

# The Burger Court Opinion Writing Database

## *McDonald v. Smith*

472 U.S. 479 (1985)

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



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

From: **The Chief Justice**

Circulated: MAY 24 1985

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1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 84-476

ROBERT McDONALD, PETITIONER *v.*  
DAVID I. SMITH

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

[May —, 1985]

CHIEF JUSTICE BURGER delivered the opinion of the  
Court.

We granted certiorari to decide whether the Petition Clause of the First Amendment provides absolute immunity to a defendant charged with expressing libelous and damaging falsehoods in letters to the President of the United States.

### I

In July 1981, respondent commenced a libel action against petitioner in state court under the common law of North Carolina. Respondent alleged that while he was being considered for the position of United States Attorney, petitioner wrote two letters to President Reagan.<sup>1</sup> The complaint alleges that these letters "contained false, slanderous, libelous, inflammatory and derogatory statements" concerning respondent. App. 4-5. In particular, the complaint states that the letters falsely accused respondent of "violating the civil rights of various individuals while a Superior Court

<sup>1</sup>The first letter, dated December 1, 1980, was written to Ronald Reagan as "President-Elect of the United States." App. 8. The second letter was dated February 13, 1981, and directed to President Reagan. *Id.*, at 14. Petitioner described himself as a "politically active American" who has owned and operated three child-care centers in North Carolina since 1970. *Id.*, at 8.

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

May 28, 1985

No. 84-476

MacDonald v. Smith

Dear Chief,

I plan to file a short opinion in  
the above generally agreeing with yours.

Sincerely,

*Bill*

The Chief Justice

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To: The Chief Justice  
Justice White  
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From: Justice Brennan

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WXS  
Please join me in your  
concurring opinion

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-476

ROBERT McDONALD, PETITIONER v.  
DAVID I. SMITH

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

[June —, 1985]

JUSTICE BRENNAN, concurring.

*New York Times Co. v. Sullivan*, 376 U. S. 254, 279-280 (1964), held that a public official may recover damages for a false statement concerning his official conduct only where the statement was "made with 'actual malice'—that is, with knowledge that it was false or with reckless disregard of whether it was false or not." This standard, explicitly directed toward protection of "freedom of speech and of the press," *id.*, at 264, reflects our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open," *id.*, at 270.

The petitioner Robert McDonald contends that when a citizen communicates directly with government officials about matters of public importance—here the qualifications of a candidate for United States Attorney—the First Amendment's Petition Clause requires courts in defamation actions to accord an *absolute* privilege to such communications rather than the qualified privilege defined in *New York Times*. I fully agree with the Court that the Petition Clause imposes no such absolute privilege.

McDonald correctly notes that the right to petition the government requires stringent protection. "The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of

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To: The Chief Justice  
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Justice O'Connor

From: Justice Brennan

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SEE PAGES: 1

## SUPREME COURT OF THE UNITED STATES

No. 84-476

ROBERT McDONALD, PETITIONER *v.*  
DAVID I. SMITH

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

[June 19, 1985]

JUSTICE BRENNAN, with whom JUSTICE MARSHALL and  
JUSTICE BLACKMUN join, concurring.

*New York Times Co. v. Sullivan*, 376 U. S. 254, 279-280  
(1964), held that a public official may recover damages for a  
false statement concerning his official conduct only where the  
statement was "made with 'actual malice'—that is, with  
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(4)

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

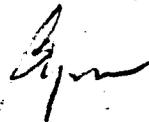
May 25, 1985

84-476 - McDonald v. Smith

Dear Chief,

Please join me.

Sincerely,



The Chief Justice

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 12, 1985

Re: No. 84-476-McDonald v. Smith

Dear Bill:

Please join me in your concurring opinion.

Sincerely,

*Jm.*

T.M.

Justice Brennan

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

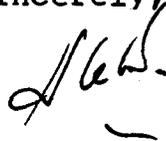
June 12, 1985

Re: No. 84-476, McDonald v. Smith

Dear Bill:

Please join me in your concurring opinion.

Sincerely,



Justice Brennan

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 24, 1985

84-476 McDonald v. Smith

Dear Chief:

Please add at the end of the next draft of your opinion that I took no part in the consideration or decision of this case.

Sincerely,

L.F.P.

The Chief Justice

lfp/ss

cc: The Conference

84 476 53 0000

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 29, 1985

Re: 84-476 - McDonald v. Smith

Dear Chief:

Please join me.

Sincerely,

WHR /JE

The Chief Justice

cc: The Conference

54 10 50 10:00

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 24, 1985

Re: 84-476 - Robert McDonald v. David I.  
Smith

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 24, 1985

No. 84-476 McDonald v. Smith

Dear Chief,

Please join me.

Sincerely,



The Chief Justice

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