

# The Burger Court Opinion Writing Database

## *Chappell v. Wallace*

462 U.S. 296 (1983)

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



Justice White  
Justice Marshall ✓  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **The Chief Justice**  
MAY 23 1983

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

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

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-167

GEORGE C. CHAPPELL, ET AL., PETITIONERS v.  
VERNON WALLACE ET AL.

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

[May —, 1983]

CHIEF JUSTICE BURGER delivered the opinion of the  
Court.

We granted certiorari to determine whether enlisted military personnel may maintain suits to recover damages from superior officers for injuries sustained as a result of violations of constitutional rights in the course of military service.

I

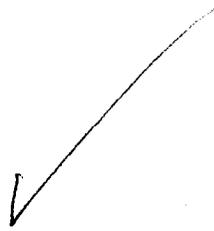
Respondents are five enlisted men who serve in the United States Navy on board a combat naval vessel. Petitioners are the Commanding Officer of the vessel, four lieutenants and three noncommissioned officers.

Respondents brought action against these officers seeking damages, declaratory judgment, and injunctive relief. Respondents alleged that because of their minority race petitioners failed to assign them desirable duties, threatened them, gave them low performance evaluations, and imposed penalties of unusual severity. App. 5-16. Respondents claimed, *inter alia*, that the actions complained of "deprived [them] of [their] rights under the Constitution and laws of the United States, including the right not to be discriminated against because of [their] race, color or previous condition of servitude. . . ." App. 7, 9, 11, 13, 15. Respondents also alleged a conspiracy among petitioners to deprive them of

5/23  
77

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

CHAMBERS OF  
THE CHIEF JUSTICE



May 25, 1983

Re: No. 82-167, Chappell v. Wallace

Dear Lewis:

Thank you for your note in this case. Bill Rehnquist has expressed some similar concerns. I certainly have no intention of retreating from my objection to Carlson's "objectionable language." But, like it or not, as you point out, it is now the law. My intention in this case is to give content to and expand the "special factors" limitation on Bivens. We can give similar treatment to the "alternative remedy" limitation on Bivens when the case arises. I lean to wait for that case, but I will ponder on my footnote 1 and see if I can't meet your concerns in my next draft.

Regards,

Justice Powell

cc: Justice Rehnquist

pp. 2-3,9

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

✓

From: **The Chief Justice**

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

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2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-167

**GEORGE C. CHAPPELL, ET AL., PETITIONERS v.  
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THE CHIEF JUSTICE

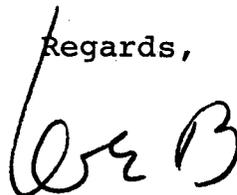
May 26, 1983

Re: No. 82-167, Chappell v. Wallace

Dear Thurgood:

I will be glad to accept your main point and also drop the final sentence. The second to last sentence has been "neutralized."

Regards,



Justice Marshall

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Many thanks!



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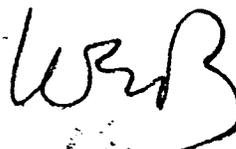
May 27, 1983

Re: No. 82-167, Chappell v. Wallace

Dear Bill:

To allay your concerns, I will change my "also will"  
in footnote 1 to a "may also" in the final draft.

Regards,



Justice Brennan

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CHAMBERS OF  
THE CHIEF JUSTICE

June 3, 1983

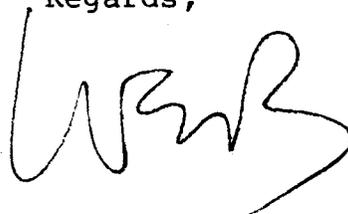
MEMORANDUM TO THE CONFERENCE

RE: 82-167 - Chappell, et al. v. Wallace

Several of you had mild problems with Note #1, page 2. I could solve the problem with changes but lean towards simply dropping Note #1 entirely.

Any dissent?

Regards,

A handwritten signature in dark ink, appearing to be 'W. B. Brennan', written in a cursive style.

p. 2

Justice White  
 Justice Marshall  
 Justice Blackmun  
 Justice Powell  
 Justice Rehnquist  
 Justice Stevens  
 Justice O'Connor

From: **The Chief Justice**

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

Recirculated: JUN 7 1983

3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 82-167

GEORGE C. CHAPPELL, ET AL., PETITIONERS *v.*  
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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

May 25, 1983

Re: No. 82-167

George C. Chappell, et al.  
v. Vernon Wallace, et al.

Dear Chief,

I agree.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill".

The Chief Justice

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

May 27, 1983

Re: Chappell v. Wallace, No. 82-167

Dear Chief:

On looking further at your opinion, and at your latest revisions, I wonder if I might suggest a further change to footnote 1. At present, it seems to foreclose the possibility that the Constitution might, in some extraordinary circumstances, require that a remedy be provided, even if Congress has excluded the remedy by statute. I note that John's opinion in Bush v. Lucas expressly reserves this question, p. 11 n. 14. Ought it not be reserved in Chappell as well? I think it should.

Sincerely,

*Bill* (CST)

WJB, Jr.

The Chief Justice

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Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 24, 1983

Re: 82-167 - Chappell v. Wallace

Dear Chief,  
I agree.

Sincerely,  


The Chief Justice  
Copies to the Conference  
cpm

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 6, 1983

Re: 82-167 - Chappell v. Wallace

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Dear Chief,

No dissent from me.

Sincerely yours,



The Chief Justice

cc: The Conference

cpm

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 26, 1983

Re: No. 82-167-Chappell v. Wallace

Dear Chief:

With respect to footnote 3 on page 9 of your opinion, it seems unnecessary to cast doubt on the continuing authority of Wilkes v. Dinsman. In my view, the first point in the footnote--that the plaintiff in Wilkes asserted a well-recognized common law cause of action, and did not ask the court to imply a new cause of action--is sufficient to distinguish that case. If you could see your way clear to omitting the last two sentences of the footnote, I will certainly join your opinion. If not, I might still join.

Sincerely,



T.M.

The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 27, 1983

Re: No. 82-167-Chappell v. Wallace

Dear Chief:

Please join me.

Sincerely,

*JM*  
T.M.

The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 27, 1983

Re: No. 82-167 - Chappell v. Wallace

Dear Chief:

Please join me in your second draft circulated May 26.

Sincerely,

*H. A. B.*

The Chief Justice

cc: The Conference

May 23, 1983

82-167 Chappell v. Wallace

Dear Chief:

I think your opinion in this case is excellent, but I do have a serious reservation about your footnote 1 on Carlson v. Green.

The footnote quotes Carlson's language with respect to an "alternative remedy" having been "explicitly declared to be a substitute". This is the language that you and I dissented from strongly in Carlson.

To be sure, Carlson is the law. But the Court in that case also said that the legislative history "made it crystal clear that Congress views FTCA and Bivens as parallel, complementary causes of action". 446 U.S., at 20. There is no evidence whatever in this case of any such showing from the legislative history. Indeed, on the contrary, the whole history of legislation and court decisions on the military belies - as you make clear - any intention to allow damage suits against officers.

I am sure you can make some appropriate revision in this footnote. It is unnecessary to repeat the objectionable language. I am concerned also by John's opinion in Bush.

Sincerely,

The Chief Justice

lfp/ss

See also  
3rd  
Draft  
of  
Bush  
p 11

June 1, 1983

81-167 Chappell v. Wallace

Dear Chief:

Since our conversation I find that that n. 1 - though modified slightly - has not been removed from your latest draft of May 26.

Although I would prefer to omit the note entirely, the first sentence in the note would meet my concerns if it reads as follows:

"A Bivens-type remedy may also be precluded when Congress expressly forecloses such a remedy by statutory language, by clear legislative history, or by a substitute remedy that is equally effective.

The underscored clause above is quite important, as it provides greater flexibility than does Carlson itself. Yet, as noted in my letter to you of May 23, Carlson does rely on legislative history.

If you conform the footnote to the above language, it would be strictly in accord with what John has written in Bush on page 11 of his circulation of May 31. I enclose a xerox copy of that page with the language marked.

Sincerely,

The Chief Justice

lfp/ss

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Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

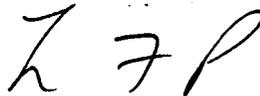
June 6, 1983

82-167 Chappell v. Wallace

Dear Chief:

Please join me.

Sincerely,

Handwritten signature of Lewis F. Powell, Jr. in cursive script.

The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 27, 1983

Re: No. 82-167 Chappell v. Wallace

Dear Chief:

I agree with the text of footnote 1 as circulated in your most recent draft, and, contrary to Bill Brennan's suggestion, I would prefer to see it remain the way it is.

Sincerely,

*WRM*

The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 1, 1983

Re: No. 82-167 Chappell v. Wallace

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 JOHN PAUL STEVENS

May 27, 1983

Re: 82-167 - Chappell v. Wallace

Dear Chief:

Please join me.

Respectfully,



The Chief Justice

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

May 23, 1983

No. 82-167 Chappell v. Wallace

Dear Chief,

I agree with your discussion of the Bivens claim in this case and will be joining the disposition of that claim. I am, however, puzzled about the disposition of the claim under §1985(3). Your statement of the case suggests that it is before us, but there is no discussion or decision on it. I wonder if you could clarify whether it is before us, and, if so, whether we are deciding it or leaving it for the Court of Appeals on remand.

Sincerely,



The Chief Justice

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JUSTICE SANDRA DAY O'CONNOR

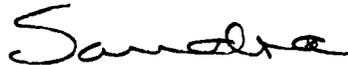
May 27, 1983

No. 82-167 Chappell v. Wallace

Dear Chief,

Please join me.

Sincerely,



The Chief Justice

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CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

June 6, 1983

No. 82-167 Chappel v. Wallace

Dear Chief,

Although I think fn 1 is useful in its cross reference to Bush, I do not dissent from its omission.

Sincerely,



The Chief Justice

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