

**WILLIAM J. BENSON, Plaintiff-Appellant, v. WILLIAM J. SCOTT and
HERBERT CAPLAN, Defendants-Appellees**

No. 83-1040

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

734 F.2d 1181; 1984 U.S. App. LEXIS 22642

January 11, 1984, Argued

May 9, 1984, Decided

PRIOR HISTORY:

[**1]

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 81 C 6591 -- William T. Hart, Judge.

COUNSEL:

Andrew B. Spiegel, Chicago, Illinois, for Plaintiff.

Imelda Terrazino, Illinois, Attorney General Office, Chicago, Illinois, for Defendant-Appellee.

JUDGES:

Wood and Eschbach, Circuit Judges, n1 and Swygert, Senior Circuit Judge. Wood, Jr., Circuit Judge, concurring and dissenting.

n1 The author acknowledges the substantial assistance of Judge Swygert to this opinion reflected in Section I and portions of Section II, B.

OPINIONBY:

ESCHBACH

OPINION:

[*1182] ESCHBACH, Circuit Judge.

The appellant, William J. Benson, initiated this action under *42 U.S.C. § 1983* in the district court alleging that William J. Scott, former Illinois Attorney General, and Herbert Caplan, former Illinois First Assistant Attorney General, violated Benson's rights

under the First and Fourteenth Amendments. The district court entered summary judgment for the defendants, finding that they were entitled to qualified immunity from liability for their actions. We affirm the district court's finding of immunity with respect to Benson's due process claim. [**2] However, we disagree with the district court that the defendants are immune from suit on Benson's First Amendment claim. Accordingly, we reverse the judgment of the district court on the claim, and remand the case for further proceedings.

I.

Benson was employed by the Illinois Department of Revenue ("Department") from 1971 until 1976. On November 1, 1974, Benson entered into a one-year written employment contract with the Department to "undertake projects requiring personal and technical services as assigned by the Department of Revenue concerning pending investigations." The contract was terminable at the will of either party upon written notice, and provided that Benson was to be paid \$750 per month. The contract further stated: "It is expressly agreed that for liability insurance purposes only, William Benson will be considered an employee rather than an independent contractor." A similar contract was entered commencing November 1, 1975, and terminating June 30, 1976. Benson was terminated from his employment on June 24, 1976.

Pursuant to his employment contract, Benson was assigned to assist in the [*1183] enforcement of the Illinois Cigarette Tax Act, 1981 Ill. [**3] Rev. Stat. ch. 120, § § 453.1-.67, against persons purchasing cigarettes in Indiana and bringing them into Illinois. Beginning in March 1975, eight civil rights actions were filed in federal district court concerning the Department's