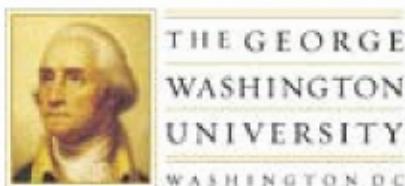


The Burger Court Opinion Writing Database

Polk v. United States

404 U.S. 1053 (1972)

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



to: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Circulated: 1-7

WILLIAM POLK v. UNITED STATES

Recirculated: _____

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

No. 71-5459. Decided January —, 1972

MR. JUSTICE DOUGLAS.

I would grant certiorari in this case. Prison censorship of mail discovered a letter written by an inmate which at the trial of the inmate was used to convict him. The evils of censorship are thus compounded. The right of privacy protected by the Bill of Rights (*Griswold v. Connecticut*, 381 U. S. 479) is re-emphasized when government is dealing with a captive audience (see *Public Utilities Commission v. Pollak*, 343 U. S. 451, 467-499, dissenting opinion). It includes, *inter alia*, the sanctity of thought and belief of the individual that is protected by the First and Fifth Amendments. As Mr. Justice Holmes said in *Milwaukee Pub. Co. v. Burleson*, 255 U. S. 407, 437 (dissenting) "the use of the mails is almost as much a part of free speech as the right to use our tongues." Under our regime the right to use the mail free of censorship is basic whether the censor be a federal official working for the post office or a federal official working for the Department of Justice. The problem is squarely raised here, free from all problems of prison security.

or distributed without the specific authorization of the Hoover Institution Archives.

HOOVER INSTITUTION
ON WAR, REVOLUTION AND PEACE



NOTICE: THIS MATERIAL MAY
BE PROTECTED BY COPYRIGHT
LAW (TITLE 17, U.S. CODE)

For The United Justice
Mr. Justice Marshall
Mr. Justice Thurgood
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Marshall
Mr. Justice Marshall
Mr. Justice Marshall
Mr. Justice Marshall

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

WILLIAM POLK v. UNITED STATES

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

No. 71-5459. Decided January —, 1972

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BRENNAN concurs.

I would grant certiorari in this case. Prison censorship of mail discovered a letter written by an inmate which at the trial of the inmate was used to convict him. The evils of censorship are thus compounded. The right of privacy protected by the Bill of Rights (*Griswold v. Connecticut*, 381 U. S. 479) is re-emphasized when government is dealing with a captive audience (see *Public Utilities Commission v. Pollak*, 343 U. S. 451, 467-499, dissenting opinion). It includes, *inter alia*, the sanctity of thought and belief of the individual that is protected by the First and Fifth Amendments. As Mr. Justice Holmes said in *Milwaukee Pub. Co. v. Burleson*, 255 U. S. 407, 437 (dissenting) "the use of the mails is almost as much a part of free speech as the right to use our tongues." Under our regime the right to use the mail free of censorship is basic whether the censor be a federal official working for the post office or a federal official working for the Department of Justice. The problem is squarely raised here, free from all problems of prison security.

HOOVER INSTITUTION
ON WAR, REVOLUTION AND PEACE
Sanford, California 94305-6000



NOTICE: THIS MATERIAL MAY
BE PROTECTED BY COPYRIGHT
LAW (TITLE 17, U.S. CODE)