The Burger Court Opinion Writing Database

Bush v. Lucas

462 U.S. 367 (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

June 3, 1983

RE: 81-469 - Bush v. Lucas

Dear John:

I join.

Regards,

Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 24, 1983

Re: No. 81-469

Bush v. Lucas

Dear John,

I agree.

Sincerely,

Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 19, 1983

Re: 81-469 - Bush v. Lucas

Dear John,

I agree.

Sincerely,

Byron

Justice Stevens

Copies to the Conference

cpm

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

From: **Justice Marshall**

Circulated: JUN 2 1983

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81–469

WILLIAM C. BUSH, PETITIONER *v.* WILLIAM R. LUCAS

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

[June ——, 1983]

JUSTICE MARSHALL, concurring.

I join the Court's opinion because I agree that there are "special factors counselling hesitation in the absence of affirmative action by Congress." *Bivens* v. *Six Unknown Fed. Narcotics Agents*, 403 U. S. 388, 396 (1971). I write separately only to emphasize that in my view a different case would be presented if Congress had not created a comprehensive scheme that was specifically designed to provide a remedy for civil service employees who are discharged or disciplined in violation of their First Amendment rights, cf. *Carlson* v. *Green*, 446 U. S. 14, 23 (1980), and that affords relief that is as effective as a damage action.

I cannot agree with petitioner's assertion that civil service remedies are less effective than an individual damages remedy and do not provide full compensation for the harm suffered. See *ante*, at 5. To begin with, the procedure provided by the civil service scheme is in many respects preferable to the judicial procedure under a *Bivens* action. See Brief for Respondent 18–21. For example, the burden of proof in an action before the Civil Service Commission must be borne by the agency, rather than by the discharged employee. See *Bishop* v. *Tice*, 622 F. 2d 349, 357, n. 15 (CA8 1980). Moreover, the employee is not required to overcome the qualified immunity of executive officials as he

Substantially revised

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

From: **Justice Marshall**

Circulated: _____

Recirculated: JUN 8 1983

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81–469

WILLIAM C. BUSH, PETITIONER *v.*
WILLIAM R. LUCAS

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

[June ——, 1983]

JUSTICE MARSHALL, concurring.

I join the Court's opinion because I agree that there are "special factors counselling hesitation in the absence of affirmative action by Congress." *Bivens* v. *Six Unknown Fed. Narcotics Agents*, 403 U. S. 388, 396 (1971). I write separately only to emphasize that in my view a different case would be presented if Congress had not created a comprehensive scheme that was specifically designed to provide full compensation to civil service employees who are discharged or disciplined in violation of their First Amendment rights, cf. *Carlson* v. *Green*, 446 U. S. 14, 23 (1980); *Sonntag* v. *Dooley*, 650 F. 2d 904, 907 (CA7 1981), and that affords a remedy that is substantially as effective as a damage action.

Although petitioner may be correct that the administrative procedure created by Congress, unlike a *Bivens* action,* does not permit recovery for loss due to emotional distress and mental anguish, Congress plainly intended to provide what it regarded as full compensatory relief when it enacted the Back Pay Act of 1966, 5 U. S. C. (Supp. V) § 5596. The Act was designed to "pu[t] the employee in the same position he would have been in had the unjustified or erroneous

*See, *e. g.*, *Halperin* v. *Kissinger*, 606 F. 2d 1192, 1207–1208 (CADC 1979), aff'd by an equally divided Court, 452 U. S. 713 (1981).

pp. 1-2

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

From: **Justice Marshall**

Circulated: _____

Recirculated: JUN 9 1983

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81–469

WILLIAM C. BUSH, PETITIONER *v.*
WILLIAM R. LUCAS

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

[June ——, 1983]

JUSTICE MARSHALL, concurring. with whom Justice BLACKMUN joins,

I join the Court's opinion because I agree that there are "special factors counselling hesitation in the absence of affirmative action by Congress." *Bivens* v. *Six Unknown Fed. Narcotics Agents*, 403 U. S. 388, 396 (1971). I write separately only to emphasize that in my view a different case would be presented if Congress had not created a comprehensive scheme that was specifically designed to provide full compensation to civil service employees who are discharged or disciplined in violation of their First Amendment rights, cf. *Carlson* v. *Green*, 446 U. S. 14, 23 (1980); *Sonntag* v. *Dooley*, 650 F. 2d 904, 907 (CA7 1981), and that affords a remedy that is substantially as effective as a damage action.

Although petitioner may be correct that the administrative procedure created by Congress, unlike a *Bivens* action,* does not permit recovery for loss due to emotional distress and mental anguish, Congress plainly intended to provide what it regarded as full compensatory relief when it enacted the Back Pay Act of 1966, 5 U. S. C. (Supp. V) § 5596. The Act was designed to "pu[t] the employee in the same position he would have been in had the unjustified or erroneous

*See, *e. g.*, *Halperin* v. *Kissinger*, 606 F. 2d 1192, 1207–1208 (CADC 1979), aff'd by an equally divided Court, 452 U. S. 713 (1981).

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 9, 1983

Re: No. 81-469 - Bush v. Lucas

Dear John:

Please join me.

Sincerely,

Harry

Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 9, 1983

Re: No. 81-469 - Bush v. Lucas

Dear Thurgood:

Please add my name to the second draft of your concurring opinion as circulated June 8. By joining your opinion I, of course, also join John's.

Sincerely,

Harry

Justice Marshall

cc: The Conference

May 27, 1983

81-469 Bush v. Lucas

Dear John:

You have been receiving more than your share of communications about this case, and I hesitate to add to them. You have written a strong and thoughtful opinion that I expect to join.

The change you made in the first paragraph on page 11 in response to Bill Rehnquist, is helpful on what concerns me primarily. I agree with your sentence (p. 11):

> "When Congress provides an alternative remedy, it may, of course, indicate its intent by statutory language, by clear legislative history, or perhaps even by the statutory remedy itself, that the Court's power should not be exercised."

In the immediately following paragraph, however, you say that Congress has not "indicated its intent" either by express language or by providing an equally effective substitute. You make no reference at this point to "legislative history". Rather, you indicate that the answer here turns on whether there are "special factors counseling hesitation". Would it not be desirable, as you do in the preceding paragraph, to retain and rely on "legislative history" as a guide to congressional intent?

In Part II, your opinion sets forth the history extremely well. In Carlson, as you note on p. 10, the Court observed that the legislative history "made it crystal clear that Congress view[ed] FTCA and Bivens as parallel, complementary causes of action". I think your presentation of the far more elaborate history of the civil service system makes it equally crystal clear that Congress intended to create an adequate and comprehensive system of remedies.

Your opinion relies on this history as constituting "special factors counseling hesitation". This is certainly true. But does not this history - that includes the elaborate scheme of remedies - go beyond merely "counseling hesitation"? I would think it dispositive as to legislative intent, though it is not necessary to rely solely on this. The fact of federal employment itself is also a factor counseling hesitation.

One further point: Note 28, p. 18, identifies certain personnel actions not covered. Included among these are "national security" personnel. The concluding sentence in the note states that we need not "decide whether constitutional damages actions" would be barred if brought by persons not covered. The sentence, though true, is not necessary. Experience indicates that sentences like this often invite litigation. In view of the British experience - that I understand has been more damaging than has been reported - it would be intolerable (for example) for the most sensitive intelligence operation to be embroiled for months in complicated and public civil service procedures.

Sincerely,

Justice Stevens

lfp/ss

May 30, 1983

81-469 Bush v. Lucas

Dear John:

The changes suggested in your letter of May 27 substantially meet my concerns.

If they are acceptable to your other "joins", I will be glad to join you also.

Sincerely,

Justice Stevens

lfp/ss

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 31, 1983

81-469 Bush v. Lucas

Dear John:

Please join me.

Sincerely,

L. Lewis

Justice Stevens

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 20, 1983

Re: No. 81-469 Bush v. Lucas

Dear John:

I think you have done a fine job on a difficult opinion. I do, however, have some concern with the first paragraph on p. 11 and with the carry-over sentence on pp. 22-23.

The second sentence of the paragraph on p. 11 states "As long as it provides a constitutionally adequate if not identical alternative remedy, Congress may express its intent, by statutory language or clear legislative history, that such power should not be exercised." I have several difficulties with this proposition. It may fairly be read as expressing the view that if Congress does not provide a "constitutionally adequate if not identical alternative remedy," then it may not deny federal courts the power to invoke a particular remedy. To my mind, this is inconsistent with the statement in note 14, that "we need not reach the question whether the Constitution itself requires a judicially-fashioned damages remedy in the absence of any other remedy to vindicate the underlying right, unless there is an express textual command to the contrary." I agree with note 14, which I take to mean that we need not decide in this case whether the Constitution places any requirements on the type of remedies Congress makes available in federal court under §1331. The sentence, quoted above, in text on p. 11 suggests that there is some standard of "constitutional adequacy" applicable to remedies for constitutional violations. I do not think this case requires us to decide whether or not Congress could entirely abrogate a personal damages action for, by way of example, Fourth Amendment violations, and I would prefer not to prejudge the issue, as I think the sentence as currently phrased does. (Indeed, although I am sure the opposite was intended, the sentence might even be read as suggesting that

alternative remedies created by Congress must be "identical" to a Bivens damage action.)

I also am concerned that the paragraph may create a mistaken impression regarding the continued vitality of the second reason, articulated in Carlson v. Green, 446 U.S. 14 (1980), for not implying a Bivens remedy. Carlson, of course, said that when "Congress has provided an alternative remedy which it explicitly declared to be a substitute for recovery directly under the Constitution and viewed as equally effective." Id., at 18-19. It seems to me that the first paragraph on p. 11 shifts the focus of this prong from what Congress thinks is "equally effective" to what the courts think is equally effective. The draft states: "Moreover, by creating an equally effective remedy, Congress may eliminate the need for judicial recognition of a Bivens-type action for damages." I would prefer to stay with the notion that the primary decision as to the efficacy of an alternative remedy should rest on Congress. (Indeed, this view seems far more consistent with the notion that Congress possesses greater competence than the Court in certain areas, which you have adopted as the theme of your opinion.)

My second concern is with aspects of the carry-over sentence on pp. 22-23, and the accompanying footnote. First, as to the final sentence of note 38, I wonder whether congressional inactivity in regulating an area necessarily cuts against a Bivens remedy. In the area of national security, for example, I would think congressional inactivity represents its considered judgment that the executive can do a better job than the legislative branch. Such a position would suggest to me that the courts would do well to follow Congress's example. (I suppose, given the second example in note 28, that future cases in this area are not entirely hypothetical.)

More generally, I doubt that courts can make principled decisions based on the degree of access of certain groups to Congress. First, it is difficult to see any way to decide what groups have influence and what groups do not. Moreover, different groups have varying amounts of access to Congress, depending largely upon the issue involved. (The plaintiff in Davis, for example, was a federal employee, and perhaps a member of NOW, but the influence of these groups was unable to provide her with any remedy.) I fear that if we attempt to ascertain the political power of various groups we will lead ourselves and the lower courts into a confusing areas lacking any real guidelines. I think this

would be unfortunate because the other factors you articulate in determining whether Congress is better able to make judgments in a particular area do, to my way of thinking, provide useful guidance.

Sincerely,

Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 23, 1983

Re: No. 81-469 Bush v. Lucas

Dear John:

The proposal in your letter of May 20th is quite satisfactory so far as my concerns about the paragraph at the top of p. 11 of your present draft are concerned. Insofar as fn. 38 and the run-over sentence on pp. 22 and 23 are concerned, your proposal is certainly acceptable; I would prefer the course suggested in my letter to you, but will leave it entirely to your discretion.

If you will make the proposed modification in the paragraph at the top of p. 11, I will be happy to join.

Sincerely,

WHR

Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 25, 1983

Re: No. 81-469 Bush v. Lucas

Dear John:

Please join me.

Sincerely,

Justice Stevens

cc: The Conference

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

From: **Justice Stevens**

Circulated: MAY 18 '83

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-469

WILLIAM C. BUSH, PETITIONER *v.*
WILLIAM R. LUCAS

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

[May ——, 1983]

JUSTICE STEVENS delivered the opinion of the Court.

Petitioner asks us to authorize a new nonstatutory damages remedy for federal employees whose First Amendment rights are violated by their superiors. Because such claims arise out of an employment relationship that is governed by comprehensive procedural and substantive provisions giving meaningful remedies against the United States, we conclude that it would be inappropriate for us to supplement that regulatory scheme with a new judicial remedy.

Petitioner Bush is an aerospace engineer employed at the George C. Marshall Space Flight Center, a major facility operated by the National Aeronautics and Space Administration in Alabama. Respondent Lucas is the Director of the Center. In 1974 the facility was reorganized and petitioner was twice reassigned to new positions. He objected to both reassignments and sought formal review by the Civil Service Commission.[1] In May and June 1975, while some of his administrative appeals were pending, he made a number of public statements, including two televised interviews, that

[1] The record indicates that petitioner filed two appeals from the first reassignment and three appeals from the second. App. to Pet. for Writ of Cert. e-3 to e-4. He asserts that he had previously made unsuccessful attempts within the Center to obtain redress. App. 30.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 18, 1983

81-469 - Bush v. Lucas

Dear Sandra:

Your point is well taken. I trust it will be satisfactory if I revise the sentence to read this way:

> "Thus, we do not deicde whether or not it would be good policy to permit a federal employee to recover damages from a supervisor who has improperly disciplined him for exercising his First Amendment rights."

Respectfully,

JPS

Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 20, 1983

Re: 81-469 - Bush v. Lucas

Dear Bill:

Would it satisfy your concerns if I revised the paragraph at the top of page 11 to read as follows:

> "This much is established by our prior cases. The federal courts' statutory jurisdiction to decide federal questions confers adequate power to award damages to the victim of a constitutional violation. When Congress provides an alternative remedy, it may, of course, indicate its intent, by statutory language, by clear legislative history, or perhaps even by the statutory remedy itself, that the Court's power should not be exercised. In the absence of such a congressional directive, the federal courts must make the kind of remedial determination that is appropriate for a common-law tribunal, paying particular heed, however, to any special factors counselling hesitation before authorizing a new kind of federal litigation."

With respect to your concern about footnote 38 and the runover sentence on pages 22 and 23, I would much rather have your vote than either the footnote or the sentence. You're dead right, of course, about Davis, but I was struggling for ways to separate this case from Carlson and thought the point had enough merit to buttress the different result in the two cases. I wonder if it would be acceptable to you to incorporate the sentence in the text as well as footnote 38 into the end of footnote 37. If you feel strongly about it

and others agree with you, I will of course eliminate it entirely subject, of course, to any comment that may be forthcoming from those who have already joined.

Respectfully,

Justice Rehnquist

Copies to the Conference

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

Rp. 11, 22-23

From: **Justice Stevens**

Circulated: _____

Recirculated: MAY 24 '83

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-469

WILLIAM C. BUSH, PETITIONER *v.*
WILLIAM R. LUCAS

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

[May ——, 1983]

JUSTICE STEVENS delivered the opinion of the Court.

Petitioner asks us to authorize a new nonstatutory damages remedy for federal employees whose First Amendment rights are violated by their superiors. Because such claims arise out of an employment relationship that is governed by comprehensive procedural and substantive provisions giving meaningful remedies against the United States, we conclude that it would be inappropriate for us to supplement that regulatory scheme with a new judicial remedy.

Petitioner Bush is an aerospace engineer employed at the George C. Marshall Space Flight Center, a major facility operated by the National Aeronautics and Space Administration in Alabama. Respondent Lucas is the Director of the Center. In 1974 the facility was reorganized and petitioner was twice reassigned to new positions. He objected to both reassignments and sought formal review by the Civil Service Commission.[1] In May and June 1975, while some of his administrative appeals were pending, he made a number of public statements, including two televised interviews, that

[1] The record indicates that petitioner filed two appeals from the first reassignment and three appeals from the second. App. to Pet. for Writ of Cert. e-3 to e-4. He asserts that he had previously made unsuccessful attempts within the Center to obtain redress. App. 30.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

These changes will enable me to join. J.P.S.

May 27, 1983

Re: 81-469 - Bush v. Lucas

Dear Lewis:

This is an important case and I therefore particularly welcome any comments or suggestions that you think appropriate. I think there is merit to your first suggestion and would like to accommodate it. Because the opinion develops from page 11 on, with emphasis first on the judicial history and later on the legislative history, I wonder if I might not be able to take care of your concern by simply inserting a reference to "history" (leaving out the word "legislative"). What I suggest is making the second sentence in the second paragraph on page 11 read this way:

> "There is, however, a good deal of history that is relevant to the question whether a federal employee's attempt to recover damages from his superior for violation of his First Amendment rights involves any 'special factors counselling hesitation.'"

I will make another language change on page 11: delete the word "either" in the first sentence of the second paragraph, thus avoiding the inference that there were only two ways in which Congress could resolve the question.

I appreciate the force in your suggestion that perhaps we should interpret the legislative history as going beyond merely "counselling hesitation." I really think it better to leave the basic holding as it is, however, because it establishes the principle that all one needs is enough legislative history to counsel hesitation in order to justify the refusal to imply a remedy. If we were to go further and interpret the legislative history as tantamount to an

outright rejection of an implied remedy, it might suggest that if we have nothing more than factors counselling hesitation a remedy should be implied.

Another reason for not over-emphasizing "legislative history" is that the history on which we are relying in this case actually occurred long before the Bivens case was decided and therefore is not exactly comparable to the post-Bivens legislative history in Carlson.

But there was a general revision in 1978

I think your comment on note 28 on page 18 is valid. I will revise it to read:

> "Not all personnel actions are covered by this system. For example, there are no provisions for appeal of either suspensions for 14 days or less, 5 U.S.C. §7503 (Supp. V 1981), or adverse actions against probationary employees, 5 U.S.C. §7511 (Supp. V 1981). In addition, certain actions by supervisors against federal employees, such as wiretapping, warrantless searches, or uncompensated takings, would not be defined as 'personnel actions' within the statutory scheme."

These changes are, of course, subject to keeping my court, but I can't believe that they will trouble anyone.

Respectfully,

John

Justice Powell

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

From: **Justice Stevens**

Circulated: _____

Recirculated: MAY 31 '83

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81–469

WILLIAM C. BUSH, PETITIONER *v.*
WILLIAM R. LUCAS

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

[June ——, 1983]

JUSTICE STEVENS delivered the opinion of the Court.

Petitioner asks us to authorize a new nonstatutory damages remedy for federal employees whose First Amendment rights are violated by their superiors. Because such claims arise out of an employment relationship that is governed by comprehensive procedural and substantive provisions giving meaningful remedies against the United States, we conclude that it would be inappropriate for us to supplement that regulatory scheme with a new judicial remedy.

Petitioner Bush is an aerospace engineer employed at the George C. Marshall Space Flight Center, a major facility operated by the National Aeronautics and Space Administration in Alabama. Respondent Lucas is the Director of the Center. In 1974 the facility was reorganized and petitioner was twice reassigned to new positions. He objected to both reassignments and sought formal review by the Civil Service Commission.[1] In May and June 1975, while some of his administrative appeals were pending, he made a number of public statements, including two televised interviews, that

[1] The record indicates that petitioner filed two appeals from the first reassignment and three appeals from the second. App. to Pet. for Writ of Cert. e-3 to e-4. He asserts that he had previously made unsuccessful attempts within the Center to obtain redress. App. 30.

HAB

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 13, 1983

MEMORANDUM TO THE CONFERENCE

Re: Case held for No. 81-469 -- Bush v. Lucas

No. 81-1010, Purtill v. Harris

In this case, the United States Court of Appeals for the Third Circuit held that petitioner, a federal employee, could not bring a Bivens action against his supervisors on the ground that they had violated his Fifth Amendment rights by harassing him in retaliation for filing age discrimination complaints. The court of appeals held that, by enacting the Age Discrimination in Employment Act, Congress had intended to preempt Bivens remedies arising out of age discrimination claims by federal employees, and also that there were special factors counselling hesitation because of the relationship between the federal government and its employees. In reaching the latter conclusion the court followed the CA5 decision in Bush v. Lucas, which we have unanimously affirmed. Because I believe that the decision below is correct, I will vote to DENY the petition.

Respectfully,

JPS

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 18, 1983

No. 81-469 Bush v. Lucas

Dear John,

I am prepared to join your opinion with one minor change in the first sentence of the first full paragraph on page 23. As presently drafted, it states "we do not decide on the merits whether a federal employee should be allowed to recover damages ...."

I believe that the opinion is indeed a determination on the merits of Lucas' claim in this case. I assume the sentence is intended to express the thought that we are not passing on the advisability of the creation by Congress of a damages remedy.

Would you consider a change along the following lines?

> "Thus, we do not address the advisability of permitting a federal employee to recover damages from a supervisor who has improperly disciplined him for exercising his First Amendment rights."

Sincerely,

Sandra

Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 19, 1983

No. 81-469 Bush v. Lucas

Dear John,

Your proposed language is fine. Please join me.

Sincerely,

Sandra

Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 23, 1983

No. 81-469 Bush v. Lucas

Dear John,

I agree with the changes proposed in response to Bill Rehnquist's suggestions.

Sincerely,

Sandra

Justice Stevens

Copies to the Conference