

The Burger Court Opinion Writing Database

Davis v. Scherer

468 U.S. 183 (1984)

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

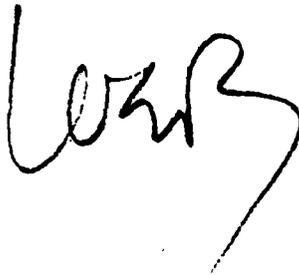
May 2, 1984

83-490
83-710

MEMORANDUM TO: Justice White
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

See attached.

Regards,

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

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

CHAMBERS OF
THE CHIEF JUSTICE

June 19, 1984

Re: 83-490 - Davis v. Scherer

Dear Lewis:

I join.

Regards,



Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 2, 1984

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CHIEF JUSTICE

'84 MAY -2 AIO:50

Memorandum to the Chief Justice

From Justice Brennan and Justice Marshall

Thurgood has examined Davis v. Scherer, No. 83-490, and concluded that he probably cannot write in support of the reversal on the issue of qualified immunity. Accordingly, he is not transferring Berkemer v. McCarthy, No. 83-710, to Bill in exchange.

Therefore, we feel that Davis v. Scherer should be assigned to someone other than either of us. Bill is willing to take anything that any other Justice in the majority to reverse Davis v. Scherer is willing to exchange.

Sincerely,

Bill
W.J.B.

J.M.
T.M.

*Any volunteers?
WJB*

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

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

84 JUN -4 AM 30

June 4, 1984

No. 83-490

Davis v. Scherer

Dear Lewis:

I'm still not able to join you in
this. I'll try my hand at a dissent in
due course.

Sincerely,

Bill

Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

June 20, 1984

Re: Davis v. Scherer, No. 83-490

Dear Sandra:

In preparing a dissent in this case, I have come to see merit in a point you made at Conference. The Court is unanimous in concluding that the District Court erred in declaring Florida's new civil service statute unconstitutional. My notes indicated that you were not sure whether, with that portion of the judgment vacated, there was any basis for the award of damages--the aspect of the case that presents the immunity question. And the other Justices who have not joined the proposed majority did not seem to disagree with you. The more I have examined the District Court's opinion, the more confusing I have found it. The order amending the judgment is, at best, very unclear as to the basis for the award of damages.

In view of the extremely murky district court opinion--and the summary affirmance by the Court of Appeals--I think it is worth considering simply vacating the declaratory portion of the judgment, paragraph 2, and remanding for the Court of Appeals to determine in the first instance where that leaves the case. Because you had not yet joined the proposed opinion on the merits, it occurred to me that you might still be disposed toward this kind of disposition. Although I am prepared to file a dissent on the merits if the majority chooses to reach them, I would be interested to hear your thoughts on a possible vacate and remand order.

Sincerely,


WJB, Jr.

Justice O'Connor

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SUPREME COURT, U.S.
JUSTICE MARSHALL

'84 JUN 21 A9:56

W.A.
Please go
and to your opinion
sent to Brennan

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

From: Justice Brennan

Circulated: 6/21/84

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DAVIS v. SCHERER

No. 83-490

1st typed draft

JUSTICE BRENNAN, concurring in part and dissenting in part.

In Harlow v. Fitzgerald, 457 U.S. 800 (1982), the Court decided that government officials seeking to establish qualified immunity must show that the acts or omissions violating the

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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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-490

RALPH DAVIS, ETC., ET AL. *v.*
GREGORY SCOTT SCHERER

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

[June —, 1984]

JUSTICE BRENNAN, concurring in part and dissenting in part.

In *Harlow v. Fitzgerald*, 457 U. S. 800 (1982), the Court decided that government officials seeking to establish qualified immunity must show that the acts or omissions violating the plaintiff's rights were objectively reasonable—specifically, that the conduct at issue did not “violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Id.*, at 815. The Court today does not purport to change that standard. Yet it holds that, despite discharging a civil service employee in 1977 without meaningful notice and an opportunity to be heard, appellants are entitled to immunity from a suit for damages. The Court reaches this decision essentially by ignoring both the facts of this case and the law relevant to appellants' conduct at the time of the events at issue. In my view, appellants plainly violated appellee's clearly established rights and the Court's conclusion to the contrary seriously dilutes *Harlow's* careful effort to preserve the availability of damages actions against governmental officials as a critical “avenue for vindication of constitutional guarantees.” 457 U. S., at 814. Accordingly, I dissent from that portion of the judgment reversing the

1,9

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'84 JUN 27 A9:47

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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JUN 26 1984

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-490

**RALPH DAVIS, ETC., ET AL. v.
GREGORY SCOTT SCHERER**

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

[June —, 1984]

JUSTICE BRENNAN, with whom JUSTICE MARSHALL, JUSTICE BLACKMUN, and JUSTICE STEVENS join, concurring in part and dissenting in part.

In *Harlow v. Fitzgerald*, 457 U. S. 800 (1982), the Court decided that government officials seeking to establish qualified immunity must show that the acts or omissions violating the plaintiff's rights were objectively reasonable—specifically, that the conduct at issue did not “violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Id.*, at 815. The Court today does not purport to change that standard. Yet it holds that, despite discharging a civil service employee in 1977 without meaningful notice and an opportunity to be heard, appellants are entitled to immunity from a suit for damages. The Court reaches this decision essentially by ignoring both the facts of this case and the law relevant to appellants' conduct at the time of the events at issue. In my view, appellants plainly violated appellee's clearly established rights and the Court's conclusion to the contrary seriously dilutes *Harlow's* careful effort to preserve the availability of damages actions against governmental officials as a critical “avenue for vindication of constitutional guarantees.” 457 U. S., at 814. Accordingly,

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②

Supreme Court of the United States
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SUPREME COURT B. Q. 20543
JUSTICE MARSHALL

CHAMBERS OF
JUSTICE BYRON R. WHITE

84 JUN -4 19 52

June 4, 1984

Re: 83-490 - Davis v. Scherer

Dear Lewis,

I agree.

Sincerely,



Justice Powell

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 4, 1984

Re: No. 83-490-Davis v. Scherer

Dear Lewis:

I await the dissent.

Sincerely,

JP

T.M.

Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 21, 1984

Re: No. 83-490-Davis v. Scherer

Dear Bill:

Please join me in your opinion concurring in part and dissenting in part.

Sincerely,



T.M.

Justice Brennan

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543 RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

84 JUN 22 P2:50

June 22, 1984

Re: No. 83-490 - Davis v. Scherer

Dear Bill:

Please join me in your dissent.

Sincerely,

Harry

Justice Brennan

cc: The Conference

May 4, 1984

Dear Chief:

This refers to your letter of May 2 asking for a volunteer to take Davis v. Scherer 83-490 off of Bill Brennan's hands in exchange for a case in which he is in the majority.

As I understand no one has held up his or her "hand", I gingerly raise mine. It seems clear that Bill needs another case. I am reluctant to surrender one of the three cases you assigned to me as I am in a position to write all three of them before the June 1 target date. Also I have lost one case you assigned to me earlier.

But I understand Bill's desire not to be left with only one case from the April arguments. Accordingly, I am glad to offer him 83-245/83-291 Pension Benefit Corp. v. Gray.

I would prefer to retain the other two cases assigned me. But if Bill does not want to write Pension Benefit, he may have Armco (83-297).

Scherer is almost a "non-case", but I will take it for a Per Curiam unless someone would like to write a Court opinion on it.

Sincerely,

The Chief Justice

lfp/ss

cc: The Conference

05/28

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SUPREME COURT, U.S.
JUSTICE MARSHALL

'84 MAY 29 A11 :09

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

From: Justice Powell

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LAF
I want the dissent
TH

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-490

**RALPH DAVIS, ETC., ET AL. v.
GREGORY SCOTT SCHERER**

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

[May —, 1984]

JUSTICE POWELL delivered the opinion of the Court.

Appellants in this case challenge the holding of the Court of Appeals that a state official loses his qualified immunity from suit for deprivation of federal constitutional rights if he is found to have violated the clear command of a state administrative regulation.

I

The present controversy arose when appellee Gregory Scherer, who was employed by the Florida Highway Patrol as a radio-teletype operator, applied for permission from the Patrol to work as well for the Escambia County Sheriff's Office as a reserve deputy. To avoid conflicts of interest, an order of the Florida Department of Highway Safety and Motor Vehicles required that proposed outside employment of Patrol members be approved by the Department. A letter from appellee's troop commander Captain K. S. Sconiers, dated September 1, 1977, granted appellee permission to accept the part-time work. The letter noted that permission would be rescinded "should [the] employment interfere . . . with your duties with [the] department." App. to Juris. Statement 5a. Later that month, Capt. Sconiers informed appellee by memorandum that permission to accept the employment was revoked. As Capt. Sconiers explained at trial, his superiors in the Highway Patrol had determined

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06/22

To: The Chief Justice
Justice Brennan
Justice White
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Justice O'Connor

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JUSTICE MARSHALL

'84 JUN 25 A9:56

p. 8

From: Justice Powell

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-490

RALPH DAVIS, ETC., ET AL. *v.*
GREGORY SCOTT SCHERER

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

[June —, 1984]

JUSTICE POWELL delivered the opinion of the Court.

Appellants in this case challenge the holding of the Court of Appeals that a state official loses his qualified immunity from suit for deprivation of federal constitutional rights if he is found to have violated the clear command of a state administrative regulation.

I

The present controversy arose when appellee Gregory Scherer, who was employed by the Florida Highway Patrol as a radio-teletype operator, applied for permission from the Patrol to work as well for the Escambia County Sheriff's Office as a reserve deputy. To avoid conflicts of interest, an order of the Florida Department of Highway Safety and Motor Vehicles required that proposed outside employment of Patrol members be approved by the Department. A letter from appellee's troop commander Captain K. S. Sconiers, dated September 1, 1977, granted appellee permission to accept the part-time work. The letter noted that permission would be rescinded "should [the] employment interfere . . . with your duties with [the] department." App. to Juris. Statement 5a. Later that month, Capt. Sconiers informed appellee by memorandum that permission to accept the employment was revoked. As Capt. Sconiers explained at trial, his superiors in the Highway Patrol had determined

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 26, 1984

MEMORANDUM TO THE CONFERENCE

RE: Terry v. Bothke, No. 83-1506
(Held for Davis v. Scherer, No. 83-490)

Respondent in this case submitted a federal income tax form for 1978 that contained only asterisks in place of figure to show respondent's income and tax. Respondent claimed that he was entitled to a refund of the amount withheld from his salary for that year. Respondent also submitted a typed affidavit explaining that he had not completed the tax form because of the unfair treatment of his 1976 return.

The Internal Revenue Service sent respondent a notice of correction of arithmetic pursuant to 26 U.S.C. §6213(b), indicating that income taxes in the amount of \$6177.87 had been assessed against him and that he should inform the IRS if he believed the balance due was incorrect. Respondent wrote back that the notice was null and void because some of the figures had no dollar sign, that the lack of signature on the notice violated his constitutional rights, and that the attachments to his 1977 return substantiated his position.

After the IRS received this letter, it sent respondent a notice of intent to levy on his salary pursuant to §6331(a) of the Internal Revenue Code. The notice informed respondent that he must pay the amount due within 10 days to avoid the levy. Petitioner, a revenue officer of the IRS, was then given responsibility for collecting respondent's delinquent account. After contacting petitioner by telephone to demand payment and ascertaining that respondent had received the notice of intent to levy, petitioner served a levy of wages on respondent's employer as authorized by §6213(b)(1) of the Code. Under that section, the IRS, after issuing a notice of correction of arithmetic and a notice of intent to levy, may levy upon a taxpayer's wages without serving the notice of deficiency generally required under §§6212 and 6213(a).

①

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

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SUPREME COURT, U.S.
JUSTICE MARSHALL

'84 MAY 30 12:55

May 30, 1984

Re: No. 83-490 Davis v. Scherer

Dear Lewis:

Please join me.

Sincerely,

wm

Justice Powell

cc: The Conference

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

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84 JUN -4 AM 1:38

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

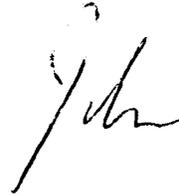
June 4, 1984

Re: 83-490 - Davis v. Scherer

Dear Lewis:

I shall await the dissent.

Respectfully,



Justice Powell

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

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SUPREME COURT, U.S.
JUSTICE MARSHALL

June 22, 1984

84 JUN 22 10:21

Re: 83-490 - Davis v. Scherer

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 SANDRA DAY O'CONNOR

June 20, 1984

No. 83-490 Davis v. Scherer

Dear Bill,

Thank you for your letter about the problems of this case. Your suggestion has merit and reflects the concerns I expressed at Conference. My views at Conference did not prevail. A majority decided to reach the merits and the case was assigned to Lewis. At this stage I am inclined to go ahead and address the merits although I would have preferred to vacate and remand had we taken that course initially.

Sincerely,



Justice Brennan

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

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JUSTICE MARSHALL

'84 JUN 22 A9:35

June 21, 1984

Re: No. 83-490 Davis v. Scherer

Dear Lewis,

Please join me.

Sincerely,



Justice Powell

Copies to the Conference