

The Burger Court Opinion Writing Database

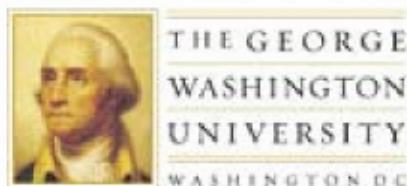
Dickey v. Florida

398 U.S. 30 (1970)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



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

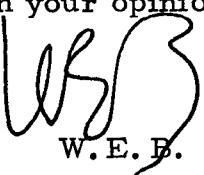
CHAMBERS OF
THE CHIEF JUSTICE

April 18, 1970

Re: No. 729 - Bachellar v. Maryland

Dear Bill:

I concur in your opinion as changed.


W. E. B.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HUGO L. BLACK

April 16, 1970

Dear Bill,

Re: No. 729 - Bachellar, et al.
v. State of Maryland

I agree.

Sincerely,



Hugo
Black

Mr. Justice Brennan

cc: Members of the Conference

March 13, 1970

Dear Chief:

In No. 729 -- Bachellar v.
Maryland, I'll assign the opinion to
Justice Brennan.

William O. Douglas

The Chief Justice

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

2

From: Brennan, J.

SUPREME COURT OF THE UNITED STATES

Circulated: 3-30-70

No. 729.—OCTOBER TERM, 1969

Recirculated:

Donald Bachellar et al.,
Petitioners, } On Writ of Certiorari to the
v. } Court of Special Appeals
State of Maryland. } of Maryland.

[April —, 1970]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

A jury in Baltimore Criminal Court convicted petitioners of violating Md. Code Ann., Art. 27, § 123 (1957),¹ which prohibits "acting in a disorderly manner to the disturbance of the public peace, upon any public street . . . in any [Maryland] city . . .".² The prosecution arose out of a demonstration protesting the Vietnam war which was staged between 3 and 5 o'clock on the afternoon of March 28, 1966, in front of a United States Army recruiting station located on a downtown Baltimore street. The Maryland Court of Special Appeals rejected petitioners' contention that their conduct was constitutionally protected under the First and Fourteenth Amendments and affirmed their convictions. 3 Md. App. 626, 240 A. 2d 623 (1968). The Court of Appeals of Maryland denied certiorari

¹ The trial in the Criminal Court was *de novo* upon appeal from a conviction in the Municipal Court of Baltimore. The Criminal Court judge sentenced each petitioner to 60 days in jail and a \$50 fine.

² The statute was amended in 1968 but without change in the operative language involved in this case. See Md. Code Ann., Art. 27, § 123 (c) (1969 Supp.).

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

CHAMBERS OF
JUSTICE JOHN M. HARLAN

April 1, 1970

Re: No. 729 - Bachellar v. Maryland

Dear Bill:

I join your opinion, understanding that you will insert at an appropriate place a reference to the trial court's refusal to grant the defendants' request to charge which would have instructed the jury to disregard the subject matter of the defendants' protest in reaching a verdict.) For example, he refused to give a ~~negligent~~ ~~in~~ ~~but~~ ~~in~~ ~~but~~ -

Sincerely,


J. M. H.

Mr. Justice Brennan

CC: The Conference

*to charge! to disregard any anger of excluded
any anger of excluded toward the
that protest against the trial have been
that was decided
that arose from their disagreement
with particular regard means about*

SUPREME COURT OF THE UNITED STATES

No. 729.—OCTOBER TERM, 1969

Donald Bachellar et al.,
Petitioners,
v.
State of Maryland. } On Writ of Certiorari to the
Court of Special Appeals
of Maryland.

[March —, 1970]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

A jury in Baltimore Criminal Court convicted petitioners of violating Md. Code Ann., Art. 27, § 123 (1957),¹ which prohibits "acting in a disorderly manner to the disturbance of the public peace, upon any public street . . . in any [Maryland] city"² The prosecution arose out of a demonstration protesting the Vietnam war which was staged between 3 and 5 o'clock on the afternoon of March 28, 1966, in front of a United States Army recruiting station located on a downtown Baltimore street. The Maryland Court of Special Appeals rejected petitioners' contention that their conduct was constitutionally protected under the First and Fourteenth Amendments and affirmed their convictions. 3 Md. App. 626, 240 A. 2d 623 (1968). The Court of Appeals of Maryland denied certiorari

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March 30, 1970

RE: No. 729 - Bachellar v. Maryland

Dear John:

I have relied in the enclosed primarily on Stromberg. Here also it is impossible to say on which of the three alternative grounds the jury found petitioner's guilty. Thus, unlike Street, the conviction may have rested wholly on petitioner's constitutionally protected activity. It's on that ground I believe that Byron White voted at conference to reverse.

You will remember that Byron dissented in Street on the view that it was perfectly clear that Street was convicted for burning the flag, and took issue with your reading of Thomas v. Collins. He said, however, "I adhere" to Stromberg. My thought, therefore, was that since we don't have to rely on the Thomas aspect of Street, we should rely primarily on Stromberg and satisfy Byron. But I adhere as strongly to Street as when I joined you.

Sincerely,

WB

Mr. Justice Harlan

Circulated
3-30-70

SUPREME COURT OF THE UNITED STATES

No. 729.—OCTOBER TERM, 1969

Donald Bachellar et al.,
Petitioners,
v.
State of Maryland. } On Writ of Certiorari to the
Court of Special Appeals
of Maryland.

[April —, 1970]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

A jury in Baltimore Criminal Court convicted petitioners of violating Md. Code Ann., Art. 27, § 123 (1957),¹ which prohibits "acting in a disorderly manner to the disturbance of the public peace, upon any public street . . . in any [Maryland] city . . .".² The prosecution arose out of a demonstration protesting the Vietnam war which was staged between 3 and 5 o'clock on the afternoon of March 28, 1966, in front of a United States Army recruiting station located on a downtown Baltimore street. The Maryland Court of Special Appeals rejected petitioners' contention that their conduct was constitutionally protected under the First and Fourteenth Amendments and affirmed their convictions. 3 Md. App. 626, 240 A. 2d 623 (1968). The Court of Appeals of Maryland denied certiorari

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*Circulated
4-2-70*

SUPREME COURT OF THE UNITED STATES

No. 729.—OCTOBER TERM, 1969

Donald Bachellar et al.,
Petitioners,
v.
State of Maryland. } On Writ of Certiorari to the
Court of Special Appeals
of Maryland.

[April —, 1970]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

A jury in Baltimore Criminal Court convicted petitioners of violating Md. Code Ann., Art. 27, § 123 (1957),¹ which prohibits “acting in a disorderly manner to the disturbance of the public peace, upon any public street . . . in any [Maryland] city”² The prosecution arose out of a demonstration protesting the Vietnam War which was staged between 3 and 5 o’clock on the afternoon of March 28, 1966, in front of a United States Army recruiting station located on a downtown Baltimore street. The Maryland Court of Special Appeals rejected petitioners’ contention that their conduct was constitutionally protected under the First and Fourteenth Amendments and affirmed their convictions. 3 Md. App. 626, 240 A. 2d 623 (1968). The Court of Appeals of Maryland denied certiorari

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SUPREME COURT OF THE UNITED STATES.

No. 729.—OCTOBER TERM, 1969

Donald Bachellar et al., Petitioners, v. State of Maryland. } On Writ of Certiorari to the Court of Special Appeals of Maryland.

[April —, 1970]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

A jury in Baltimore Criminal Court convicted petitioners of violating Md. Code Ann., Art. 27, § 123 (1957),¹ which prohibits "acting in a disorderly manner to the disturbance of the public peace, upon any public street . . . in any [Maryland] city . . .".² The prosecution arose out of a demonstration protesting the Vietnam War which was staged between 3 and 5 o'clock on the afternoon of March 28, 1966, in front of a United States Army recruiting station located on a downtown Baltimore street. The Maryland Court of Special Appeals rejected petitioners' contention that their conduct was constitutionally protected under the First and Fourteenth Amendments and affirmed their convictions. 3 Md. App. 626, 240 A. 2d 623 (1968). The Court of Appeals of Maryland denied certiorari

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NOTICE : This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 729.—OCTOBER TERM, 1969

Donald Bachellar et al.,
Petitioners,
v.
State of Maryland. } On Writ of Certiorari to the
Court of Special Appeals
of Maryland.

[April 20, 1970]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

A jury in Baltimore City Criminal Court convicted petitioners of violating Md. Code Ann., Art. 27, § 123 (1967),¹ which prohibits "acting in a disorderly manner to the disturbance of the public peace, upon any public street . . . in any [Maryland] city"² The prosecution arose out of a demonstration protesting the Vietnam War which was staged between 3 and shortly after 5 o'clock on the afternoon of March 28, 1966, in front of a United States Army recruiting station located on a downtown Baltimore street. The Maryland Court of Special Appeals rejected petitioners' contention that their conduct was constitutionally protected under the First and Fourteenth Amendments and affirmed their convictions. 3 Md. App. 626, 240 A. 2d 623 (1968). The Court of Appeals of Maryland denied certiorari

¹ The trial in the Criminal Court was *de novo* upon appeal from a conviction in the Municipal Court of Baltimore. The Criminal Court judge sentenced each petitioner to 60 days in jail and a \$50 fine.

² The statute was amended in 1968 but without change in the operative language involved in this case. See Md. Code Ann., Art. 27, § 123 (c) (1969 Supp.).

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 1, 1970

No. 729 - Bachellar v. Maryland

Dear Bill,

I am glad to join your opinion for
the Court in this case.

Sincerely yours,

P.S.

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 30, 1970

Re: No. 729 - Bachellar v. State
of Maryland

Dear Bill:

Please join me.

Sincerely,



B.R.W.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 30, 1970

Re: No. 729 - Bachellar v. Maryland

Dear Bill:

Please join me.

Sincerely,



T.M.

Mr. Justice Brennan

cc: The Conference