

## ALEXANDER ET AL. v. VIRGINIA

## CERTIORARI TO THE SUPREME COURT OF VIRGINIA

No. 71-1315. Argued October 19, 1972—Decided June 25, 1973

The judgment of the Supreme Court of Virginia, affirming the trial court's order adjudging certain magazines obscene and restraining their sale, is vacated and remanded for further proceedings consistent with *Miller v. California*, ante, p. 15; *Paris Adult Theatre I v. Slaton*, ante, p. 49; and *Heller v. New York*, ante, p. 483. Trial by jury is not constitutionally required in this civil action pursuant to Va. Code Ann. § 18.1-236.3.

212 Va. 554, 186 S. E. 2d 43, vacated and remanded.

*Stanley M. Dietz* argued the cause and filed a brief for petitioners.

*James E. Kulp*, Assistant Attorney General of Virginia, argued the cause for respondent. With him on the brief were *Andrew P. Miller*, Attorney General, and *Robert E. Shepherd, Jr.*, Assistant Attorney General.\*

## PER CURIAM.

The judgment of the Supreme Court of Virginia is vacated and the case is remanded for further proceedings not inconsistent with *Miller v. California*, ante, at 23-25, *Paris Adult Theatre I v. Slaton*, ante, at 58 n. 7, and *Heller v. New York*, ante, p. 483. See *United States v. 12 200-ft. Reels of Film*, ante, at 129-130 and n. 7. A trial by jury is not constitutionally required in this state civil proceeding pursuant to § 18.1-236.3 of the Code of Virginia, 1950, as amended. See *Melancon v. McKeithen*, 345 F. Supp. 1025, 1027, 1035-1045, 1048 (ED La.), aff'd *sub nom. Mayes v. Ellis*, 409 U. S. 943 (1972), and *Hill v. Mc-*

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\**Ralph J. Schwarz, Jr.*, *Mel S. Friedman*, and *Joel Hirschhorn* filed a brief for the First Amendment Lawyers' Association as *amicus curiae* urging reversal.

836

BRENNAN, J., dissenting

*Keithen*, 409 U. S. 943 (1972). Cf. *Kingsley Books, Inc. v. Brown*, 354 U. S. 436, 443-444 (1957).

*Vacated and remanded.*

MR. JUSTICE DOUGLAS would reverse the judgment of the Supreme Court of Virginia. See *Miller v. California, ante*, p. 37 (DOUGLAS, J., dissenting).

MR. JUSTICE BRENNAN, with whom MR. JUSTICE STEWART and MR. JUSTICE MARSHALL join, dissenting.

I would reverse the judgment of the Supreme Court of Virginia and remand the case for further proceedings not inconsistent with my dissenting opinion in *Paris Adult Theatre I v. Slaton, ante*, p. 73. See my dissent in *Miller v. California, ante*, p. 47.