

# The Burger Court Opinion Writing Database

## *Maryland v. Macon*

472 U.S. 463 (1985)

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



W

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

CHAMBERS OF  
THE CHIEF JUSTICE

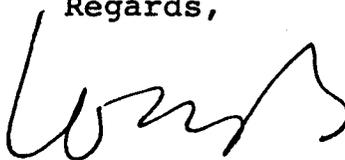
May 17, 1985

Re: No. 84-778 - Maryland v. Macon

Dear Sandra:

I join.

Regards,



Justice O'Connor

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

April 29, 1985

No. 84-778

Maryland v. Macon

Dear Thurgood,

You and I are in dissent in the  
above. I'll be happy to take on the  
dissent.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill".

Justice Marshall

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

May 21, 1985

No. 84-778

Maryland v. Macon

Dear Sandra,

I will be "shortly" circulating a  
brief dissent in the above.

Sincerely,

*Bill*

Justice O'Connor

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To: The Chief Justice  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: Justice Brennan

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~~WSB~~  
~~Please join me in your dissent~~  
~~H~~

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 84-778

MARYLAND, PETITIONER *v.* BAXTER MACON

ON WRIT OF CERTIORARI TO THE COURT OF SPECIAL APPEALS  
OF MARYLAND

[June —, 1985]

JUSTICE BRENNAN dissenting.

The Court granted certiorari to consider the holding of the Court of Special Appeals of Maryland that the First and Fourth Amendments require evidentiary suppression of certain magazines obtained in the course of an investigation culminating in the warrantless arrest of respondent on obscenity charges. The statute under which the prosecution was brought<sup>1</sup> is, in my view, unconstitutionally overbroad and therefore facially invalid in its entirety. See my dissent in *Paris Adult Theater I v. Slaton*, 413 U. S. 49, 73 (1973). For this reason, I would affirm the judgment of the Court of Special Appeals invalidating respondent's conviction. Even if I thought otherwise with respect to the constitutionality of the Maryland obscenity statute, however, I would not join today's opinion because I disagree with the Court's analysis of whether respondent's warrantless arrest should lead to a reversal of his conviction in this case.

I

"The use by government of the power of search and seizure as an adjunct to a system for the suppression of objectionable publications is not new. . . . The Bill of Rights was fashioned against the background of knowledge that unrestricted power of search and seizure could also be an instrument for

<sup>1</sup>Md. Code Ann. art. 27, § 418.

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STYLISTIC CHANGES THROUGHOUT.  
SEE PAGES: 4, old p 2 omitted

To: The Chief Justice  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: Justice Brennan

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JUN 13 1985

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2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 84-778

MARYLAND, PETITIONER *v.* BAXTER MACON

ON WRIT OF CERTIORARI TO THE COURT OF SPECIAL APPEALS  
OF MARYLAND

[June —, 1985]

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins,  
dissenting.

The Court granted certiorari to consider the holding of the Court of Special Appeals of Maryland that the First and Fourth Amendments require evidentiary suppression of certain magazines obtained in the course of an investigation culminating in the warrantless arrest of respondent on obscenity charges. The statute under which the prosecution was brought<sup>1</sup> is, in my view, unconstitutionally overbroad and therefore facially invalid in its entirety. See my dissent in *Paris Adult Theatre I v. Slaton*, 413 U. S. 49, 73 (1973). For this reason, I would affirm the judgment of the Court of Special Appeals invalidating respondent's conviction. Even if I thought otherwise with respect to the constitutionality of the Maryland obscenity statute, however, I would not join today's opinion because I disagree with the Court's analysis of whether respondent's warrantless arrest should lead to a reversal of his conviction in this case.

I

"The use by government of the power of search and seizure as an adjunct to a system for the suppression of objectionable publications is not new. . . ." *Marcus v. Search Warrent*, 367 U. S. 717, 724 (1961). "The Bill of Rights was fashioned

<sup>1</sup> Md. Ann. Code, Art. 27, § 418 (1982).

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CHAMBERS OF  
JUSTICE BYRON R. WHITE

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

May 22, 1985



84-778 - Maryland v. Macon

Dear Sandra,

I agree.

Sincerely,

Justice O'Connor

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 11, 1985

Re: No. 84-778-Maryland v. Macon

Dear Bill:

Please join me in your dissent.

Sincerely,

*J.M.*  
T.M.

Justice Brennan

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 16, 1985

Re: No. 84-778, Maryland v. Macon

Dear Sandra:

Please join me.

Sincerely,



Justice O'Connor

cc: The Conference

86 MAY 15 1985

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 16, 1985

84-778 Mayland v. Macon

Dear Sandra:

Please join me.

Sincerely,

*Lewis*

Justice O'Connor

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 21, 1985

Re: No. 84-778 Maryland v. Macon

Dear Sandra,

Please join me.

Sincerely,

*wm*

Justice O'Connor

cc: The Conference

84 MAY 21 1985

2

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 16, 1985

Re: 84-778, Maryland v. Macon

Dear Sandra:

Please join me.

Respectfully,



Justice O'Connor

Copies to the Conference

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To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens

From: Justice O'Connor

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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 84-778

**MARYLAND, PETITIONER v. BAXTER MACON**

**ON WRIT OF CERTIORARI TO THE COURT OF SPECIAL APPEALS  
OF MARYLAND**

[May —, 1985]

JUSTICE O'CONNOR delivered the opinion of the Court.

This case requires us to decide whether allegedly obscene magazines purchased by undercover officers shortly before the warrantless arrest of a sales clerk must be excluded from evidence at the clerk's subsequent trial for distribution of obscene materials. Following a jury trial in the Circuit Court of Prince George's County, Maryland, respondent was convicted of distribution of obscene materials in violation of Md. Code. Ann. art 27, §418. The Maryland Court of Special Appeals reversed the conviction and ordered the charges dismissed on the ground that the magazines were improperly admitted in evidence. *Macon v. State*, 57 Md. App. 705, 471 A. 2d 1090 (1984). The Maryland Supreme Court denied certiorari. *State v. Macon*, 300 Md. 765, 481 A. 2d 240 (1984). We granted certiorari, — U. S. — (1985), to resolve a conflict among the State courts on the question whether a purchase of allegedly obscene matter by an undercover police officer constitutes a seizure under the Fourth Amendment. Finding that it does not, we reverse.

I

On May 6, 1981, three Prince George's County police detectives went to the Silver News, Inc., an adult bookstore in Hyattsville, Maryland, as part of a police investigation of adult bookstores in the area. One of the detectives, who was not in uniform, entered the store, browsed for several min-

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stylistic change throughout  
change on p4

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens

From: Justice O'Connor

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2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 84-778

MARYLAND, PETITIONER *v.* BAXTER MACON

ON WRIT OF CERTIORARI TO THE COURT OF SPECIAL APPEALS  
OF MARYLAND

[June —, 1985]

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### I

On May 6, 1981, three Prince George's County police detectives went to the Silver News, Inc., an adult bookstore in Hyattsville, Maryland, as part of a police investigation of adult bookstores in the area. One of the detectives, who was not in uniform, entered the store, browsed for several minutes, and purchased two magazines from a clerk, Baxter

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