

The Burger Court Opinion Writing Database

Brandon v. Holt

469 U.S. 464 (1985)

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

December 21, 1984

Re: No. 83-1622 - Brandon v. Holt

Dear John,

I am generally in agreement with you on this case.

One point concerns me, however. You correctly state that the petitioners may amend their pleadings under Rule 15(b) of Federal Rules of Civil Procedure; however, Rule 15(b) deals with the amendment of pleadings to conform with the proof. Is this the controlling rule to apply? The amendment here amounts to a change of the parties to the suit. The director of police in his individual capacity is dropped and the City is added. Can parties be automatically added to a suit under Rule 15(b) simply because some evidence is introduced implicating them?

Either Rule 15(a), which allows an amendment by "leave of court" after a responsive pleading is filed, or Rule 21, which deals with nonjoinder or misjoinder of parties, would be suited. Either would permit the nominal change in parties here. Have I missed something?

Regards,

Justice Stevens

Copies to the Conference

RECORDS SECTION
U.S. SUPREME COURT
WASHINGTON, D.C. 20543

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

January 18, 1985

CHAMBERS OF
THE CHIEF JUSTICE

Re: 83-1622 - Elizabeth Brandon v. John D. Holt

Dear John,

I will add the following:

This case presents two issues: (1) was the Director of Police, as a matter of law, sued in his official capacity? (2) does a judgment against the Director of Police in his official capacity impose liability against the city?

It does not make a fetish out of orderly procedure to say that if a claimant seeks damages from a municipality, this should be done by making it a named party defendant; that will assure the municipality has notice and an opportunity to respond. At the latest, a claimant should move at the close of the case to amend the pleadings to conform with the proof.

It is an odd business for this Court, the third and final tribunal, to treat the issue in a casual, off-hand way; modern pleading is less rigid than in an earlier day, but it is not too much to ask that if a person or entity is to be subject to suit, the person or the entity should be named. I agree with Justice Rehnquist that it is a dubious business to encourage such shoddy pleading practices, but the courts have crossed that bridge. I join only the judgment.

Regards,



Justice Stevens

Copies to the Conference

81 JAN 23 1985

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS



CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

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

December 19, 1984

No. 83-1622

Brandon v. Holt

Dear John,

I agree.

Sincerely,

Bill

Justice Stevens

Copies to the Conference

12 PM 19 12 1984

DEC 19 1984

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

h w

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 20, 1984

Re: 83-1622 - Brandon v. Holt

Dear John,

Please join me, but I suggest that the second sentence in the first full paragraph on page four could be considerably clarified.

Sincerely yours,

Byron

Justice Stevens

Copies to the Conference

84 DEC 30 11:58

273
275

RECORDED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 19, 1984

Re: No. 83-1622-Brandon v. Holt

Dear John:

Please join me.

Sincerely,

JM

T.M.

Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 18, 1984

Re: No. 83-1622, Brandon v. Holt

Dear John:

Please join me.

Sincerely,



Justice Stevens

cc: The Conference

84 DEC 18 11 28 AM '84

1000
1000

n/

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 18, 1984

83-1622 Brandon v. Holt

Dear John:

Please join me.

Sincerely,



Justice Stevens

lfp/ss

cc: The Conference

.84 DEC 18 11 28

2081
3012

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 19, 1984

Re: 83-1622 Brandon v. Holt

Dear John:

In short order I will circulate a dissent.

Sincerely,



Justice Stevens

cc: The Conference

91 00 10 53.00

2014

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

From: **Justice Rehnquist**

Circulated: 1/9/85

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1622

ELIZABETH BRANDON, ET AL., PETITIONERS *v.*
JOHN D. HOLT, ETC., ET AL.

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

[January —, 1985]

JUSTICE REHNQUIST, dissenting.

The Court's decision in this case announces two propositions, both of which seem wrong to me, but which in any event are mutually inconsistent.

Part I holds that petitioner is entitled to amend her pleadings in this Court to add the city of Memphis as a party defendant. The Court relies for this holding on a potpourri of the Federal Rules of Civil Procedure, *ante*, p. 7, n. 19, although primarily it relies on Fed. Rule Civ. Proc. 15(b), and on citations to texts discussing that rule. The entire presentation of this issue in this Court consisted of one sentence in petitioners' reply brief, and therefore the Court is seriously handicapped in deciding the question—particularly since it is the sort of issue with which this Court almost never deals, but which is dealt with regularly by the District Courts. I think the Court is wrong in deciding this issue as it does.

Rule 15(b) by its terms deals with "amendments to conform to the evidence." It states in part:

"When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to

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

From: Justice Rehnquist

Circulated: _____

Recirculated: 1/16/85

Pp 1+2

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1622

**ELIZABETH BRANDON, ET AL., PETITIONERS v.
JOHN D. HOLT, ETC., ET AL.**

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

[January —, 1985]

JUSTICE REHNQUIST, dissenting.

The Court's decision in this case announces two propositions, both of which seem wrong to me, but which in any event are mutually inconsistent.

Part I holds that petitioner is entitled to amend her pleadings in this Court to add the city of Memphis as a party defendant. The Court relies for this holding on Fed. Rule Civ. Proc. 15(b), and on citations to texts discussing that rule. The entire presentation of this issue in this Court consisted of one sentence in petitioners' reply brief, and therefore the Court is seriously handicapped in deciding the question—particularly since it is the sort of issue with which this Court almost never deals, but which is dealt with regularly by the District Courts. I think the Court is wrong in deciding this issue as it does.

Rule 15(b) by its terms deals with "amendments to conform to the evidence." It states in part:

"When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to

omission

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

JPS
Please find me
JH

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

From: Justice Stevens
DEC 17 1984

Circulated: _____

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1622

ELIZABETH BRANDON, ET AL., PETITIONERS *v.*
JOHN D. HOLT, ETC., ET AL.

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

[December —, 1984]

JUSTICE STEVENS delivered the opinion of the Court.

The District Court entered a damages judgment against the Director of the Memphis (Tennessee) Police Department in his official capacity. *Brandon v. Allen*, 516 F. Supp. 1357, 1361 (WD Tenn., WD 1981). The Court of Appeals for the Sixth Circuit reversed, holding that he was protected by qualified immunity. 719 F. 2d 151, 153 (1983). The question presented is whether the damages judgment is payable by the City of Memphis because the director was sued in his official capacity or whether the director is individually liable, but shielded by qualified immunity.

Petitioners brought this action under 42 U. S. C. § 1983.¹ They alleged and proved that Robert J. Allen, who was then a Memphis police officer, viciously assaulted them on March 5, 1977.² They also proved that Allen had a history of vio-

¹That section provides, in pertinent part:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects or causes to be subjected, any citizen of the United States . . . 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."

²The following excerpt from the District Court's findings of fact adequately reflects the character of the incident:

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

December 28, 1984

RE: 83-1622 - Brandon v. Holt

Dear Chief:

Thank you for your letter of December 21, 1984.

I think it may be appropriate to cite all of the Rules. Since the evidence was offered to prove that the Director of Police was liable in his official capacity, rather than individually as alleged in the complaint, Rule 15(b) applies. Since the effect of the change was to make the City liable, Rules 15(a) and 21 may also apply. If you do not object, I will cite all of the Rules in footnote 20.

Respectfully,

John/SM

The Chief Justice

Copies to the Conference

85 DEC 28 10 51

20

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

STYLISTIC CHANGES THROUGHOUT.

SEE PAGES: 4, 5, 7

Footnotes renumbered 9-25

From: Justice Stevens

Circulated: _____

Recirculated: _____ JAN 4 1985

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1622

ELIZABETH BRANDON ET AL., PETITIONERS *v.*
JOHN D. HOLT, ETC., ET AL.

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

[January —, 1985]

JUSTICE STEVENS delivered the opinion of the Court.

The District Court entered a damages judgment against the Director of the Memphis (Tenn.) Police Department in his official capacity. *Brandon v. Allen*, 516 F. Supp. 1355, 1361 (WD Tenn. 1981). The Court of Appeals for the Sixth Circuit reversed, holding that he was protected by qualified immunity. 719 F. 2d 151, 153 (1983). The question presented is whether the damages judgment is payable by the city of Memphis because the director was sued in his official capacity or whether the director is individually liable, but shielded by qualified immunity.

Petitioners brought this action under 42 U. S. C. § 1983.¹ They alleged and proved that Robert J. Allen, who was then a Memphis police officer, viciously assaulted them on March 5, 1977.² They also proved that Allen had a history of vio-

¹That section provides, in pertinent part:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects or causes to be subjected, any citizen of the United States . . . 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."

²The following excerpt from the District Court's findings of fact adequately reflects the character of the incident:

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

From: **Justice Stevens**

Circulated: _____

Recirculated: JAN 11 1985

2.7
3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1622

ELIZABETH BRANDON ET AL., PETITIONERS *v.*
JOHN D. HOLT, ETC., ET AL.

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

[January —, 1985]

JUSTICE STEVENS delivered the opinion of the Court.

The District Court entered a damages judgment against the Director of the Memphis (Tenn.) Police Department in his official capacity. *Brandon v. Allen*, 516 F. Supp. 1355, 1361 (WD Tenn. 1981). The Court of Appeals for the Sixth Circuit reversed, holding that he was protected by qualified immunity. 719 F. 2d 151, 153 (1983). The question presented is whether the damages judgment is payable by the city of Memphis because the director was sued in his official capacity or whether the director is individually liable, but shielded by qualified immunity.

Petitioners brought this action under 42 U. S. C. § 1983.¹ They alleged and proved that Robert J. Allen, who was then a Memphis police officer, viciously assaulted them on March 5, 1977.² They also proved that Allen had a history of vio-

¹That section provides, in pertinent part:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects or causes to be subjected, any citizen of the United States . . . 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."

²The following excerpt from the District Court's findings of fact adequately reflects the character of the incident:

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS



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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

December 18, 1984

No. 83-1622 Brandon v. Holt

Dear John,

Please join me.

Sincerely,

Justice Stevens

Copies to the Conference

DEC 18 1984

DEC 18 1984