

The Burger Court Opinion Writing Database

Smith v. Wade

461 U.S. 30 (1983)

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

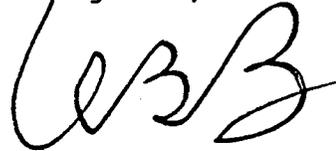
November 15, 1982

RE: 81-1196 - Smith v. Wade

Dear Bill:

Will you take on a dissent in this case?

Regards,

A handwritten signature in cursive script, appearing to read 'WEB', is written below the typed word 'Regards,'.

Justice Rehnquist
Justice Powell

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

CHAMBERS OF
THE CHIEF JUSTICE

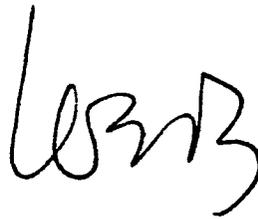
March 9, 1983

Re: No. 81-1196, Smith v. Wade

Dear Bill:

I join your dissent.

Regards,

A handwritten signature in black ink, appearing to be 'WRB', written in a cursive style.

Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

November 12, 1982

RE: No. 81-1196 Smith v. Wade

Dear Chief:

I'll undertake the opinion for the Court in the above.

Sincerely,



The Chief Justice

Copies to the Conference

To: The Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Brennan**

Circulated: **FEB 6 4 1983**

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1196

**WILLIAM H. SMITH, PETITIONER v.
DANIEL R. WADE**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT**

[February —, 1983]

JUSTICE BRENNAN delivered the opinion of the Court.

We granted certiorari in this case, 455 U. S. — (1982), to decide whether the District Court for the Western District of Missouri applied the correct legal standard in instructing the jury that it might award punitive damages under 42 U. S. C. § 1983 (1976 ed., Supp. IV).¹ The Court of Appeals for the Eighth Circuit sustained the award of punitive damages. *Wade v. Haynes*, 663 F. 2d 778 (1981). We affirm.

I

The petitioner, William H. Smith, is a guard at Algoa Reformatory, a unit of the Missouri Division of Corrections for youthful first offenders. The respondent, Daniel R. Wade, was assigned to Algoa as an inmate in 1976. In the summer of 1976 Wade voluntarily checked into Algoa's protective cus-

¹ Rev. Stat. § 1979, amended, 93 Stat. 1284. Section 1983 reads in relevant part:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

WLB
Please join me
W

Stylistic changes throughout;
New material added + old material rearranged, pp. 4-18;
Other changes, pp. 3, 21, 23, 26

To: The Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Brennan

Circulated: _____

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2nd
~~1st~~ DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1196

WILLIAM H. SMITH, PETITIONER *v.*
DANIEL R. WADE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

[March —, 1983]

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STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 5, 11

To: The Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Brennan**

Circulated: _____

Recirculated: **MAR 16 1983**

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1196

WILLIAM H. SMITH, PETITIONER *v.*
DANIEL R. WADE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

[March —, 1983]

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To: The Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 4-5, 7-15, 17-18, 20, 24

+ FOOTNOTES RENUMBERED

From: Justice Brennan

Circulated: _____

Recirculated: MAR 29 1983

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1196

WILLIAM H. SMITH, PETITIONER *v.*
DANIEL R. WADE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

[March —, 1983]

JUSTICE BRENNAN delivered the opinion of the Court.

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STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 4-5, 7-10, 15, 20, 25-26

To: The Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Brennan

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5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1196

WILLIAM H. SMITH, PETITIONER *v.*
DANIEL R. WADE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

[April —, 1983]

JUSTICE BRENNAN delivered the opinion of the Court.

We granted certiorari in this case, 456 U. S. 924 (1982), to decide whether the District Court for the Western District of Missouri applied the correct legal standard in instructing the jury that it might award punitive damages under 42 U. S. C. § 1983 (1976 ed., Supp. IV).¹ The Court of Appeals for the Eighth Circuit sustained the award of punitive damages. *Wade v. Haynes*, 663 F. 2d 778 (1981). We affirm.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 9, 1983

Re: 81-1196 - Smith v. Wade

Dear Bill,

I shall await the dissent.

Sincerely yours,



Justice Brennan

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 3, 1983

Re: 81-1196 - Smith v. Wade

Dear Bill,

Please join me.

Sincerely,



Justice Brennan

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 9, 1983

Re: No. 81-1196 - Smith v. Wade

Dear Bill:

Please join me.

Sincerely,



T.M.

Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 9, 1983

Re: No. 81-1196 - Smith v. Wade

Dear Bill:

Please join me.

Sincerely,



Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 9, 1983

81-1196 Smith v. Wade

Dear Bill:

I will await the dissent that I believe Bill
Rehnquist will write.

Sincerely,



Justice Brennan

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 3, 1983

81-1196 Smith v. Wade

Dear Bill:

Please join me in your dissent.

Sincerely,

Lewis

Justice Rehnquist

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 16, 1982

Re: No. 81-1196 Smith v. Wade

Dear Chief:

I will be happy to take on the dissent in this case.

Sincerely,

WHP

The Chief Justice
Justice Powell

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 9, 1983

Re: No. 81-1196 Smith v. Wade

Dear Bill:

I will be circulating a dissent in due course.

Sincerely,



Justice Brennan

cc: The Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

Circulated: MAR 1 1983

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1196

**WILLIAM H. SMITH, PETITIONER v.
DANIEL R. WADE**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT**

[February —, 1983]

JUSTICE REHNQUIST, dissenting.

This case requires us to determine what degree of culpability on the part of a defendant in an action under 42 U. S. C. § 1983 will permit an award of punitive damages. The District Court instructed the jury that it could award punitive damages in favor of the plaintiff if it concluded that the defendant's conduct constituted "reckless or callous disregard of, or indifference to, the rights or safety of others." In my view, a forthright inquiry into the intent of the 42d Congress and a balanced consideration of the public policies at issue compel the conclusion that the proper standard for an award of punitive damages under § 1983 requires some degree of bad faith or improper motive on the part of the defendant.

The Court rejects an "actual intent" standard, instead requiring a plaintiff to show merely "reckless . . . indifference to the federally protected rights of others." The following justifications are offered by the Court for this result: first, the rule in "most cases [decided in the last 15 years] under state common law" is "more or less" equivalent to a recklessness standard; second, the Court asserts that a similar rule "prevailed at the time of the enactment of § 1983"; and finally, there is an "absence of any persuasive argument" for not applying existing state tort rules to the federal statutory remedies available against state and local officials under § 1983.

STYLISTIC CHANGES THROUGHOUT

PP 1, 15, 16, 23

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: Justice Rehnquist

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1196

WILLIAM H. SMITH, PETITIONER *v.*
DANIEL R. WADE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

[March —, 1983]

JUSTICE REHNQUIST, joined by JUSTICE POWELL,
dissenting.

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To: The Chief Justice
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Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

Pp. 1-2, 5-8, 10, 12-30, 34

From: **Justice Rehnquist**

Circulated: _____

MAR 24 1983

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1196

**WILLIAM H. SMITH, PETITIONER v.
DANIEL R. WADE**

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

[March —, 1983]

JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE and
JUSTICE POWELL join, dissenting.

This case requires us to determine what degree of culpability on the part of a defendant in an action under 42 U. S. C. § 1983 will permit an award of punitive damages. The District Court instructed the jury that it could award punitive damages in favor of the plaintiff if it concluded that the defendant's conduct constituted "reckless or callous disregard of, or indifference to, the rights or safety of others." In my view, a forthright inquiry into the intent of the 42d Congress and a balanced consideration of the public policies at issue compel the conclusion that the proper standard for an award of punitive damages under § 1983 requires at least some degree of bad faith or improper motive on the part of the defendant.

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To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

Circulated: _____

Recirculated: APR 14 1983

1, 12-15, 17-19, 28, 31-33

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1196

**WILLIAM H. SMITH, PETITIONER v.
DANIEL R. WADE**

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

[April —, 1983]

JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE and
JUSTICE POWELL join, dissenting.

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The Court rejects a "wrongful intent" standard, instead requiring a plaintiff to show merely "reckless . . . indifference to the federally protected rights of others." The following justifications are offered by the Court for this result: first, the rule in "most cases [decided in the last 15 years] under state common law" is "more or less" equivalent to a recklessness standard; second, the Court asserts that a similar rule "prevailed at the time of the enactment of § 1983"; and finally, there is an "absence of any persuasive argument" for not ap-

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 8, 1983

Re: 81-1196 - Smith v. Wade

Dear Bill:

Please join me.

Respectfully,



Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 2, 1983

Re: 81-1196 - Smith v. Wade

Dear Bill:

Bill Rehnquist has written a dissenting opinion which is far stronger than anything advanced in the briefs or argument of this case. I must confess that simply on the basis of one reading of his opinion, I have serious doubts about my vote. I will study the case further and await with interest what you may say in response but I thought it only fair to tell you that I now have serious doubts about the outcome of this case.

Respectfully,



Justice Brennan

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 15, 1983

Re: 81-1196 - Smith v. Wade

Dear Bill:

You win. Twenty-six pages of footnotes clearly outweigh 24 pages of text. I apologize for almost being overwhelmed by the dissent's citation of Ogg v. Murdock but I've now seen the clear light of day through an appropriate 19th Century perspective.

Respectfully,



Justice Brennan

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

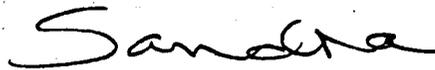
February 8, 1983

No. 81-1196 Smith v. Wade

Dear Bill,

Please join me.

Sincerely,



Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

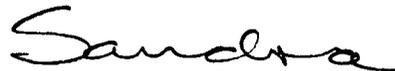
March 14, 1983

No. 81-1196 Smith v. Wade

Dear Bill,

I find Bill Rehnquist's dissent very persuasive. I assume you will be making some changes in response, which I will want to consider. As of now, he may have caused me sufficient concern to change my view.

Sincerely,



Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

March 31, 1983

No. 81-1196 Smith v. Wade

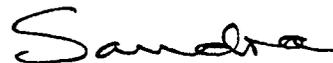
Dear Bill,

As you know, I have been concerned about the emerging "battle of the footnotes" in this case. I have reluctantly concluded there is no real winner in that battle due to the number of conflicting holdings and the lack of clarity of the language contained in them. It seems to me we are forced to resolve the issue as to whether reckless conduct will support a punitive damages award under §1983 by determining which rule best accords with the policies of §1983. The policy considerations lead me to conclude that recovery of punitive damages for reckless conduct does not sufficiently further the policies of §1933.

As difficult as it is to admit my previous evaluation of the case was in error, I ask your indulgence in allowing me to withdraw my joinder for the purpose of writing separately. I believe you still will have a Court for your opinion because I was a sixth vote.

I will not delay you more than a couple of days.

Sincerely,



Justice Brennan

Copies to the Conference

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

From: **Justice O'Connor**

Circulated: APR 4 1983

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1196

WILLIAM H. SMITH, PETITIONER *v.*
DANIEL R. WADE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

[April —, 1983]

JUSTICE O'CONNOR, dissenting.

Although I agree with the result reached in JUSTICE REHNQUIST's dissent, I write separately because I cannot agree with the approach taken by either the Court or JUSTICE REHNQUIST. Both opinions engage in exhaustive, but ultimately unilluminating, exegesis of the common law of the availability of punitive damages in 1871. Although both the Court and JUSTICE REHNQUIST display admirable skills in legal research and analysis of great numbers of musty cases, the results do not significantly further the goal of the inquiry: to establish the intent of the 42d Congress. In interpreting § 1983, we have often looked to the common law as it existed in 1871, in the belief that, when Congress was silent on a point, it intended to adopt the principles of the common law with which it was familiar. See, *e. g.*, *City of Newport v. Fact Concerts, Inc.*, 453 U. S. 247, 258 (1981); *Carey v. Phiphus*, 435 U. S. 247, 255 (1978). This approach makes sense when there was a generally prevailing rule of common law, for then it is reasonable to assume that congressmen were familiar with that rule and imagined that it would cover the cause of action that they were creating. But when a significant split in authority existed, it strains credulity to argue that Congress simply assumed that one view rather than the other would govern. Particularly in a case like this one, in