SUPREME COURT OF THE UNITED STATES

No. 90–985

JAYNE BRAY, ET AL., PETITIONERS *v.* ALEXANDRIA WOMEN'S HEALTH CLINIC ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

[January 13, 1993]

JUSTICE KENNEDY, concurring.

In joining the opinion of the Court, I make these added observations.

The three separate dissenting opinions in this case offer differing interpretations of the statute in question, 42 U. S. C. §1985(3). Given the difficulty of the question, this is understandable, but the dissenters' inability to agree on a single rationale confirms, in my view, the correctness of the Court's opinion. As all recognize, essential considerations of federalism are at stake here. The federal balance is a fragile one, and a false step in interpreting §1985(3) risks making a whole catalog of ordinary state crimes a concurrent violation of a single congressional statute passed more than a century ago.

Of course, the wholesale commission of common state-law crimes creates dangers that are far from ordinary. Even in the context of political protest, persistent, organized, premeditated lawlessness menaces in a unique way the capacity of a State to maintain order and preserve the rights of its citizens. Such actions are designed to inflame, not inform. They subvert the civility and mutual respect that are the essential preconditions for the orderly resolution of social conflict in a free society. For this reason, it is important to note that another federal statute offers the possibility of powerful federal assistance for persons who are injured or threatened by organized lawless conduct that falls within the primary jurisdiction of the States and their local governments.

Should state officials deem it necessary, law enforcement assistance is authorized upon request by the State to the Attorney General of the United States, pursuant to 42 U. S. C. §10501. In the event of a law enforcement emergency as to which "State and local resources are inadequate to protect the lives and property of citizens or to enforce the criminal law," §10502(3), the Attorney General is empowered to put the full range of federal law enforcement resources at the disposal of the State, including the resources of the United States Marshals Service, which was presumably the principal practical advantage to respondents of seeking a federal injunction under §1985(3). See §10502(2).

If this scheme were to be invoked, the nature and extent of a federal response would be a determination for the Executive. Its authority to act is less circumscribed than our own, but I have little doubt that such extraordinary intervention into local controversies would be ordered only after a careful assessment of the circumstances, including the need to preserve our essential liberties and traditions. Indeed, the statute itself explicitly directs the Attorney General to consider "the need to avoid unnecessary Federal involvement and intervention in matters primarily of State and local concern." §10501(c)(5).

I do not suggest that this statute is the only remedy available. It does illustrate, however, that Congress has provided a federal mechanism for ensuring that adequate law enforcement resources are available to protect federally guaranteed rights and that Congress, too, attaches great significance to the federal decision to intervene. Thus, even if, after proceedings on remand, the ultimate result is dismissal of the action, local authorities retain the right and the ability to request federal assistance, should they deem it warranted.