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 STEVENS, with whom JUSTICE BLACKMUN joins, dissenting.

After the Civil War, Congress enacted legislation imposing on the Federal Judiciary the responsibility to remedy both abuses of power by persons acting under color of state law and lawless conduct that state courts are neither fully competent, nor always certain, to prevent.[1] The Ku Klux Act of 1871, 17 Stat. 13, was a response to the massive, organized lawlessness that infected our Southern States during the post-Civil War era. When a question concerning this statute's coverage arises, it is appropriate to consider whether the controversy has a purely local character or the kind of federal dimension that gave rise to the legislation.

Based on detailed, undisputed findings of fact, the District Court concluded that the portion of §2 of the Ku Klux Act now codified at 42 U. S. C. §1985(3) provides a federal remedy for petitioners' violent concerted activities on the public streets and private property of law-abiding citizens. *National Organization for Women* v. *Operation Rescue*, 726 F. Supp. 1483 (ED Va. 1989). The Court of Appeals affirmed. *National Organization for Women* v. *Operation Rescue*, 914 F. 2d 582 (CA4 1990). The

[1]Thus, for example, the Sherman Act, 26 Stat. 209, was a response to a concern about concentrations of economic power that could not be effectively controlled by state enforcement of common-law doctrines of restraint of trade. See W. Letwin, Law and Economic Policy in America 77–85 (1980).

holdings of the courts below are supported by the text and the legislative history of the statute and are fully consistent with this Court's precedents. Admittedly, important questions concerning the meaning of §1985(3) have been left open in our prior cases, including whether the statute covers gender-based discrimination and whether it provides a remedy for the kind of interference with a woman's right to travel to another State to obtain an abortion revealed by this record. Like the overwhelming majority of federal judges who have spoken to the issue,[2] I am persuaded that traditional principles of statutory construction readily provide affirmative answers to these questions.

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[2]See *Volunteer Medical Clinic, Inc*. v. *Operation Rescue*, 948 F. 2d 218 (CA6 1991); *National Organization for Women* v. *Operation Rescue*, 914 F. 2d 582 (CA4 1990); *New York State National Organization for Women* v. *Terry*, 886 F. 2d 1339 (CA2 1989), cert. denied, 495 U. S. 947 (1990); *Women's Health Care Services* v. *Operation Rescue–National,* 773 F. Supp. 258 (Kan. 1991); *Planned Parenthood Assn. of San Mateo Cty.* v. *Holy Angels Catholic Church*, 765 F. Supp. 617 (ND Cal. 1991); *National Organization for Women* v. *Operation Rescue*, 747 F. Supp. 760 (DC 1990); *Southwestern Medical Clinics of Nevada, Inc.* v. *Operation Rescue*, 744 F. Supp. 230 (Nev. 1989); *National Organization for Women* v. *Operation Rescue*, 726 F. Supp. 1483 (ED Va. 1989); *Portland Feminist Women's Health Center* v. *Advocates for Life, Inc.*, 712 F. Supp. 165 (Ore. 1988); *Roe* v. *Operation Rescue*, 710 F. Supp. 577 (ED Pa. 1989); and *New York State National Organization for Women* v. *Terry*, 697 F. Supp. 1324 (SDNY 1988); but see *Lucero* v. *Operation Rescue of Birmingham*, 954 F. 2d 624 (CA11 1992); *National Abortion Federation* v. *Operation Rescue*, 721 F. Supp. 1168 (CD Cal. 1989); and *Lucero* v. *Operation Rescue of Birmingham*, 772 F. Supp. 1193 (ND Ala. 1991).

It is unfortunate that the Court has analyzed this case as though it presented an abstract question of logical deduction rather than a question concerning the exercise and allocation of power in our federal system of government. The Court ignores the obvious (and entirely constitutional) congressional intent behind §1985(3) to protect this Nation's citizens from what amounts to the theft of their constitutional rights by organized and violent mobs across the country.

The importance of the issue warrants a full statement of the facts found by the District Court before reaching the decisive questions in this case.

Petitioners are dedicated to a cause that they profoundly believe is far more important than mere obedience to the laws of the Commonwealth of Virginia or the police power of its cities. To achieve their goals, the individual petitioners ``have agreed and combined with one another and with defendant Operation Rescue to organize, coordinate and participate in `rescue' demonstrations at abortion clinics in various parts of the country, including the Washington Metropolitan area. The purpose of these `rescue' demonstrations is to disrupt operations at the target clinic and indeed ultimately to cause the clinic to cease operations entirely.''[3]

The scope of petitioners' conspiracy is nationwide; it far exceeds the bounds or jurisdiction of any one State. They have blockaded clinics across the country, and their activities have been enjoined in New York, Pennsylvania, Washington, Connecticut, California, Kansas, and Nevada, as well as the District of Columbia metropolitan area. They have carried out their ``rescue'' operations in the District of Columbia

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[3]*National Organization for Women* v. *Operation Rescue*, 726 F. Supp., at 1488.

and Maryland in defiance of federal injunctions.[4]

Pursuant to their overall conspiracy, petitioners have repeatedly engaged in ``rescue'' operations that violate local law and harm innocent women. Petitioners trespass on clinic property and physically block access to the clinic, preventing patients, as well as physicians and medical staff, from entering the clinic to render or receive medical or counseling services. Uncontradicted trial testimony demonstrates that petitioners' conduct created a ``substantial risk that existing or prospective patients may suffer physical or mental harm.''[5] Petitioners

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[4]*Id.*, at 1490.

[5]*Id.*, at 1489. The District Court's findings described the risk of serious physical and psychological injuries caused by petitioners' conduct:

``For example, for some women who elect to undergo an abortion, clinic medical personnel prescribe and insert a pre-abortion laminaria to achieve cervical dilation. In these instances, timely removal of the laminaria is necessary to avoid infection, bleeding and other potentially serious complications. If a `rescue' demonstration closes a clinic, patients requiring the laminaria removal procedure or other vital medical services must either postpone the required treatment and assume the attendant risks or seek the services elsewhere. Uncontradicted trial testimony established that there were numerous economic and psychological barriers to obtaining these services elsewhere. Hence, a `rescue' demonstration creates a substantial risk that a clinic's patients may suffer physical and mental harm.

``. . . Uncontradicted trial testimony by Dickinson-Collins, a trained mental health professional, established that blockading clinics and preventing patient access could cause stress, anxiety and mental harm (i) to women with abortions scheduled for that time, (ii) to women with abortion procedures (i.e.,

make no claim that
their conduct is a legitimate form of protected expression.

Petitioners' intent to engage in repeated violations of law is not contested. They trespass on private property, interfere with the ability of patients to obtain medical and counseling services, and incite others to engage in similar unlawful activity. They also engage in malicious conduct, such as defacing clinic signs, damaging clinic property, and strewing nails in clinic parking lots and on nearby public streets.[6] This unlawful conduct is ``vital to [petitioners'] avowed purposes and goals.''[7] They show no signs of abandoning their chosen method for advancing their goals.[8]

Rescue operations effectively hinder and prevent the constituted authorities of the targeted community from providing local citizens with adequate protection.[9] The lack of advance warning of petitioners' activities, combined with limited police department resources, makes it difficult for the police to prevent petitioners' ambush by ``rescue'' from closing a clinic for many hours at a time. The trial record is replete with examples of petitioners overwhelming local law enforcement officials by sheer

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laminaria insertion) already underway and (iii) to women seeking counselling concerning the abortion decision.'' *Ibid.* (footnote omitted).

[6]*Ibid*.

[7]*Id.*, at 1495.

[8]*Id.*, at 1490.

[9]Presumably this fact, as well as her understanding of the jurisdictional issue, contributed to the decision of the Attorney General of Virginia to file a brief *amicus curiae* supporting federal jurisdiction in this case. The City Attorney for Falls Church, Virginia, has also filed an *amicus curiae* brief supporting respondents.

force of numbers. In one ``rescue'' in Falls Church, Virginia, the demonstrators vastly outnumbered the police department's complement of 30 deputized officers. The police arrested 240 rescuers, but were unable to prevent the blockade from closing the clinic for more than six hours. Because of the large-scale, highly organized nature of petitioners' activities, the local authorities are unable to protect the victims of petitioners' conspiracy.[10]

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[10]See *id.*, at 1489, n. 4. The District Court's findings contain several examples illustrating the character of petitioners' ``rescue'' operations: ``For example, on almost a weekly basis for the last five (5) years, Commonwealth Women's Clinic has been the target of `rescue' demonstrations by Operation Rescue. One of the largest of these occurred on October 29, 1988. That `rescue' succeeded in closing the Clinic from 7:00 a.m. to 1:30 p.m., notwithstanding the efforts of the Falls Church Police Department. `Rescuers' did more than trespass on to the clinic's property and physically block all entrances and exits. They also defaced clinic signs, damaged fences and blocked ingress into and egress from the Clinic's parking lot by parking a car in the center of the parking lot entrance and deflating its tires. On this and other occasions, `rescuers' have strewn nails on the parking lots and public streets abutting the clinics to prevent the passage of any cars. Less than a year later, in April 1989, a similar `rescue' demonstration closed the Metropolitan Family Planning Institute in the District of Columbia for approximately four (4) hours.

``. . . Clinics in Maryland and the District of Columbia were closed as a result of `rescues' on November 10, 11 and 12, 1989. The following weekend, on November 18, 1989, the Hillcrest Women's Surgi-Center in the District of Columbia was closed for eleven (11) hours as a result of a `rescue'

Petitioners' conspiracy had both the purpose and effect of interfering with interstate travel. The number of patients who cross state lines to obtain an abortion obviously depends, to some extent, on the location of the clinic and the quality of its services. In the Washington Metropolitan area, where interstate travel is routine, 20 to 30 percent of the patients at some clinics were from out of State, while at least one clinic obtained over half its patients from other States. The District Court's conclusions in this regard bear repetition:

> ``[Petitioners] engaged in this conspiracy for the purpose, either directly or indirectly, of depriving women seeking abortions and related medical and counselling services, of the right to travel. The right to travel includes the right to unobstructed interstate travel to obtain an abortion and other medical services. . . . Testimony at trial establishes that clinics in Northern Virginia provide medical services to plaintiffs' members and patients who travel from out of state. Defendants' activities interfere with these persons' right to unimpeded interstate travel by blocking their access to abortion clinics. And, the Court is not persuaded that clinic closings affect only intra-state travel, from the street to the doors of the clinics. Were the Court to hold otherwise, interference with the right to travel could occur only at state borders. This conspiracy, therefore, effectively deprives organizational plaintiffs' non-Virginia members of their right to interstate travel.''[11]

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demonstration. Five (5) women who had earlier commenced the abortion process at the clinic by having laminaria inserted were prevented by `rescuers' from entering the clinic to undergo timely laminaria removal.'' *Id.*, at 1489–1490 (footnote omitted).

[11]*Id.*, at 1493.

To summarize briefly, the evidence establishes that petitioners engaged in a nationwide conspiracy; to achieve their goal they repeatedly occupied public streets and trespassed on the premises of private citizens in order to prevent or hinder the constituted authorities from protecting access to abortion clinics by women, a substantial number of whom traveled in interstate commerce to reach the destinations blockaded by petitioners. The case involves no ordinary trespass, nor anything remotely resembling the peaceful picketing of a local retailer. It presents a striking contemporary example of the kind of zealous, politically motivated, lawless conduct that led to the enactment of the Ku Klux Act in 1871 and gave it its name.

The text of the statute makes plain the reasons Congress considered a federal remedy for such conspiracies both necessary and appropriate. In relevant part the statute contains two independent clauses which I separately identify in the following quotation:

> ``If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, [*first*] for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or [*second*] for the purpose of preventing or hindering the consti-tuted authorities of any State or Territory from giving or securing to all persons within such State or Terri-tory the equal protection of the laws; . . . in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising

> any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.'' 42 U. S. C. §1985(3).

The plain language of the statute is surely broad enough to cover petitioners' conspiracy. Their concerted activities took place on both the public ``highway'' and the private ``premises of another.'' The women targeted by their blockade fit comfortably within the statutory category described as ``any person or class of persons.'' Petitioners' interference with police protection of women seeking access to abortion clinics ``directly or indirectly'' deprived them of equal protection of the laws and of their privilege of engaging in lawful travel. Moreover, a literal reading of the second clause of the statute describes petitioners' proven ``purpose of preventing or hindering the constituted authorities of any State or Territory'' from securing ``to all persons within such State or Territory the equal protection of the laws.''

No one has suggested that there would be any constitutional objection to the application of this statute to petitioners' nationwide conspiracy; it is obvious that any such constitutional claim would be frivolous. Accordingly, if, as it sometimes does, the Court limited its analysis to the statutory text, it would certainly affirm the judgment of the Court of Appeals. For both the first clause and the second clause of §1985(3) plainly describe petitioners' conspiracy.

The Court bypasses the statute's history, intent, and plain language in its misplaced reliance on prior precedent. Of course, the Court has never before had occasion to construe the second clause of §1985(3). The first clause, however, has been narrowly construed in *Collins* v. *Hardyman*, 341 U. S. 651 (1951), *Griffin* v. *Breckenridge*, 403 U. S. 88 (1971),

and *Carpenters* v. *Scott*, 463 U. S. 825 (1983). In the first of these decisions, the Court held that §1985(3) did not apply to wholly private conspiracies.[12] In *Griffin* the Court rejected that view but limited the application of the statute's first clause to conspiracies motivated by discriminatory intent to deprive plaintiffs of rights constitutionally protected against private (and not just governmental) deprivation. Finally, *Carpenters* re-emphasized that the first clause of §1985(3) offers no relief from the violation of rights protected against only state interference. 463 U. S., at 830–834. To date, the Court has recognized as rights protected against private encroachment (and, hence, by §1985(3)) only the constitutional right of interstate travel and rights granted by the Thirteenth Amendment.

For present purposes, it is important to note that in each of these cases the Court narrowly construed §1985(3) to avoid what it perceived as serious constitutional problems with the statute itself. Because those problems are not at issue here, it is even more important to note a larger point about our precedent. In the course of applying Civil War era legislation to civil rights issues unforeseeable in 1871, the Court has adopted a flexible approach, interpreting the statute to reach current concerns without exceeding the bounds of its intended purposes or the constitutional powers of Congress.[13] We need not exceed those bounds to apply the statute to these

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[12]The Court subsequently noted that the constitutional concerns that had supported the limiting construction adopted in *Collins* would not apply to ``a private conspiracy so massive and effective that it supplants [state] authorities and thus satisfies the state action requirement.'' *Griffin*, 403 U. S., at 98, and n. 5.

[13]The Court's caution in this regard echoes the recorded debates of the enacting Congress itself. See *Griffin* v. *Breckenridge*, 403 U. S., at 99-102.

facts.

The facts and decision in *Griffin* are especially instructive here. In overruling an important part of *Collins*, the Court found that the conduct the plaintiffs alleged—a Mississippi highway attack on a white man suspected of being a civil rights worker and the two black men who were passengers in his car—was emblematic of the antiabolitionist violence that §1985(3) was intended to prevent. A review of the legislative history demonstrated, on the one hand, that Congress intended the coverage of §1985(3) to reach purely private conspiracies, but on the other hand, that it wanted to avoid the ``constitutional shoals'' that would lie in the path of a general federal tort law punishing an ordinary assault and battery committed by two or more persons. The racial motivation for the battery committed by the defendants in the case before the Court placed their conduct ``close to the core of the coverage intended by Congress.'' 403 U. S., at 103. It therefore satisfied the limiting construction that the Court placed on the reference to a deprivation of ``equal'' privileges and immunities in the first clause of the Act. The Court explained that construction:

> ``The constitutional shoals that would lie in the path of interpreting §1985(3) as a general federal tort law can be avoided by giving full effect to the congressional purpose—by requiring, as an element of the cause of action, the kind of invidiously discriminatory motivation stressed by the sponsors of the limiting amendment. See the remarks of Representatives Willard and Shellabarger, quoted *supra*, at 100 [Cong. Globe, 42d Cong., 1st Sess., App. 69 (1871)]. The language requiring intent to deprive of *equal* protection, or *equal* privileges and immunities, means that there must be some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action.'' *Id.*, at

101–102.

A footnote carefully left open the question ``whether a conspiracy motivated by invidiously discriminatory intent other than racial bias would be actionable *under the portion of §1985(3) before us*.'' *Id.*, at 102, n. 9 (emphasis added). Neither of our two more recent opinions construing §1985 (3) has answered the question left open in *Griffin* or has involved the second clause of the statute.[14]

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[14]In *Great American Federal Savings & Loan Assn.* v. *Novotny*, 442 U. S. 366 (1979), we held that §1985(3) does not provide a remedy for a retaliatory discharge that violated Title VII of the Civil Rights Act of 1964, 42 U. S. C. §2000e *et seq*. We had no occasion to agree or to disagree with the Court of Appeals' holding that conspiracies motivated by an invidious animus against women fall within §1985(3) because we concluded that the deprivation of the subsequently created Title VII statutory right could not form the basis for a §1985(3) claim.

Carpenters v. *Scott*, 463 U. S. 825 (1983), arose out of a labor dispute in which union organizers had assaulted two nonunion employees and vandalized equipment owned by the employer. We held that §1985(3) did not provide a remedy for two reasons. First, the alleged violation of the First Amendment was insufficient because there was no claim that the State was involved in the conspiracy or that the aim of the conspiracy was to influence state action. Second, we concluded that group action resting on economic or commercial animus, such as animus in favor of or against unionization, did not constitute the kind of class-based discrimination discussed in our opinion in *Griffin* v. *Breckenridge,* 403 U. S. 88 (1971). As the introductory paragraph to the opinion made clear, the case involved only the scope of the remedy made available by the first clause of §1985(3). See 463 U. S., at 827.

After holding that the statute did apply to such facts, and that requiring a discriminatory intent would prevent its over-application, the *Griffin* Court held that §1985(3) would be within the constitutional power of Congress if its coverage were limited to constitutional rights secured against private action. The facts in that case identified two such grounds.

One ground was §2 of the Thirteenth Amendment. The other was the right to travel. The Court explained how the petitioners could show a violation of the latter. As with the class-based animus requirement, the Court was less concerned with the specifics of that showing than with the constitutionality of §1985(3); it emphasized that whatever evidence they presented had to ``make it clear that the petitioners had suffered from conduct that Congress may reach under its power to protect the right of interstate travel.'' *Id.*, at 106.

The concerns that persuaded the Court to adopt a narrow reading of the text of §1985(3) in *Griffin* are not presented in this case. Giving effect to the plain language of §1985(3) to provide a remedy against the violent interference with women exercising their privilege—indeed, their right—to engage in interstate travel to obtain an abortion presents no danger of turning the statute into a general tort law. Nor does anyone suggest that such relief calls into question the constitutional powers of Congress. When the *Griffin* Court rejected its earlier holding in *Collins*, it provided both an ``authoritative construction'' of §1985(3), see *ante*, at 1–2 (SOUTER, J., concurring in part and dissenting in part), and a sufficient reason for rejecting the doctrine of *stare decisis* whenever it would result in an unnecessarily narrow construction of the statute's plain language. The Court wrote:

> ``Whether or not *Collins* v. *Hardyman* was correctly decided on its own facts is a question with which we need not here be concerned. But it is clear, in the light of the evolution of decisional

> law in the years that have passed since that case was decided, that many of the constitutional problems there perceived simply do not exist. Little reason remains, therefore, not to accord to the words of the statute their apparent meaning.'' 403 U. S., at 95–96.

Once concerns about the constitutionality of §1985(3) are properly put aside, we can focus more appropriately on giving the statute its intended effect. On the facts disclosed by this record, I am convinced that both the text of the statute and its underlying purpose support the conclusion that petitioners' conspiracy was motivated by a discriminatory animus and violated respondents' protected right to engage in interstate travel.

The question left open in *Griffin*—whether the coverage of §1985(3) is limited to cases involving racial bias—is easily answered. The text of the statute provides no basis for excluding from its coverage any cognizable class of persons who are entitled to the equal protection of the laws. This Court has repeatedly and consistently held that gender-based classifications are subject to challenge on constitutional grounds, see, *e. g.*, *Reed* v. *Reed*, 404 U. S. 71 (1971); *Mississippi University for Women* v. *Hogan*, 458 U. S. 718 (1982). A parallel construction of post-Civil War legislation that, in the words of Justice Holmes, ``dealt with Federal rights and with all Federal rights, and protected them in the lump,'' *United States* v. *Mosley*, 238 U. S. 383, 387 (1915), is obviously appropriate.

The legislative history of the Act confirms the conclusion that even though it was primarily motivated by the lawless conduct directed at the recently emancipated citizens, its protection extended to ``all the thirty-eight millions of the citizens of this nation.'' Cong. Globe, 42d Cong., 1st Sess., 484 (1871). Given then prevailing attitudes

about the respective roles of males and females in society, it is possible that the enacting legislators did not anticipate protection of women against class-based discrimination. That, however, is not a sufficient reason for refusing to construe the statutory text in accord with its plain meaning, particularly when that construction fulfills the central purpose of the legislation. See *Union Bank* v. *Wolas*, 502 U. S. ___, ___ (1991) (slip op., at 4).

The gloss that Justice Stewart placed on the statute in *Griffin*, then, did not exclude gender-based discrimination from its coverage. But it does require us to resolve the question whether a conspiracy animated by the desire to deprive women of their right to obtain an abortion is ``class-based.''

The terms ``animus'' and ``invidious'' are susceptible to different interpretations. The Court today announces that it could find class-based animus in petitioners' mob violence ``only if one of two suggested propositions is true: (1) that opposition to abortion can reasonably be presumed to reflect a sex-based intent, or (2) that intent is irrelevant, and a class-based animus can be determined solely by effect.'' *Ante*, at 5.

The first proposition appears to describe a malevolent form of hatred or ill-will. When such an animus defends itself as opposition to conduct that a given class engages in exclusively or predominantly, we can readily unmask it as the intent to discriminate against the class itself. See *ante*, at 4–5. *Griffin* itself, for instance, involved behavior animated by the desire to keep African-American citizens from exercising their constitutional rights. The defendants were no less guilty of a class-based animus because they *also* opposed the cause of desegregation or rights of African-American suffrage, and the Court did not require the plaintiffs in *Griffin* to prove that their beatings were motivated by hatred for African-

Americans. Similarly, a decision disfavoring female lawyers,[15] female owners of liquor establishments,[16] or pregnant women[17] may appropriately be characterized as ``invidiously discriminatory'' even if the decisionmakers have goals other than—or in addition to—discrimination against individual women.[18]

The second proposition deserves more than the Court's disdain. It plausibly describes an assumption

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[15]See *Bradwell* v. *Illinois*, 16 Wall. 130 (1873). The reasoning of the concurring Justices surely evidenced invidious animus, even though it rested on traditional views about a woman's place in society, rather than on overt hostility toward women. These Justices wrote:

``[T]he civil law, as well as nature herself, has always recognized a wide difference in the respective spheres and destinies of man and woman. Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The constitution of the family organization, which is founded in the divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood. The harmony, not to say identity, of interests and views which belong, or should belong, to the family institution is repugnant to the idea of a woman adopting a distinct and independent career from that of her husband. So firmly fixed was this sentiment in the founders of the common law that it became a maxim of that system of jurisprudence that a woman had no legal existence separate from her husband, who was regarded as her head and representative in the social state; and, notwithstanding some recent modifications of this civil status, many of the special rules of law flowing from and dependent upon this cardinal principle still exist in full force in most States.

that intent lies behind the discriminatory effects from which Congress intended §1985(3) to protect American citizens. Congress may obviously offer statutory protections against behavior that the Constitution does not forbid, including forms of discrimination that undermine §1985(3)'s guarantee of equal treatment under the law. Regardless of whether the examples of paternalistic discrimination given above involve a constitutional violation, as a matter of statutory construction it is entirely appropri-

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One of these is, that a married woman is incapable, without her husband's consent, of making contracts which shall be binding on her or him. . . .

``. . . The paramount destiny and mission of woman are to fulfil the noble and benign offices of wife and mother. This is the law of the Creator.'' *Id.*, at 141 (Bradley, J., joined by Swayne and Field, JJ., concurring in judgment).

The Justices who subscribed to those views were certainly not misogynists, but their basic attitude—or animus—toward women is appropriately characterized as ``invidiously discriminatory.''

[16]See *Goesaert* v. *Cleary*, 335 U. S. 464 (1948). In a prescient dissenting opinion written in 1948 that accords with our current understanding of the idea of equality, Justice Rutledge appropriately selected the word ``invidious'' to characterize a statutory discrimination between male and female owners of liquor establishments. *Id*., at 468 (Rutledge, J., dissenting).

[17]See *Nashville Gas Co.* v. *Satty*, 434 U. S. 136 (1977).

[18]Last Term in *Fort Gratiot Sanitary Landfill, Inc*. v. *Michigan Dept. of Natural Resources,* 504 U. S. ___ (1992), we found that Michigan had discriminated against interstate commerce in garbage even though its statutory scheme discriminated against most of the landfill operators in Michigan as well as those located in other States.

ate to conclude that each would satisfy the class-based animus requirement because none of them poses any danger of converting §1985(3) into a general tort law or creating concerns about the constitutionality of the statute.

Both forms of class-based animus that the Court proposes are present in this case.

Sex-Based Discrimination

It should be noted that a finding of class-based animus in this case does not require finding that to disfavor abortion is ``*ipso facto*'' to discriminate invidiously against women. See *ante*, at 6. Respondents do not take that position, and they do not rely on abstract propositions about "opposition to abortion" *per se*, see *ante*, at 4–5. Instead, they call our attention to a factual record showing a particular lawless conspiracy employing force to prevent women from exercising their constitutional rights. Such a conspiracy, in the terms of the Court's first proposition, may ``reasonably be presumed to reflect a sex-based intent.'' See *ante*, at 5.

To satisfy the class-based animus requirement of §1985(3), the conspirators' conduct need not be motivated by hostility toward individual women. As women are unquestionably a protected class, that requirement—as well as the central purpose of the statute—is satisfied if the conspiracy is aimed at conduct that only members of the protected class have the capacity to perform. It is not necessary that the intended effect upon women be the sole purpose of the conspiracy. It is enough that the conspiracy be motivated ``at least in part'' by its adverse effects upon women. Cf. *Personnel Administrator of Mass.* v. *Feeney*, 442 U. S. 256, 279 (1979); *Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U. S. 252, 265–266 (1977). The immediate and intended effect of this conspiracy was to prevent women from

obtaining abortions. Even assuming that the ultimate and indirect consequence of petitioners' blockade was the legitimate and nondiscriminatory goal of saving potential life, it is undeniable that the conspirators' immediate purpose was to affect the conduct of women.[19] Moreover, petitioners target women *because of* their sex, specifically, because of their capacity to become pregnant and to have an abortion.[20]

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[19]In *Personnel Administrator of Mass.* v. *Feeney*, 442 U. S. 256 (1979), we inquired whether the challenged conduct was undertaken ``at least in part `because of,' not merely `in spite of,' its adverse effects upon an identifiable group.'' *Id.*, at 279. It would be nonsensical to say that petitioners blockaded clinics ``in spite of'' the effect of the blockades on women.

[20]The Court mischaracterizes this analysis by ignoring the distinction between a classification that is sex-based and a classification that constitutes sexual discrimination prohibited by the Constitution or by statute. See *ante*, at 7, n. 3. A classification is sex-based if it classifies on the basis of sex. As the capacity to become pregnant is a characteristic necessarily associated with one sex, a classification based on the capacity to become pregnant is a classification based on sex.

See Sunstein, Neutrality in Constitutional Law (With Special Reference to Pornography, Abortion, and Surrogacy), 92 Colum. L. Rev. 1, 32–33 (1992) (footnotes omitted):

``The first point is that restrictions on abortion should be seen as a form of sex discrimination. The proper analogy here is to a law that is targeted solely at women, and thus contains a de jure distinction on the basis of sex. A statute that is explicitly addressed to women is of course a form of sex discrimination. A statute that involves a defining characteristic or a biological correlate of being female should be treated in precisely the same way. If a law said that `no

It is also obvious that petitioners' conduct was motivated ``at least in part'' by the invidious belief that individual women are not capable of deciding whether to terminate a pregnancy, or that they should not be allowed to act on such a decision. Petitioners' blanket refusal to allow any women access to an abortion clinic overrides the individual class member's choice, no matter whether she is the victim of rape or incest, whether the abortion may be necessary to save her life,[21] or even whether she is

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woman' may obtain an abortion, it should readily be seen as a sex-based classification. A law saying that `no person' may obtain an abortion has the same meaning.

``The fact that some men may also be punished by abortion laws—for example, male doctors—does not mean that restrictions on abortion are sex-neutral. Laws calling for racial segregation make it impermissible for whites as well as blacks to desegregate, and this does not make such laws race-neutral. Nor would it be correct to say that restrictions on abortion merely have a discriminatory impact on women, and that they should therefore be treated in the same way as neutral weight and height requirements having disproportionate effects on women. With such requirements, men and women are on both sides of the legal line; but abortion restrictions exclusively target women. A law that prohibited pregnant women, or pregnant people, from appearing on the streets during daylight would readily be seen as a form of de jure sex discrimination. A restriction on abortion has the same sex-based features.''

[21]The Court refers to petitioners' opposition to ``voluntary'' abortion. *Ante*, at 5. It is not clear what the Court means by ``voluntary'' in this context, but petitioners' opposition is certainly not limited to ``elective'' abortions. Petitioners' conduct evidences

merely seeking advice or information about her options. Petitioners' conduct is designed to deny *every* woman the opportunity to exercise a constitutional right that *only* women possess. Petitioners' conspiracy, which combines massive defiance of the law with violent obstruction of the constitutional rights of their fellow citizens, represents a paradigm of the kind of conduct that the statute was intended to cover.[22]

The Court recognizes that the requisite animus may ``readily be presumed'' on the basis of the relationship between the targeted activity and membership in the targeted class. *Ante*, at 5. But the Court insists that opposition to an act engaged in exclusively by members of a protected class does not involve class-based animus unless the act itself is an ``irrational object of disfavor.'' *Ibid.* The Court's view requires a subjective judicial interpretation inappropriate in the civil rights context, where what seems rational to an oppressor seems equally irrational to a victim. Opposition to desegregation, and opposition to the voting rights of both African-Americans and women, were certainly at one time considered ``rational'' propositions. But such propositions were never free of the class-based discrimination from which §1985(3) protects the members of both

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a belief that it is better for a woman to die than for the fetus she carries to be aborted. See nn. 5, 10, *supra*.

[22]The Court's discussion of the record suggests that the District Court made a finding that petitioners were not motivated by a purpose directed at women as a class. See *ibid.* The District Court made no such finding, and such a finding would be inconsistent with the District Court's conclusion that petitioners' gender-based animus satisfied the class-based animus requirement of §1985(3), see 726 F. Supp., at 1492.

classes.

The activity of traveling to a clinic to obtain an abortion is, of course, exclusively performed by women. Opposition to that activity may not be ``irrational,'' but violent interference with it is unquestionably ``aimed at'' women. The Court offers no justification for its newly crafted suggestion that *deliberately* imposing a burden on an activity exclusively performed by women is not class-based discrimination unless opposition to the activity is also irrational. The Court is apparently willing to presume discrimination only when opposition to the targeted activity is—in its eyes—wholly pretextual: that is, when it thinks that no rational person would oppose the activity, except as a means of achieving a separate and distinct goal.[23] The Court's analysis makes sense only if every member of a protected class exercises all of her constitutional rights, or if no rational excuse remains for otherwise invidious discrimination. Not every member of every protected class chooses to exercise all of his or her constitutional rights; not all of them want to. That many women do not obtain abortions—that many women *oppose* abortion—does not mean that those who violently prevent the exercise of that right by women who do exercise it are somehow cleansed of their discriminatory intent. In enacting a law such as §1985(3) for federal courts to enforce, Congress

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[23]The limitations of this analysis are apparent from the example the Court invokes: ``A tax on wearing yarmulkes is a tax on Jews.'' *Ante,* at 5. The yarmulke-tax would not become less of a tax on Jews if the taxing authorities really did wish to burden the wearing of yarmulkes. And the fact that many Jews do not wear yarmulkes—like the fact that many women do not seek abortions—would not prevent a finding that the tax—like petitioners' blockade—-targeted a particular class.

asked us to see through the excuses—the ``rational'' motives—that will always disguise discrimination. Congress asked us to foresee, and speed, the day when such discrimination, no matter how well disguised, would be unmasked.

Statutory Relief from Discriminatory Effects

As for the second definition of class-based animus, disdainfully proposed by the Court, *ante*, at 5, there is no reason to insist that a statutory claim under §1985(3) must satisfy the restrictions we impose on constitutional claims under the Fourteenth Amendment. A congressional statute may offer relief from discriminatory effects even if the Fourteenth Amendment prevents only discriminatory intent.

The Court attempts to refute the finding of class-based animus by relying on our cases holding that the governmental denial of either disability benefits for pregnant women or abortion funding does not violate the Constitution. That reliance is misplaced for several reasons. Cases involving constitutional challenges to governmental plans denying financial benefits to pregnant women, and cases involving Equal Protection challenges to facially neutral statutes with discriminatory effects, involve different concerns and reach justifiably different results than a case involving citizens' statutory protection against burdens imposed on their constitutional rights.

In *Geduldig* v. *Aiello*, 417 U. S. 484 (1974), we faced the question whether a State's disability insurance system violated the Fourteenth Amendment by excluding benefits for normal pregnancy. A majority of the Court concluded that the system did not constitute discrimination on the basis of sex prohibited by the Equal Protection Clause. *Geduldig*, of course, did not purport to establish that, as a matter of logic, a classification based on pregnancy is gender-neutral. As an abstract statement, that

proposition is simply false; a classification based on pregnancy is a sex-based classification, just as, to use the Court's example, a classification based on the wearing of yarmulkes is a religion-based classification. Nor should *Geduldig* be understood as holding that, as a matter of law, pregnancy-based classifications never violate the Equal Protection Clause. In fact, as the language of the opinion makes clear, what *Geduldig* held was that not every legislative classification based on pregnancy was equivalent, for equal protection purposes, to the explicitly gender-based distinctions struck down in *Frontiero* v. *Richardson*, 411 U. S. 677 (1973), and *Reed* v. *Reed*, 404 U. S. 71 (1971). That *Geduldig* must be understood in these narrower terms is apparent from the sentence which the Court quotes in part: ``While it is true that only women can become pregnant, it does not follow that every legislative classification concerning pregnancy is a sex-based classification *like those*

considered in Reed, supra, and Frontiero, supra.'' *Geduldig*, 417 U. S., at 496, n. 20 (emphasis added).[24]

Central to the holding in *Geduldig* was the Court's belief that the disability insurance system before it was a plan that conferred benefits evenly on men and women.[25] Later cases confirmed that the holding in *Geduldig* depended on an analysis of the insurance plan as a benefit program with an overall nondiscriminatory effect.[26] *Nashville Gas Co.* v. *Satty*, 434 U. S.

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[24]To his argument quoted in n. 19, *supra,* Professor Sunstein adds: "It is by no means clear that *Geduldig* would be extended to a case in which pregnant people were (for example) forced to stay indoors in certain periods, or subjected to some other unique criminal or civil disability.'' 92 Colum. L. Rev., at 32, n. 122.

[25]The Court emphasized that nothing in the record suggested that the actuarial value of the insurance package was greater for men than for women. See 417 U. S., at 496. Indeed, even the exclusion of coverage for pregnancy-related disability benefited both men and women. The Court noted that dual distribution of benefits in the now-famous lines: ``The program divides potential recipients into two groups—pregnant women and nonpregnant persons. . . . The fiscal and actuarial benefits of the program thus accrue to members of both sexes.'' *Id.*, at 497, n. 20.

[26]See, *e.g., Newport News Shipbuilding & Dry Dock Co.* v. *EEOC*, 462 U. S. 669, 677, n. 12 (1983) (after quoting the footnote in *Geduldig* which includes the language on which the Court relies today, we stated: ``The principal emphasis in the text of the *Geduldig* opinion, unlike the quoted footnote, was on the reasonableness of the State's cost justifications for the classification in its insurance program.''); *Turner* v. *Department of Employment Security of Utah*, 423 U. S. 44, 45, n. (1975) *(per curiam)* (observing that

136 (1977), applied a statute without an intent requirement to an employer's policy denying accumulated seniority to employees returning from pregnancy leave. Notwithstanding *Geduldig*, the Court found that the policy burdened only women, and therefore constituted discrimination on the basis of sex. The Court stated that ``petitioner has not merely refused to extend to women a benefit that men cannot and do not receive, but has imposed on women a substantial burden that men need not suffer. The distinction between benefits and burdens is more than one of semantics.'' 434 U. S., at 142.[27] The distinction between those who oppose abortion,

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the opinion below ``ma[de] no mention of coverage limitations or insurance principles central to [*Geduldig* v.] *Aiello*''); and *General Electric Co.* v. *Gilbert*, 429 U. S. 125, 137 (1976) (relying on the reasoning of *Geduldig*, the Court again emphasized that notwithstanding a pregnancy exclusion, the plan had not been shown to provide women, as a group, with a lower level of health benefits).

[27]The abortion-funding cases cited by the Court similarly turn on the distinction between the denial of monetary benefits and the imposition of a burden. See *Maher* v. *Roe*, 432 U. S. 464, 475 (1977) (``There is a basic difference between direct state interference with a protected activity and state encouragement of an alternative activity consonant with legislative policy''); see also *Harris* v. *McRae*, 448 U. S. 297, 313–318 (1980). In *Harris* and *Maher*, the ``suspect classification'' that the Court considered was indigency. Relying on *San Antonio Independent School Dist.* v. *Rodriguez*, 411 U. S. 1 (1973), and *Dandridge* v. *Williams*, 397 U. S. 471 (1970), the Court rejected the argument that ``financial need alone identifies a suspect class.'' *Maher*, 432 U. S., at 471; *Harris*, 448 U. S., at 323 (citing *Maher*, 432 U. S., at 471).

and those who physically threaten women and obstruct their access to abortion clinics, is also more than semantic. Petitioners in this case form a mob that seeks to impose a burden on women by forcibly preventing the exercise of a right that only women possess. The discriminatory effect of petitioners' conduct is beyond doubt.

Geduldig is inapplicable for another reason. The issue of class-based animus in this case arises in a statutory, not a constitutional, context. There are powerful reasons for giving §1985(3) a reading that is broader than the constitutional holdings on which the Court relies.[28] In our constitutional cases, we apply

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[28]A failure to meet the intent standard imposed on the Fourteenth Amendment does not preclude a finding of class-based animus here. Much of this Court's Fourteenth Amendment jurisprudence concerns the permissibility of particular legislative distinctions. The case law that has evolved focuses on how impermissible discrimination may be inferred in the face of arguably ``neutral'' legislation or policy. See *Personnel Administrator of Mass*. v. *Feeney,* 442 U. S., at 274; *Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U. S. 252, 264–266 (1977); *Washington* v. *Davis*, 426 U. S. 229, 242 (1976). We have recognized that even in constitutional cases disproportionate impact may provide powerful evidence of discrimination. See *Feeney*, 442 U. S., at 279, n. 25; *Arlington Heights,* 429 U. S., at 265–266; *Davis,* 426 U. S., at 242. In developing the intent standard, though, we expressed reluctance to subject facially neutral legislation to judicial invalidation based on effect alone. The question here is not whether a law ``neutral on its face and serving ends otherwise within the power of government to pursue,'' *Davis,* 426 U. S., at 242, violates the Equal Protection Clause. It is indisputable that a governmental body would violate the Constitution if,

the intent standard to determine whether a constitutional violation has occurred. In cases under §1985(3), we apply the class-based animus test not to determine whether a constitutional violation has occurred—the violation is independently established—but to determine whether that violation can be remedied. Given the differing roles the intent standard and the class-based animus requirement play in our jurisprudence, there is no justification for applying the same stringent standards in the context of §1985(3) as in our constitutional cases.

As a matter of statutory interpretation, I have always believed that rules that place special burdens on pregnant women discriminate on the basis of sex, for the capacity to become pregnant is the inherited and immutable characteristic that ``primarily differentiates the female from the male.'' *General Electric Co.* v. *Gilbert*, 429 U. S. 125, 162 (1976) (STEVENS, J., dissenting). I continue to believe that that view should inform our construction of civil rights legislation.

That view was also the one affirmed by Congress in the Pregnancy Discrimination Act, 92 Stat. 2076, which amended Title VII of the Civil Rights Act of

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for the purpose of burdening abortion, it infringed a person's federally protected right to travel. *Doe* v. *Bolton*, 410 U. S. 179, 200 (1973). This governmental conduct would be actionable under §1 of the Ku Klux Act, now 42 U. S. C. §1983. If private parties jointly participated in the conduct, they, too, would be liable under §1983. See *Lugar* v. *Edmondson Oil Co.*, 457 U. S. 922 (1982); *Adickes* v. *S. H. Kress & Co.*, 398 U. S. 144 (1970). The class-based animus requirement determines whether a private conspiracy to violate the federal right to travel—a right protected against private interference—similarly gives rise to a federal cause of action.

1964, 42 U. S. C. §2000e *et seq*.[29] The Act categorically expressed Congress' view that ``discrimination based on a woman's pregnancy is, on its face, discrimination because of her sex.'' *Newport News Shipbuilding & Dry Dock Co.* v. *EEOC*, 462 U. S. 669, 684 (1983). *Geduldig* had held that a pregnancy-based classification did not constitute forbidden sex discrimination if the classification related to benefits and did not have a discriminatory effect. In the Pregnancy Discrimination Act, Congress rejected *Geduldig*'s focus on benefits and overall impact, instead insisting that discrimination on the basis of pregnancy necessarily constitutes prohibited sex discrimination. See H. R. Rep. No. 95–948, pp. 2–3 (1978). The statements of the bill's proponents demonstrate their disapproval of the Court's reluctance in *Gilbert* and *Geduldig* to recognize that discrimination on the basis of pregnancy is *always* gender-based discrimination. See, *e.g.,* 123 Cong. Rec. 10581 (1977) (remarks of Rep. Hawkins) (``[I]t seems only commonsense, that since only women can become pregnant, discrimination against pregnant people is necessarily discrimination against women . . .'').[30]

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[29]The Pregnancy Discrimination Act was passed in reaction to the Court's decision in *Gilbert*, which relied on *Geduldig* to uphold a pregnancy exclusion in a private employer's disability insurance plan, challenged under Title VII. In enacting the Pregnancy Discrimination Act, Congress directly repudiated the logic and the result of *Gilbert*. See *Newport News,* 462 U. S., at 678 (``When Congress amended Title VII in 1978, it unambiguously expressed its disapproval of both the holding and the reasoning of the Court in the *Gilbert* decision'').

[30]The House and Senate Reports both state that the Act adopts the position, held by the Justices who dissented in *Gilbert,* that discrimination on the basis

Two Terms ago, in *Automobile Workers* v. *Johnson Controls*, 499 U. S. ___ (1991), the Court again faced the question whether a classification based on childbearing capacity violated a statutory ban on discrimination. That case, arising under Title VII, concerned Johnson Controls' ``fetal-protection policy,'' which excluded all women ``capable of bearing children'' from jobs requiring exposure to lead. Johnson Controls sought to justify the policy on the basis that maternal exposure to lead created health risks for a fetus. The first question the Court addressed was whether the policy was facially discriminatory or, alternatively, facially neutral with merely a discriminatory effect. The Court concluded that the policy was facially discriminatory. The policy was not neutral, the Court held, ``because it does not apply to the reproductive capacity of the company's male employees in the same way as it applies to that of the females.'' *Id.,* at ___ (slip op., at 10). *Johnson Controls*, I had thought, signaled the Court's recognition that classifications based on ability to become pregnant are necessarily discriminatory.

Respondents' right to engage in interstate travel is inseparable from the right they seek to exercise. That right, unduly burdened and frustrated by petitioners' conspiracy, is protected by the Federal Constitution, as we recently reaffirmed in *Planned Parenthood of Southeastern Pennsylvania* v. *Casey*, 505 U. S. ___ (1992). Almost two decades ago, the Court squarely held that the right to enter another State for the purpose of seeking abortion services available there is protected by the Privileges and Immunities Clause, U. S. Const., Art. IV, §2. *Doe* v.

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of pregnancy is discrimination on account of sex. H. R. Rep. No. 95–948, p. 2 (1978); S. Rep. No. 95–331, pp. 2–3 (1977); see *Newport News*, 462 U. S., at 678–679.

Bolton, 410 U. S. 179, 200 (1973).[31] A woman's right to engage in interstate travel for this purpose is either entitled to special respect because she is exercising a constitutional right, or because restrictive rules in her home State may make travel to another State imperative. Federal courts are uniquely situated to protect that right for the same reason they are well suited to protect the privileges and immunities of those who enter other States to ply their trade. See, *e.g.*, *Blake* v. *McClung*, 172 U. S. 239, 248–256 (1898).

The District Court's conclusion that petitioners intended to interfere with the right to engage in interstate travel is well-supported by the record. Interference with a woman's ability to visit another State to obtain an abortion is essential to petitioners' achievement of their ultimate goal—the complete elimination of abortion services throughout the United States. No lesser purpose can explain their multi-state ``rescue'' operations.

Even in a single locality, the effect of petitioners' blockade on interstate travel is substantial. Between 20 and 30 percent of the patients at a targeted clinic in Virginia were from out of State and over half of the patients at one of the Maryland clinics were interstate travelers. 726 F. Supp., at 1489. Making their

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[31]Although two Justices dissented from other portions of the decision in *Doe* v. *Bolton*, see 410 U. S., at 221–223, no Member of the Court expressed disagreement with this proposition. Moreover, even if the view of the two Justices who dissented in *Roe* v. *Wade,* 410 U. S. 113, 171, 221 (1973) were the law, a woman's right to enter another State to obtain an abortion would deserve strong protection. For under the position espoused by those dissenters, the diversity among the States in their regulation of abortion procedures would magnify the importance of unimpeded access to out-of-state facilities.

destination inaccessible to women who have engaged in interstate travel for a single purpose is unquestionably a burden on that travel. That burden was not only a foreseeable and natural consequence of the blockades, but indeed was also one of the intended consequences of petitioners' conspiracy.

Today the Court advances two separate reasons for rejecting the District Court's conclusion that petitioners deliberately deprived women seeking abortions of their right to interstate travel. First, relying on an excerpt from our opinion in *United States* v. *Guest*, 383 U. S. 745, 760 (1966), the Court assumes that ```the predominant pur-pose''' or ``the very purpose'' of the conspiracy must be to impede interstate travel. *Ante*, at 9–10. Second, the Court assumes that even an intentional restriction on out-of-state travel is permissible if it imposes an equal burden on intrastate travel. The first reason reflects a mistaken understanding of *Guest* and *Griffin*, and the second is unsupported by precedent or reason.

In the *Guest* case, the Court squarely held that the Federal Constitution protects the right to engage in interstate travel from private interference. Not a word in that opinion suggests that the constitutional protection is limited to impediments that discriminate against non-residents. Instead, the Court broadly referred to the federal commerce power that ``authorizes Congress to legislate for the protection of individuals from violations of civil rights that impinge on their free movement in interstate commerce.'' 383 U. S., at 759. It then held that the right of interstate travel was one of the federal rights protected from private interference by the criminal statute that had been enacted as §6 of the Enforcement Act of 1870, 16 Stat. 141, later codified at 18 U. S. C. §241. That statute had previously been construed to contain a ``stringent scienter requirement'' to save it from condemnation as a criminal statute failing to provide adequate notice of

the proscribed conduct. 383 U. S., at 785 (Brennan, J., concurring in part and dissenting in part); see also *id.*, at 753–754. The *Guest* opinion then explained why this history would limit the coverage of 18 U. S. C. §241:

> ``This does not mean, of course, that every criminal conspiracy affecting an individual's right of free interstate passage is within the sanction of 18 U. S. C. §241. A specific intent to interfere with the federal right must be proved, and at a trial the defendants are entitled to a jury instruction phrased in those terms. *Screws* v. *United States*, 325 U. S. 91, 106–107 [1945]. Thus, for example, a conspiracy to rob an interstate traveler would not, of itself, violate §241. But if the predominant purpose of the conspiracy is to impede or prevent the exercise of the right of interstate travel, or to oppress a person because of his exercise of that right, then, whether or not motivated by racial discrimination, the conspiracy becomes a proper object of the federal law under which the indictment in this case was brought.'' 383 U. S., at 760.

Today the Court assumes that the same sort of scienter requirement should apply to §1985(3) because 18 U. S. C. §241 is its ``criminal counterpart.'' *Ante*, at 9.

The Court is mistaken. The criminal sanctions that were originally included in §2 of the Ku Klux Act were held unconstitutional over a century ago. *United States* v. *Harris*, 106 U. S. 629 (1883); *Baldwin* v. *Franks*, 120 U. S. 678 (1887). The statute now codified at 18 U. S. C. §241 was enacted in 1870, a year earlier than the Ku Klux Act. The texts of the two statutes are materially different. Even if that were not so, it would be inappropriate to assume that a strict scienter requirement in a criminal statute

should be glibly incorporated in a civil statute.[32] But what is most significant is the dramatic difference between the language of 18 U. S. C. §241, which includes an unequivocal ``intent'' requirement and the language of §1985(3), which broadly describes a purpose to deprive another of a protected privilege ``either directly or indirectly.'' An indirect interference with the right to travel may violate §1985(3) even if it would not violate §241.[33]

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[32]See, *e.g., United States* v. *United States Gypsum Co.*, 438 U. S. 422, 436, and n. 13 (1978) (distinguishing intent requirement for civil and criminal violations of the Sherman Act).

[33]The Court's confusion of the intent element of §1985(3) with the intent required in criminal civil rights statutes is particularly surprising in that *Griffin* v. *Breckenridge,* 403 U. S. 88 (1971), anticipated this mistake and explicitly warned against it. Indeed, *Griffin* expressly rejected the idea that §1985(3) contained a specific intent requirement. In finding specific intent necessary for a violation of 18 U. S. C. §241, *United States* v. *Guest,* 383 U. S. 745 (1966), relied on *Screws* v. *United States*, 325 U. S. 91, 106–107 (1945), which also construed a criminal statute, 18 U. S. C. §241, to require specific intent. See *Guest,* 383 U. S., at 760. *Griffin* unmistakably distinguished that kind of specific intent requirement from the mental element required for a claim under §1985(3). In *Griffin* the Court stated that the ``motivation requirement'' of §1985(3) ``must not be confused with the test of `specific intent to deprive a person of a federal right made definite by decision or other rule of law' articulated by the plurality opinion in *Screws* v. *United States* . . . .'' 403 U. S., at 102, n. 10. The language could hardly be more clear. *Griffin* took care to differentiate between ``invidiously discriminatory animus,'' which §1985(3) did require, and specific intent to violate a right, which §1985(3)

The Court interpreted the right to interstate travel more generously in *Griffin*. It wrote:

> ``Under these allegations it is open to the petitioners to prove at trial that they had been engaging in interstate travel or intended to do so, that their federal right to travel interstate was one of the rights meant to be discriminatorily

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did not. Further, while distinguishing *Screws*, *Griffin* cited *Monroe* v. *Pape*, 365 U. S. 167 (1961), which declined to find a specific intent requirement for actions under 42 U. S. C. §1983. See *Monroe*, 365 U. S., at 187; see also *id.*, at 206–207 (Frankfurter, J., concurring in part and dissenting in part). Section 1983, like §1985(3), was enacted as part of the Ku Klux Act of 1871 and provides for civil enforcement of federal rights. The pattern is clear: the criminal statutes, 18 U. S. C. §241 and 18 U. S. C. §242, require specific intent to violate a right; the civil statutes, 42 U. S. C. §1983 and 42 U. S. C. §1985(3), do not.

The Court's repeated invocation of the word ``aim'' simply does not support its attempt to manufacture a specific intent requirement out of whole cloth. As the Court observes, *Carpenters* v. *Scott*, 463 U. S. 825 (1983), uses the expression ``aimed at,'' *id*., at 833. *Carpenters* does not relate this phrase to a specific intent requirement, nor does it in any other way suggest that an action under §1985(3) requires proof of specific intent. *Griffin* also uses the phrase ``aim at''; there, the Court states, ``The conspiracy, in other words, must *aim at* a deprivation of the equal enjoyment of rights secured by the law to all.'' 403 U. S., at 102 (emphasis added). Unlike *Carpenters*, *Griffin* does discuss whether §1985(3) requires specific intent. In the footnote appended to the very sentence that contains the phrase ``aim at,'' the Court explains, ``The motivation aspect of §1985(3)

impaired by the conspiracy, that the conspirators intended to drive out-of-state civil rights workers from the State, or that they meant to deter the petitioners from associating with such persons. This and other evidence could make it clear that the petitioners had suffered from conduct that Congress may reach under its power to protect the right of interstate travel.'' *Griffin*, 403 U. S., at 106.

In that paragraph the Court mentions that the plaintiffs' federal right to travel may have been ``discriminatorily'' impaired. The use of that word was appropriate because of the Court's earlier discussion of the importance of class-based discriminatory animus in interpreting the statute, but was entirely unnecessary in order to uphold the constitutionality of the statute as applied to conduct that ``Congress may reach under its power to protect

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focuses not on scienter in relation to deprivation of rights but on invidiously discriminatory animus.'' 403 U. S., at 102, n. 10. Today, in insisting that §1985(3) requires specific intent to violate a right, the Court contradicts *Griffin* and finds that one of the mental elements of §1985(3) *does* relate to ``scienter in relation to deprivation of rights.'' In seeking to justify this departure from precedent, the Court describes the passage in *Griffin* that includes this Court's only discussion of specific intent in relation to §1985(3) as ``supremely'' irrelevant, *ante*, at 11, n. 6. I gather this means that only the Supreme Court could find it irrelevant; lower courts have been more reluctant to ignore *Griffin*'s plain language, see *Fisher* v. *Shamburg*, 624 F. 2d 156, 158, n. 2 (CA10 1980); *Cameron* v. *Brock*, 473 F. 2d 608, 610 (CA6 1973); *Azar* v. *Conley*, 456 F. 2d 1382, 1385–1386 (CA6 1972); *Weiss* v. *Patrick*, 453 F. Supp. 717, 723 (R. I.), aff'd, 588 F. 2d 818 (CA1 1978), cert. denied, 442 U. S. 929 (1979).

the right of interstate travel.'' *Ibid.* Moreover, ``in the light of the evolution of decisional law,'' *id.,* at 95–96, in recent years, today no one could possibly question the power of Congress to prohibit private blockades of streets and highways used by interstate travelers, even if the conspirators indiscriminately interdicted both local and out-of-state travelers.

The implausibility of the Court's readings of *Griffin* and *Guest* is matched by its conclusion that a burden on interstate travel is permissible as long as an equal burden is imposed on local travelers. The Court has long recognized that a burden on interstate commerce may be invalid even if the same burden is imposed on local commerce. See *Pike* v. *Bruce Church, Inc.*, 397 U. S. 137 (1970); *Dean Milk Co.* v. *Madison*, 340 U. S. 349, 354, n. 4 (1951); *Southern Pacific Co.* v. *Arizona ex rel. Sullivan*, 325 U. S. 761 (1945). The fact that an impermissible burden is most readily identified when it discriminates against nonresidents does not justify immunizing conduct that even-handedly disrupts both local and interstate travel. The defendants in *Griffin*, for example, could not have refuted the claim that they interfered with the right to travel by demonstrating that they indiscriminately attacked local civil rights activists as well as nonresidents.

In this case petitioners have deliberately blockaded access to the destinations sought by a class of women including both local and interstate travelers. Even though petitioners may not have known *which* of the travelers had crossed the state line, petitioners unquestionably knew that many of them had. The conclusion of the District Court that petitioners ``engaged in this conspiracy for the purpose, either directly or indirectly, of depriving women seeking abortions and related medical counselling services, of the right to travel,'' 726 F. Supp., at 1493, is abundantly supported by the record.

Discrimination is a necessary element of the class-

based animus requirement, not of the abridgement of a woman's right to engage in interstate travel. Perhaps nowhere else in its opinion does the Court reject such obvious assumptions of the authors of §1985(3). The Reconstruction Congress would have been startled, I think, to learn that §1985(3) protected freed slaves and their supporters from Klan violence not covered by the Thirteenth Amendment only if the Klan members spared *local* African-Americans and abolitionists their wrath. And it would have been shocked to learn that its law offered relief from a Klan lynching of an out-of-state abolitionist only if the plaintiff could show that the Klan specifically intended to prevent his travel between the States. Yet these are the impossible requirements the Court imposes on a §1985(3) plaintiff who has shown that her right to travel has been deliberately and significantly infringed. It is difficult to know whether the Court is waiting until only a few States have abortion clinics before it finds that petitioners' behavior violates the right to travel, or if it believes that petitioners could never violate that right as long as they oppose the abortion a woman seeks to obtain as well as the travel necessary to obtain it.

Respondents have unquestionably established a claim under the second clause of §1985(3), the state hindrance provision.[34] The record amply

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[34] ``If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another . . . *for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws*; . . . in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured

demonstrates petitioners' successful efforts to overpower local law enforcement officers. During the ``rescue'' operations, the duly constituted authorities are rendered ineffective, and mob violence prevails.[35] A conspiracy that seeks by force of numbers to prevent local officials from protecting the victims' constitutional rights presents exactly the kind of pernicious combination that the second clause of §1985(3) was designed to counteract. As we recognized in *Griffin*, the second clause of §1985(3) explicitly concerns such interference with state officials and for that reason does not duplicate the coverage of the first clause. *Griffin,* 403 U. S., at 99.

Petitioners' conspiracy hinders the lawful authorities from protecting women's constitutionally protected right to choose whether to end their pregnancies. Though this may be a right that is protected only against state infringement, it is clear that by preventing government officials from safeguarding the exercise of that right, petitioners' conspiracy effects a deprivation redressable under §1985(3). See *Carpenters* v. *Scott*, 463 U. S. 825, 830 (1983); *id*., at 840, n. 2 (BLACKMUN, J., dissenting); see also *Great American Federal Savings & Loan Assn.* v. *Novotny*, 442 U. S., at 384 (STEVENS, J., concurring). A conspiracy that seeks to interfere with law enforcement officers' performance of their duties entails sufficient involvement with the State to implicate the federally protected right to choose an abortion and to give rise to a cause of action under

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in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.'' 42 U. S. C. §1985(3) (emphasis added).

[35]See 726 F. Supp., at 1489–1490, and n. 4.

§1985(3).

We have not previously considered whether class-based animus is an element of a claim under the second clause of §1985(3). We have, however, confronted the question whether the class-based animus requirement developed in *Griffin* should extend to another part of the Ku Klux Act, the portion now codified at §1985(2). That provision, which generally proscribes conspiracies to interfere with federal proceedings, was enacted as part of the same paragraph of the Ku Klux Act that also contained what is now §1985(3).[36] For that reason, in *Kush* v. *Rutledge*, 460 U. S. 719 (1983), the defendants contended that the plaintiffs had the burden of proving that the alleged conspiracy to intimidate witnesses had been motivated by the kind of class-based animus described in *Griffin*. The Court of Appeals rejected this contention. Its reasoning, which we briefly summarized in *Kush*, is highly relevant here: ``Noting the Federal Government's unquestioned constitutional authority to protect the processes of its own courts, and the absence of any need to limit the first part of §1985(2) to avoid creating a general federal tort law, the Court of Appeals declined to impose the limitation set forth in *Griffin* v. *Breckenridge*.'' 460 U. S., at 723.

Kush suggests that *Griffin*'s strictly construed class-based animus requirement, developed for the first clause of §1985(3), should not limit the very different second clause. We explained:

> ``Although *Griffin* itself arose under the first clause of §1985(3), petitioners argue that its reasoning should be applied to the remaining portions of §1985 as well. We cannot accept that

[36]The full text of §2 of the 1871 Civil Rights Act, 17 Stat. 13, is quoted in the appendix to the Court's opinion in *Kush* v. *Rutledge*, 460 U. S. 719, 727–729 (1983).

> argument for three reasons. First, the scope of the *Griffin* opinion is carefully confined to `the portion of §1985(3) now before us,' [*Griffin*, 403 U. S.,] at 99; see also *id.*, at 102, n. 9. There is no suggestion in the opinion that its reasoning applies to any other portion of §1985. Second, the analysis in the *Griffin* opinion relied heavily on the fact that the sponsors of the 1871 bill added the `equal protection' language in response to objections that the `enormous sweep of the original language' vastly extended federal authority and displaced state control over private conduct. *Id.*, at 99–100. That legislative background does not apply to the portions of the statute that prohibit interference with federal officers, federal courts, or federal elections. Third, and of greatest importance, the statutory language that provides the textual basis for the `class-based, invidiously discriminatory animus' requirement simply does not appear in the portion of the statute that applies to this case.'' 460 U. S., at 726.

It is true, of course, that the reference to ``equal protection'' appears in both the first and the second clauses of §1985(3), but the potentially unlimited scope of the former is avoided by the language in the latter that confines its reach to conspiracies directed at the ``constituted authorities of any State or Territory.'' The deliberate decision in *Griffin* that ``carefully confined'' its holding to ``the portion of §1985(3) now before us,'' coupled with the inapplicability of *Griffin*'s rationale to the second clause, makes it entirely appropriate to give that clause a different and more natural construction. Limited to conspiracies that are sufficiently massive to supplant local law enforcement authorities, the second clause requires no further restriction to honor the congressional purpose of creating an effective civil rights remedy without federalizing all tort law.

The justification for a narrow reading of *Griffin*'s judicially crafted requirement of class-based animus simply does not apply to the state hindrance clause. An action under that clause entails both a violation of the victims' constitutional rights and state involvement. This situation is so far removed from the question whether facially neutral legislation constitutes a violation of the Equal Protection Clause that the strict intent standards developed in that area can have no application.

In the context of a conspiracy that hinders state officials and violates respondents' constitutional rights, class-based animus can be inferred if the conspirators' conduct burdens an activity engaged in predominantly by members of the class. Indeed, it would be faithful both to *Griffin* and to the text of the state hindrance clause to hold that the clause proscribes conspiracies to prevent local law enforcement authorities from protecting activities that are performed exclusively by members of a protected class, even if the conspirators' animus were directed at the activity rather than at the class members. Thus, even if yarmulkes, rather than Jews, were the object of the conspirators' animus, the statute would prohibit a conspiracy to hinder the constituted authorities from protecting access to a synagogue or other place of worship for persons wearing yarmulkes. Like other civil rights legislation, this statute should be broadly construed to provide federal protection against the kind of disorder and anarchy that the States are unable to control effectively.

With class-based animus understood as I have suggested, the conduct covered by the state hindrance clause would be as follows: a large-scale conspiracy that violates the victims' constitutional rights by overwhelming the local authorities and that, by its nature, victimizes predominantly members of a particular class. I doubt whether it would be possible to describe conduct closer to the core of §1985(3)'s

coverage. This account would perfectly describe the conduct of the Ku Klux Klan, the group whose activities prompted the enactment of the statute. This description also applies to petitioners, who have conspired to deprive women of their constitutional right to choose an abortion by overwhelming the local police and by blockading clinics with the intended effect of preventing women from exercising a right only they possess. The state hindrance clause thus provides an independent ground for affirmance.[37]

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[37]As part of its crabbed interpretation of the statute, the Court asserts that the scope of the conspiracy is irrelevant in determining whether its activities can be reached by §1985(3). See *ante*, at 15–16. This suggestion is contradicted by our prior cases, which have recognized that the magnitude of the conspiratorial undertaking may indeed be relevant in ascertaining whether conduct is actionable under §1985(3). See *Griffin*, 403 U. S., at 98; *Collins* v. *Hardyman*, 341 U. S. 651, 661–662 (1951).

More generally, the Court's comments evidence a renunciation of the effort to construe this civil rights statute in accordance with its intended purpose. In *Griffin*, *Novotny*, and *Carpenters*, our construction of the statute was guided by our understanding of Congress' goals in enacting the Ku Klux Act. Today, the Court departs from this practice and construes §1985(3) without reference to the ``purpose, history, and common understanding of this Civil War Era statute,'' *Novotny*, 442 U. S., at 381 (Powell, J., concurring). This represents a sad and unjustified abandonment of a valuable interpretive tradition.

Of course, the Court does not completely reject resort to statutory purpose: The Court does rely on legislative intent in limiting the reach of the statute. The requirement of class-based animus, for example, owes as much to *Griffin*'s analysis of congressional purpose as to the text of §1985(3). Two Terms ago I

In sum, it is irrelevant whether the Court is correct in its assumption that ``opposition to abortion'' does not necessarily evidence an intent to disfavor women. Many opponents of abortion respect both the law and the rights of others to make their own decisions on this important matter. Petitioners, however, are not mere opponents of abortion; they are defiant lawbreakers who have engaged in mas-sive concerted conduct that is designed to prevent all women from making up their own minds about not only the issue of abortion in general, but also whether they should (or will) exercise a right that all women—and only women—possess.

Indeed, the error that infects the Court's entire opinion is the unstated and mistaken assumption that this is a case about opposition to abortion. It is not. It is a case about the exercise of Federal power to control an interstate conspiracy to commit illegal acts. I have no doubt that most opponents of abortion, like most members of the citizenry at large, understand why the existence of federal jurisdiction is appropriate in a case of this kind.

The Court concludes its analysis of §1985(3) by suggesting that a contrary interpretation would have condemned the massive ``sit-ins'' that were conducted to promote desegregation in the 1960's—a ``wildly improbable result.'' See *ante*, at 14. This

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noted, ``In recent years the Court has vacillated between a purely literal approach to the task of statutory interpretation and an approach that seeks guidance from historical context, legislative history, and prior cases identifying the purpose that motivated the legislation.'' *West Virginia University Hospitals, Inc.* v. *Casey*, 499 U. S. ___, ___ (1991) (STEVENS, J., dissenting) (slip op., at 10). Today, the Court selectively employs both approaches to give the statute its narrowest possible construction.

suggestion is profoundly misguided. It assumes that we must totally reject the class-based animus requirement to affirm the District Court, when, in fact, we need only construe that requirement to satisfy its purpose. Moreover, the demonstrations in the 1960's were motivated by a desire to extend the equal protection of the laws to all classes—not to impose burdens on any disadvantaged class. Those who engaged in the nonviolent ``sit-ins'' to which the Court refers were challenging ``a political and economic system that had denied them the basic rights of dignity and equality that this country had fought a Civil War to secure.'' *NAACP* v. *Claiborne Hardware Co.*, 458 U. S. 886, 918 (1982). The suggestion that there is an analogy between their struggle to achieve equality and these petitioners' concerted efforts to deny women equal access to a constitutionally protected privilege may have rhetorical appeal, but it is insupportable on the record before us, and does not justify the majority's parsimonious construction of an important federal statute.[38]

I respectfully dissent.

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[38]JUSTICE KENNEDY'S reminder that the Court's denial of any relief to individual respondents does not prevent their States from calling on the United States, through its Attorney General, for help, *ante*, at 2, is both puzzling and ironic, given the role this Administration has played in this and related cases in support of Operation Rescue. See Brief for United States as *Amicus Curiae*; *Women's Health Care Services* v. *Operation Rescue-National*, 773 F. Supp., at 269–270; compare Memorandum for United States as *Amicus Curiae* in *Griffin* v. *Breckenridge*, O. T. 1970, No. 144.