

The Burger Court Opinion Writing Database

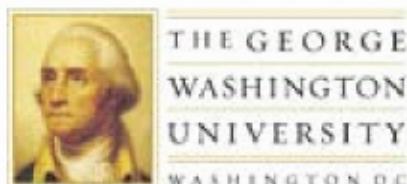
Procunier v. Martinez

416 U.S. 396 (1974)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



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

CHAMBERS OF
THE CHIEF JUSTICE

December 18, 1973

MEMORANDUM TO THE CONFERENCE:

Re: 72-1465 - Procurier v. Martinez

I have reassigned the above case to Lewis Powell.

Regards,

WB

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

CHAMBERS OF
THE CHIEF JUSTICE

April 9, 1974

Re: No. 72-1465 - Procurier, et al v. Martinez, et al

Dear Lewis:

Please join me.

Regards,

W. B.

Mr. Justice Powell

Copies to the Conference

SUPREME COURT OF THE UNITED STATES

No. 72-1465

Raymond K. Procunier)

Mr. Justice Douglas, concurring.

I have joined Mr. Justice Marshall's opinion because I think it makes abundantly clear that foremost among the Bill of Rights of prisoners in this country, whether under state or federal detention, is the First Amendment. Prisoners are still "persons" entitled to all Constitutional rights except and unless their liberty has been constitutionally curtailed in the procedures that satisfy all of the ~~other~~ requirements of due process.

While Chief Justice Hughes in Stromberg v. California, 283 US stated that the First Amendment was applicable to the states by reason of the due process clause of the Fourteenth, it has become customary to rest on the broader foundation of the entire Fourteenth Amendment, ~~and~~ ^{Free speech and press}, within the meaning of the First Amendment is, in my judgment, ^{one} of the preeminent privileges and immunities of all citizens.

all at in

To : The Chief Justice
Mr. Justice Ferguson
Mr. Justice...
Mr. Justice...

SUPREME COURT OF THE UNITED STATES

No. 72-1465

Raymond K. Procunier, Director, California Department of Corrections, et al., Appellants,
v.
Robert Martinez et al.

On Appeal from the
United States District
Court for the ^{Eastern} North-
ern District of Cali-
fornia.

4-26

[April 29, 1974]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL join, concurring.

Part II of

I have joined MR. JUSTICE MARSHALL's opinion because I think it makes abundantly clear that foremost among the Bill of Rights of prisoners in this country, whether under state or federal detention, is the First Amendment. Prisoners are still "persons" entitled to all constitutional rights except and unless their liberty has been constitutionally curtailed in the procedures that satisfy all of the requirements of due process.

While Chief Justice Hughes in *Stromberg v. California*, 283 U. S. 359, stated that the First Amendment was applicable to the States by reason of the Due Process Clause of the Fourteenth, it has become customary to rest on the broader foundation of the entire Fourteenth Amendment. Free speech and press within the meaning of the First Amendment is, in my judgment, one of the preeminent privileges and immunities of all citizens.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 4, 1974

RE:No. 72-1465 Procurier v. Martinez

Dear Lewis:

Thank you very much for your consideration
of my suggestion. I am very happy to join your
opinion.

Sincerely,



Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR. April 25, 1974

RE: No. 72-1465 Procurier v. Martinez

Dear Thurgood:

Please join me in your concurring
opinion in the above.

Sincerely,

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 6, 1974

Re: No. 72-1465, Procunier v. Martinez

Dear Lewis,

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

Sincerely yours,

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 5, 1974

Re: No. 72-1465 - Procunier v. Martinez

Dear Lewis:

Please join me in your very good opinion
in this case.

Sincerely,

Byrn

Mr. Justice Powell

Copies to Conference

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Black
Mr. Justice Powell
Mr. Justice Rehnquist

2nd DRAFT

From: Marshall, J.

Circulated: APR 24 1974

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 72-1465

Raymond K. Procunier, Director, California Department of Corrections, et al.,
Appellants,
v.
Robert Martinez et al.

On Appeal from the United States District Court for the Northern District of California.

[April —, 1974]

MR. JUSTICE MARSHALL, concurring.

I concur in the opinion and judgment of the Court. I write separately only to emphasize that I do not join in any implication in the Court's opinion that prison authorities have a general right to open and read all incoming and outgoing prison mail. The issue of the First Amendment rights of inmates is, of course, explicitly reserved by the Court. I believe, however, that a brief recital of my views on that subject is necessary to dispel any suggestion that by joining the Court's opinion today I subscribe to the proposition that prison authorities may read inmate mail as a matter of course.

As Mr. Justice Holmes observed over a half century ago, "the use of the mails is almost as much a part of free speech as the right to use our tongues." *Milwaukee Social Democratic Publishing Co. v. Burleson*, 255 U. S. 407, 437 (1921), quoted with approval in *Blount v. Rizzi*, 400 U. S. 410, 416 (1971). See also *Lamont v. Postmaster General*, 381 U. S. 301, 305 (1965). A prisoner does not shed such basic First Amendment rights at the prison gate.¹ Rather, he "retains all the rights of an

¹ See, e. g., *Cruz v. Beto*, 405 U. S. 319 (1972); *Cooper v. Pate*, 378 U. S. 546 (1964); *Brown v. Peyton*, 437 F. 2d 1228, 1230 (CA4 1971).

I concur in the opinion and judgment of the Court. I write separately only to emphasize my view that prison authorities do not have a general right to open and read all incoming and outgoing prison mail. The issue of the First Amendment rights of inmates is, of course, explicitly reserved by the Court, but I would reach that issue to hold that prison authorities may not read inmate mail as a matter of course.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 4, 1974

Re: No. 72-1465 - Procurier v. Martinez

Dear Lewis:

Please join me.

Sincerely,

H.A.B.

Mr. Justice Powell

cc: The Conference

To: The Supreme Court
Mr. Justice BRENNAN
Mr. Justice MARSHALL
Mr. Justice BLACKBURNE
Mr. Justice POWELL
Mr. Justice WHITE
Mr. Justice REHNQUIST
Mr. Justice BURGER
Mr. Justice STONE

2nd DRAFT

From: [unclear]

Circulated: 3-1-74

SUPREME COURT OF THE UNITED STATES

No. 72-1465

Recirculated: _____

Raymond K. Procunier, Director, California Department of Corrections, et al.,
Appellants.

Robert Martinez et al.

On Appeal from the United States District Court for the Northern District of California.

(February —, 1974)

MR. JUSTICE POWELL delivered the opinion of the Court.

This case concerns the constitutionality of certain regulations promulgated by appellant Procunier in his capacity as Director of the California Department of Corrections. Appellees brought a class action on behalf of themselves and all other inmates of penal institutions under the Department's jurisdiction to challenge the rules relating to censorship of prisoner mail and the ban against the use of law students and legal paraprofessionals to conduct attorney-client interviews with inmates. Pursuant to 28 U. S. C. § 2281 a three-judge United States District Court was convened to hear appellees' request for declaratory and injunctive relief. That court entered summary judgment enjoining continued enforcement of the rules in question and ordering appellants to submit new regulations for the court's approval. 354 F. Supp. 1092 (ND Cal. 1973). Appellants' first revisions resulted in counterproposals by appellees and a court order issued May 30, 1973, requiring further modification of the proposed rules. The second set of revised regulations

new footnote 12
Subsequent footnotes renumbered
changes 8, 9, 11, 12, 14, 15, 18

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Arg.: Powell, J.

No. 72-1465

Circulated:

Recirculated:

~~MAR 6 1974~~

Raymond K. Proeunier, Director, California Department of Corrections, et al.,
Appellants,

Robert Martinez et al.

On Appeal from the United States District Court for the Northern District of California.

(February -- 1974)

MR. JUSTICE POWELL delivered the opinion of the Court.

This case concerns the constitutionality of certain regulations promulgated by appellant Proeunier in his capacity as Director of the California Department of Corrections. Appellees brought a class action on behalf of themselves and all other inmates of penal institutions under the Department's jurisdiction to challenge the rules relating to censorship of prisoner mail and the ban against the use of law students and legal paraprofessionals to conduct attorney-client interviews with inmates. Pursuant to 28 U. S. C. § 2281 a three-judge United States District Court was convened to hear appellees' request for declaratory and injunctive relief. That court entered summary judgment enjoining continued enforcement of the rules in question and ordering appellants to submit new regulations for the court's approval. 354 F. Supp. 1092 (ND Cal. 1973). Appellants' first revisions resulted in counterproposals by appellees and a court order issued May 30, 1973, requiring further modification of the proposed rules. The second set of revised regulations

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 8, 1974

Re: No. 72-1465 - Procunier v. Martinez

Dear Lewis:

You have written a good opinion, and I don't think legal literature would be enriched by my dissenting on the basis of my Conference vote. Please join me.

Sincerely,

WR

Mr. Justice Powell

Copies to the Conference