

# The Burger Court Opinion Writing Database

## *Carey v. Phipus*

435 U.S. 247 (1978)

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


March 14, 1978

Re: 76-1149 - Carey v. Phipps

Dear Lewis:

I join.

Regards,



Mr. Justice Powell

Copies to the Conference

✓

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

L

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

March 6, 1978

RE: No. 76-1149 Carey v. Piphus, etc. et al.

Dear Lewis:

I agree.

Sincerely,

*Biel*

Mr. Justice Powell

cc: The Conference

8

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

CHAMBERS OF  
JUSTICE POTTER STEWART

February 27, 1978

No. 76-1149 - Carey v. Phipps

Dear Lewis,

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

Sincerely yours,

7.3.1  
✓

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

February 27, 1978

Re: 76-1149 - Carey v. Phipps

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Dear Lewis,

Please join me.

Sincerely yours,



Mr. Justice Powell

Copies to the Conference

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

JUSTICE THOMAS OF  
GOOD MARSHALL

March 9, 1978

Re: No. 76-1149, Carey v. Piphus

Dear Lewis:

Please note me as concurring in the result.

Sincerely,



T. M.

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

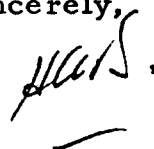
February 23, 1978

Re: No. 76-1149 - Carey v. Phipps

Dear Lewis:

At the end of your opinion will you please add a notation to the effect that I took no part in the consideration or decision of this case.

Sincerely,



Mr. Justice Powell

cc: The Conference

M

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

From: Mr. Justice Powell

1st DRAFT

Circulated: 23 FEB 1978

Recirculated: \_\_\_\_\_

SUPREME COURT OF THE UNITED STATES

No. 76-1149

John D. Carey et al., Petitioners,	} On Writ of Certiorari to the United States Court of Appeals for the Sev- enth Circuit.
v.	
Jarius Piphus, Etc., et al.	

[February —, 1978]

MR. JUSTICE POWELL delivered the opinion of the Court.

In this case, brought under 42 U. S. C. § 1983, we consider the elements and prerequisites for recovery of damages by students who were suspended from public elementary and secondary schools without procedural due process. The Court of Appeals for the Seventh Circuit held that the students are entitled to recover substantial nonpunitive damages even if their suspensions were justified, and even if they do not prove that any actual injury was caused by the denial of procedural due process. We disagree, and hold that in the absence of proof of actual injury, the students are entitled to recover only nominal damages.

I

Respondent Jarius Piphus was a freshman at Chicago Vocational High School during the 1973-1974 school year. On January 23, 1974, during school hours, the school principal saw Piphus and another student standing outdoors on school property passing back and forth what the principal described as an irregularly shaped cigarette. The principal approached the students unnoticed and smelled what he believed was the strong odor of burning marihuana. He also saw Piphus try to pass a packet of cigarette papers to the other student. When the students became aware of the principal's presence, they threw the cigarette into a nearby hedge.



P. 1, 9-10, 16, 17, 19, 20;  
footnotes renumbered.

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

From: Mr. Justice Powell

Circulated: \_\_\_\_\_

Recirculated: MAR 6 1978

2nd DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 76-1149

John D. Carey et al., Petitioners,	} On Writ of Certiorari to the United States Court of Appeals for the Sev- enth Circuit.
v.	
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[March —, 1978]

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## I

Respondent Jarius Piphus was a freshman at Chicago Vocational High School during the 1973-1974 school year. On January 23, 1974, during school hours, the school principal saw Piphus and another student standing outdoors on school property passing back and forth what the principal described as an irregularly shaped cigarette. The principal approached the students unnoticed and smelled what he believed was the strong odor of burning marihuana. He also saw Piphus try to pass a packet of cigarette papers to the other student. When the students became aware of the principal's presence, they threw the cigarette into a nearby hedge.

Pp. 2, 4, 13, 15, 17, 18, 19, 20.

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

From: Mr. Justice Powell

3rd DRAFT

Circulated: \_\_\_\_\_

Recirculated: 15 MAR 1978

SUPREME COURT OF THE UNITED STATES

No. 76-1149

John D. Carey et al., Petitioners,	} On Writ of Certiorari to the United States Court of Appeals for the Sev- enth Circuit.
v.	
Jarius Piphus, Etc., et al.	

[March —, 1978]

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

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March 28, 1978

MEMORANDUM TO THE CONFERENCE

Case held for No. 76-1149 Carey v. Phipus  
No. 77-85, Smalling, Superintendent of Unified  
School Dist. No. 480 v. Epperson, has been held pending  
decision in Carey v. Phipus.

In this case petitioners, a public school board and its members, terminated two teachers' employment without a hearing. The teachers, respondents here, sued petitioners under § 1983 and also directly under the Fourteenth Amendment, alleging that (i) petitioners had terminated their employment in retaliation for their exercise of First Amendment rights, and (ii) petitioners had denied them procedural due process by refusing to hold a pre-termination hearing. A jury determined that respondents' employment was not terminated in retaliation for their exercise of First Amendment rights. The DC ruled that (1) the action could proceed directly under the Fourteenth Amendment; (2) respondents had been denied procedural due process; (3) monetary relief was barred by

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

February 27, 1978

Re: No. 76-1149 - Carey v. Phipps

Dear Lewis:

Please join me.

Sincerely,



Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

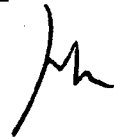
February 27, 1978

RE: 76-1149 - Carey v. Phipps

Dear Lewis:

Please join me.

Respectfully,



Mr. Justice Powell

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