

## **MILLER V. CALIFORNIA**

**Supreme Court of the United States, 1973 413 U.S. 15, 93 S.Ct. 2607, 37 L.Ed.2d. 419**

Facts of the Case: Miller was found guilty for unsolicited mailings of pamphlets that contained pictures and drawings of men and women portrayed in sexual positions with their genitalia exposed. They stood as an advertisement for books and film that violated California's obscenity law. His conviction was confirmed at the state appellate level, thus his petition to the US Supreme Court.

### Issues/ Decisions:

- Under what parameters do state police power apply to pornographic and obscene material? A three-part test is offered, summarized as follows: 1) if an average person, applying community standards, would find the material appealing to a "prurient interest"; 2) if the work portrays sexual conduct in an offensive fashion in accordance with state law; 3) and if the work lacks literary, artistic, political, or scientific value.
- To what extent is obscene material protected by the First Amendment, incorporated to state law under the Fourteenth Amendment? Obscenity is not protected, although state statutes regulating it must be narrow in scope, defining materials that appeal to a "prurient interest," that "portray sexual conduct in a patently offensive..." manner, and are without political, literary, artistic, or scientific value.
- Does Miller's conviction violate the First Amendment? His case was vacated and remanded for further review given the aforementioned standards placed forward.

Reasoning: Chief Justice Burger wrote for the majority, attempting to advance an obscenity standard supported by a majority of the Court on the heels of several failed attempts. In accordance with the standards articulated above Burger provided examples of material subject to prosecution under state law, including "patently offensive representations" of sex acts, masturbation, "excretory functions," and "lewd" display of genitalia. Burger added that prosecution would only be permitted for the "sale or exposure" of "hard-core" pornography as defined by state statute, rejecting a more comprehensive standard given national heterogeneity by community.

Separate Opinions: Justice Douglass dissented from the new standards offered by the Court, troubled by the fact that obscenity is not addressed in the Constitution or the Bill of Rights, leaving the Court without guidelines in this realm. He noted the utter arbitrary nature of stabs at enacting such standards, for they vary by the person. Any national standards should therefore be established through a national debate precipitating in a constitutional amendment defining the appropriate parameters of censorship.