the "snail darter" treatment. The change of your vote, therefore, is most helpful.

Sincerely,

HAB

*He previously gave it  
- present - future cite  
8 Jan 10*

The Chief Justice

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN


December 31, 1979

Re: No. 77-1546 - Stafford v. Briggs  
No. 78-303 - Colby v. Driver

Dear Chief:

Please join me.

Sincerely,

A handwritten signature in dark ink, appearing to be "H.A.B." with a horizontal line underneath.

The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

December 17, 1979

77-1546 Stafford v. Briggs  
78-303 Colby v. Driver

Dear Chief:

Please join me.

Sincerely,

*Lewis*

The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

December 17, 1979

Re: No. 77-1546 - Stafford v. Briggs

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

Copies to the Conference



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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

January 3, 1980

Re: 77-1546 and 78-303 - Stafford v. Briggs;  
Colby v. Driver

Dear Chief:

Please join me.

Respectfully,



The Chief Justice

Copies to the Conference