

14th Amendment- Equal Protection  
*Barrett v. Williams*, 247 Or.App. 309 (2011)  
Oregon Court of Appeals

**Facts:**

Petitioner (Barrett) is in the legal custody of the Oregon Department of Corrections but was placed in the physical custody of the Oklahoma State Penitentiary (OSP) under the Interstate Compact Agreement.

Starting in August 2008, the OSP staff began to open, read, and confiscate the legal mail from Charles Simmons, who is Barrett's attorney. Petitioner alleges the staff continues to do this and then refuses to deliver the confiscated mail.

**Petitioner's Arguments:**

Petitioner asserts that opening mail from his attorney in his absence violates a variety of state and federal constitutional rights including the right to counsel, the right to access to courts, and the right to equal treatment.

**Issues:**

Did prison officials violate an inmate's right to counsel, right to access to courts, or right to equal treatment by opening an inmate's confidential mail and reading it?

**Court's Analysis and Conclusions:**

On the right to counsel argument, the court rejects this argument because there is no right to counsel in post conviction relief cases under the sixth amendment or the Oregon Constitution.

The access to courts claim is grounded in the due process clause of the fourteenth amendment, which the petitioner does have a right to. In a past case, *Bounds v. Smith* (1977) the U.S. Supreme Court held that the constitution required that an inmate have a reasonably adequate opportunity to present claimed violations of fundamental constitutional rights to the courts. To comply with that requirement the state could assist inmates in the preparation and filing of legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law.

This holding was narrowed in *Lewis v. Casey* (1996), which limited the constitutional guarantee of an inmate's access to courts to just those issues involving the crime they had been convicted of or challenges to the conditions of their confinement. The court reasoned that impairment of any other litigating capacity was incidental to the consequences of imprisonment.

In order to make an access claim the petitioner must also allege facts showing the deprivation of his right of access to courts requires immediate judicial attention and no other timely remedy is practicably available. He alleges no facts, and makes no legal arguments to support those allegations.

Furthermore, it is doubtful the petitioner could allege the necessary facts. In *Keenan v. Peterson* (1988), an inmate claimed prison officials were depriving him of constitutional rights by monitoring telephone conversations between him and his attorney. This court held that, “the procedures adopted by prisons do not infringe on any petitioner’s constitutional rights.” The same reasoning applies in this case and the court rejects petitioner’s claim for denial of access to courts.

As for the equal protection argument, it is clear that Mr. Barrett would have the ability to protect mail from his attorney from being read by others were it not for his incarceration. Because the right to be represented by counsel is a fundamental right, discrimination against Mr. Barrett on the basis of his incarcerated status is unconstitutional unless, it is the least restrictive means necessary to further a compelling governmental interest. However, the right to counsel is not a fundamental right in post-conviction cases and so the fourteenth amendment argument fails. Lastly, inmates do not constitute a protected class under the Oregon Constitution.

### **Who won?**

The court held the actions of the prison officials did not violate the three rights the prison inmate put forth. Therefore, the prison won.

Questions

1. When does the sixth amendment right to counsel apply?
  - a. When you are arrested and the state is charging you with a crime?
  - b. What about when a person is suing you?
  - c. Whenever you are a defendant in a case?
2. Can you think of a protected class under the equal protection clause?
3. What amendment is the equal protection clause found in?
4. What facts did the petitioner have to include in his allegation for access to courts?
5. Do you think it is fair that prison inmates have less privacy protections? Why or why not?