

The Burger Court Opinion Writing Database

Jones v. North Carolina Prisoners' Labor Union, Inc.

433 U.S. 119 (1977)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University in St. Louis

Forrest Maltzman, George Washington University



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

CHAMBERS OF
THE CHIEF JUSTICE

November 23, 1976

Re: 75-1874 Jones v. North Carolina Prisoners' Labor Union

Dear Bill:

I voted to note and hear this case and was prepared to reverse summarily.

With Potter and Harry's memoranda there are now four to *Note*.

Regards,

WB B

Mr. Justice Rehnquist

cc: The Conference

Charge was in your book

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

CHAMBERS OF
THE CHIEF JUSTICE

June 13, 1977

Re: 75-1874 - Jones v. North Carolina
Prisoners' Labor Union

Dear Bill:

I join. I may possibly "add a
word."

Regards,

WJB

Mr. Justice Rehnquist

Copies to the Conference

To: Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist
 Mr. Justice Stevens

From: The Chief Justice

Circulated: JUN 16 1977

Recirculated: _____

No. 75-1874 - Jones v. North Carolina Prisoners' Labor Union, Inc.

MR. CHIEF JUSTICE BURGER, concurring:

I concur fully in the Court's opinion.

This is but another in a long line of cases in the federal courts raising questions concerning the authority of the States to regulate and administer matters peculiarly local in nature. Too often there is confusion as to what the Court decides in this type of case. The issue here, of course, is not whether prisoner "unions" are "good" or "bad", but rather, whether the Federal Constitution prohibits state prison officials from deciding to exclude such organizations of inmates from prison society in their efforts to carry out one of the most vexing of all state responsibilities -- that of operating a penalogical institution. In determining that it does not, we do not suggest that prison officials could not or should ^{not} permit such inmate organizations, but only that the Constitution does not require them to do so.

The solutions to problems arising within correctional institutions will never be simple or easy. Prisons, by definition, are closed societies populated by individuals

To: Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist
 Mr. Justice Stevens

From: The Chief Justice

Circulated: _____

1st/DRAFT

Recirculated: JUN 20 1977

SUPREME COURT OF THE UNITED STATES

No. 75-1874

David L. Jones, Secretary of the North
 Carolina Department of Correction,
 et al., Appellants,
 v.
 North Carolina Prisoners' Labor
 Union, Inc., etc.

On Appeal from the
 United States Dis-
 trict Court for the
 Eastern District of
 North Carolina.

[June —, 1977]

MR. CHIEF JUSTICE BURGER, concurring.

I concur fully in the Court's opinion.

This is but another in a long line of cases in the federal courts raising questions concerning the authority of the States to regulate and administer matters peculiarly local in nature. Too often there is confusion as to what the Court decides in this type of case. The issue here, of course, is not whether prisoner "unions" are "good" or "bad," but rather, whether the Federal Constitution prohibits state prison officials from deciding to exclude such organizations of inmates from prison society in their efforts to carry out one of the most vexing of all state responsibilities—that of operating a penalogical institution. In determining that it does not, we do not suggest that prison officials could not or should not permit such inmate organizations, but only that the Constitution does not require them to do so.

The solutions to problems arising within correctional institutions will never be simple or easy. Prisons, by definition, are closed societies populated by individuals who have demonstrated their inability, or refusal, to conform their conduct to the norms demanded by a civilized society. Of necessity, rules far different than those imposed on society at large must prevail within prison walls. The federal courts, as we

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 20, 1977

RE: No. 75-1874 Jones v. North Carolina Prisoners' Labor
Union, Inc.

Dear Thurgood:

Please join me in the dissenting opinion you have
prepared in the above.

Sincerely,

Bill

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

November 22, 1976

Re: No. 75-1874, Jones v. North Carolina
Prisoners' Labor Union, Inc.

Dear Bill,

I should appreciate your adding the following at
the foot of your dissenting opinion in this case:

MR. JUSTICE STEWART would note
probable jurisdiction of this appeal and
set the case for briefing and oral argu-
ment.

Sincerely yours,

P.S.
/

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 24, 1977

No. 75-1874 - Jones v. North
Carolina Prisoners' Union

Dear Bill,

I am glad to join the opinion
you have written for the Court in this
case.

Sincerely yours,



Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 31, 1977

Re: No. 75-1874 - Jones v. North Carolina
Dept of Correction

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquist

Copies to Conference

JUN 17 1977

Re: 75-1874 - Jones v. North Carolina Prisoners' Labor Union, Inc.

MR. JUSTICE MARSHALL dissenting.

There was a time, not so very long ago, when prisoners were regarded as "slave[s] of the State," having "not only forfeited [their] liberty, but all [their] personal rights . . ." Ruffin v. Commonwealth, 62 Va. 790, 792 (1871). In recent years, however, the courts increasingly have rejected this view, and with it the corollary which holds that courts should keep their "hands off" penal institutions.^{1/} Today, however, the Court, in apparent fear of a prison reform organization that has the temerity to call itself a "union", takes a giant step backwards towards the now-discredited conception of prisoners' rights and of the role of the courts. I decline to join in what I hope will prove to be a temporary retreat.

Stylistic Changes Throughout
1, 5, 8

JUN 22 1977

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1874

David L. Jones, Secretary of the North
Carolina Department of Correction,
et al., Appellants,

v.

North Carolina Prisoners' Labor
Union, Inc., etc.

On Appeal from the
United States Dis-
trict Court for the
Eastern District of
North Carolina.

[June —, 1977]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE BRENNAN
joins, dissenting.

There was a time, not so very long ago, when prisoners were regarded as "slave[s] of the State," having "not only forfeited [their] liberty, but all [their] personal rights . . ." *Ruffin v. Commonwealth*, 62 Va. 790, 792 (1871). In recent years, however, the courts increasingly have rejected this view, and with it the corollary which holds that courts should keep their "hands off" penal institutions.¹ Today, however, the Court, in apparent fear of a prison reform organization that has the temerity to call itself a "union," takes a giant step backwards towards that discredited conception of prisoners' rights and the role of the courts. I decline to join in what I hope will prove to be a temporary retreat.

I

In *Procunier v. Martinez*, 416 U. S. 396 (1974), I set forth at some length my understanding of the First Amendment rights of prison inmates. The fundamental tenet I advanced is simply stated: "A prisoner does not shed . . . basic First Amendment rights at the prison gate. Rather, he 'retains all

¹ For brief exposition of the "hands-off" doctrine and its demise, see Fox, *The First Amendment Rights of Prisoners*, 63 J. Crim. L. C. & P. S. 162 (1972).

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 23, 1976

Re: No. 75-1874 - Jones v. North Carolina Prisoners'
Labor Union

Dear Bill:

At the foot of your opinion would you please note that I also would note probable jurisdiction and set the case for briefing and oral argument.

Sincerely,



Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 27, 1977

Re: No. 75-1874 - Jones v. North Carolina Prisoners'
Labor Union, Inc.

Dear Bill:

I am with you in any event, but I have two minor suggestions that are one and the same.

In Pell the Court spoke of "substantial evidence" as the point of deference. 417 U.S., at 827. I wonder, therefore, if your use of "irrational" is somewhat different from Pell's substantial evidence standard. I would be happy if (1) "utterly irrational" in the 6th line on page 8 were changed to read "unreasonable" or "without adequate foundation" and (2) if the 5th word in the 1st line on page 16 were changed to "unreasonable."

Sincerely,



Mr. Justice Rehnquist

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

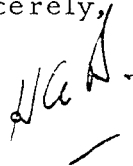
May 27, 1977

Re: No. 75-1874 - Jones v. North Carolina Prisoners'
Labor Union, Inc.

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquist

cc: The Conference

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

May 23, 1977

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

No. 75-1874 Jones v. North Carolina
Prisoners' Labor Union

Dear Bill:

Please join me.

Sincerely,

Lewis

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

NOV 22 1948

Respondent prisoners' union brought this § 1983 action to challenge the policies of the State Department of Corrections in restricting the Union's activities within the prison. The three-judge District Court hearing the case specifically found that while the defendant officials permitted inmate membership in the union, they prohibited all face-to-face solicitation of membership within the prison, barred all meetings of the Union, and refused to allow receipt of bulk mailings from the Union for distribution among the inmates. Finding that these very privileges were allowed to the Junior Chamber of Commerce, Alcoholics Anonymous, and, in one institution, the Boy Scouts of America, and that "[t]here is not one scintilla of evidence to suggest that the union has been utilized to disrupt the operation of the penal institutions," App. to J. S., at 28, the court found merit in the union's free speech and equal protection arguments. Without deciding whether the union could assert any constitu-

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

FROM Mr. Jones

MAY 19 1977

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1874

David L. Jones, Secretary of the
North Carolina Department
of Correction, et al.,
Appellants,
v.
North Carolina Prisoners' Labor
Union, Inc., etc.

On Appeal from the United
States District Court for
the Eastern District of
North Carolina.

[May —, 1977]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Pursuant to regulations promulgated by the North Carolina Department of Correction, appellants prohibited inmates from soliciting other inmates to join appellee, the North Carolina Prisoners' Labor Union, Inc. (the Union), barred all meetings of the Union, and refused to deliver packets of Union publications that had been mailed in bulk to several inmates for redistribution among other prisoners. The Union instituted this action, based on 42 U. S. C. § 1983, to challenge these policies. It alleged that appellants' efforts to prevent the operation of a prisoners' union violated the First and Fourteenth Amendment rights of it and its members and that the refusal to grant the Union those privileges accorded several other organizations operating within the prison system deprived the Union of equal protection of the laws. A three-judge court was convened. After a hearing, the court found merit in the Union's free speech, association, and equal protection arguments, and enjoined appellants from preventing inmates from soliciting other prisoners to join the Union and from "refus[ing] receipt of the Union's publications on the

P. 13

To: The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Stevens

From Mr. Justice Rehnquist

Circulated: _____

Redistributed: MAY 4 1977

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1874

David L. Jones, Secretary of the
 North Carolina Department
 of Correction, et al.,
 Appellants,
 v.
 North Carolina Prisoners' Labor
 Union, Inc., etc.

On Appeal from the United
 States District Court for
 the Eastern District of
 North Carolina.

[May —, 1977]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Pursuant to regulations promulgated by the North Carolina Department of Correction, appellants prohibited inmates from soliciting other inmates to join appellee, the North Carolina Prisoners' Labor Union, Inc. (the Union), barred all meetings of the Union, and refused to deliver packets of Union publications that had been mailed in bulk to several inmates for redistribution among other prisoners. The Union instituted this action, based on 42 U. S. C. § 1983, to challenge these policies. It alleged that appellants' efforts to prevent the operation of a prisoners' union violated the First and Fourteenth Amendment rights of it and its members and that the refusal to grant the Union those privileges accorded several other organizations operating within the prison system deprived the Union of equal protection of the laws. A three-judge court was convened. After a hearing, the court found merit in the Union's free speech, association, and equal protection arguments, and enjoined appellants from preventing inmates from soliciting other prisoners to join the Union and from "refus[ing] receipt of the Union's publications on the

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

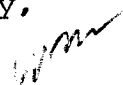
May 31, 1977

Re: No. 75-1874 Jones v. North Carolina Prisoners'
Labor Union, Inc.

Dear Harry:

Many thanks for your note accompanying your join letter of May 27. I agree with your suggested changes and will circulate a fresh edition of the opinion as soon as it returns from the print shop.

Sincerely,



Mr. Justice Blackmun

To: The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Stevens

From: Mr. Justice Rehnquist

Filed: MAY 21 1977

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1874

David L. Jones, Secretary of the
 North Carolina Department
 of Correction, et al.,
 Appellants,
 v.
 North Carolina Prisoners' Labor
 Union, Inc., etc.

On Appeal from the United
 States District Court for
 the Eastern District of
 North Carolina.

[May —, 1977]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Pursuant to regulations promulgated by the North Carolina Department of Correction, appellants prohibited inmates from soliciting other inmates to join appellee, the North Carolina Prisoners' Labor Union, Inc. (the Union), barred all meetings of the Union, and refused to deliver packets of Union publications that had been mailed in bulk to several inmates for redistribution among other prisoners. The Union instituted this action, based on 42 U. S. C. § 1983, to challenge these policies. It alleged that appellants' efforts to prevent the operation of a prisoners' union violated the First and Fourteenth Amendment rights of it and its members and that the refusal to grant the Union those privileges accorded several other organizations operating within the prison system deprived the Union of equal protection of the laws. A three-judge court was convened. After a hearing, the court found merit in the Union's free speech, association, and equal protection arguments, and enjoined appellants from preventing inmates from soliciting other prisoners to join the Union and from "refus[ing] receipt of the Union's publications on the

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 20, 1977

Re: No. 75-1074 - Jones v. North Carolina
Prisoners' Labor Union, Inc.

Dear Thurgood:

I do not anticipate making any changes in my
circulating opinion in response to your dissent.

Sincerely,



Mr. Justice Marshall

Copies to the Conference

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

From: Mr. Justice Stevens

JUN 15 1977

75-1874 - Jones v. North Carolina Prisoners' Union

Circulated: _____

Recirculated: _____

MR. JUSTICE STEVENS, concurring in part, and
 dissenting in part.

My disagreement with the Court is extremely narrow. The Court has not sanctioned a restraint on discussion between inmates on the relative advantages or disadvantages of belonging to a prisoners' union. The prohibition of inmate-to-inmate solicitation which the Court upholds is defined as "an invitation to collectively engage in a legitimately prohibited activity." Ante, at 11. The Court has made it clear that mere membership in a union is not such an activity, ante, at 9. The language of appellants' "no-solicitation regulation" is, however, somewhat broader.^{*/} Therefore, instead of concluding that the entire regulation is valid, ante, at 16-17, I would hold it invalid to the extent that it exceeds the Court's definition.

I join the portions of the Court's opinion concerning the bulk mailing and union meeting claims.

^{*/} "Persons in the custody of the Department of Correction are prohibited from soliciting other inmates about membership in any inmate union." App. 38.

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

From: Mr. Justice Stevens

Circulated: _____

Recirculated: JUN 20 1977

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1874

David L. Jones, Secretary of the
 North Carolina Department
 of Correction, et al.,
 Appellants,
 v.
 North Carolina Prisoners' Labor
 Union, Inc., etc.

On Appeal from the United
 States District Court for
 the Eastern District of
 North Carolina.

[June —, 1977]

MR. JUSTICE STEVENS, concurring in part and dissenting in part.

My disagreement with the Court is extremely narrow. The Court has not sanctioned a restraint on discussion between inmates on the relative advantages or disadvantages of belonging to a prisoners' union. The prohibition of inmate-to-inmate solicitation which the Court upholds is defined as "an invitation to collectively engage in a legitimately prohibited activity." *Ante*, at 11. The Court has made it clear that mere membership in a union is not such an activity, *ante*, at 9. The language of appellants' "no-solicitation regulation" is, however, somewhat broader.* Therefore, instead of concluding that the entire regulation is valid, *ante*, at 16-17, I would hold it invalid to the extent that it exceeds the Court's definition.

I join the portions of the Court's opinion concerning the bulk mailing and union meeting claims.

*"Persons in the custody of the Department of Correction are prohibited from soliciting other inmates about membership in any inmate union." App. 38.