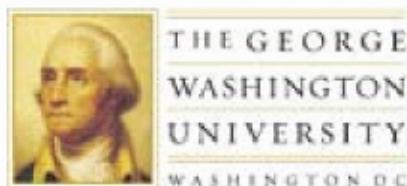


The Burger Court Opinion Writing Database

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 <i>v.</i> John Briggs et al.	On Writ of Certiorari to the United States Court of Appeals 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 Appeals for the First Circuit.

[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.¹ Together they conducted grand-jury proceedings in Florida, inquiring into the possibility that various individuals

¹ 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

From: The Chief Justice

Circulated:

JAN 2 1980

Recirculated:

2nd DRAFT

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 Appeals for the District of Columbia Circuit.
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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:

JAN 2 1980

Recirculated

3rd 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 Appeals 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 Appeals for the First Circuit,

[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.

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¹ 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

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 Appeals 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 Appeals for the First Circuit.

[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

Stafford et al. v. Briggs et al.

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¹ Goodwin is not a party in the case before this Court.

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,

Bill

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,



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

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

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 <i>v.</i> John Briggs et al.	On Writ of Certiorari to the United States Court of Appeals 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 Appeals 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.¹ 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

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

TO THE OTHER JUSTICES
 Mr. Justice Brennan
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice O'Connor
 Mr. Justice Stevens

1, 8, 10

From: Mr. Justice Stewart

7 Feb. 1980
Circulated:

2nd DRAFT

Recirculated:

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 Appeals 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 Appeals for the First Circuit.
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[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

When Congress enacted § 1391 (e) in 1962, this Court had recognized two types of suits against federal officers acting under color of legal authority.¹ 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

¹ 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 Powell
 Mr. Justice Rehnquist
 Mr. Justice Stevens

D. 1, 10

From: Mr. Justice Stewart

Circulated: 12 FEB 1980

3rd DRAFT

Recirculated: _____

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 Appeals for the District of Columbia Circuit.
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[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 that it thus applies as well 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.¹ 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

¹ 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 you 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 always did a good job

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,



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,



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