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 SCALIA delivered the opinion of the Court.

This case presents the question whether the first clause of Rev. Stat. §1980, 42 U. S. C. §1985(3)—the surviving version of §2 of the Civil Rights Act of 1871—provides a federal cause of action against persons obstructing access to abortion clinics. Respondents are clinics that perform abortions, and organizations that support legalized abortion and that have members who may wish to use abortion clinics. Petitioners are Operation Rescue, an unincorporated association whose members oppose abortion, and six individuals. Among its activities, Operation Rescue organizes antiabortion demonstrations in which participants trespass on, and obstruct general access to, the premises of abortion clinics. The individual petitioners organize and coordinate these demonstrations.

Respondents sued to enjoin petitioners from conducting demonstrations at abortion clinics in the Washington, D. C., metropolitan area. Following an expedited trial, the District Court ruled that petitioners had violated §1985(3) by conspiring to deprive women seeking abortions of their right to interstate travel. The court also ruled for respondents on their pendent state-law claims of trespass and public nuisance. As relief on these three claims, the court enjoined petitioners from trespassing on, or obstructing access to, abortion clinics in specified

Virginia counties and cities in the Washington, D. C., metropolitan area. *National Organization for Women* v. *Operation Rescue*, 726 F. Supp. 1483 (ED Va. 1989). Based on its §1985(3) ruling and pursuant to 42 U. S. C. §1988, the court also ordered petitioners to pay respondents $27,687.55 in attorney's fees and costs.

The Court of Appeals for the Fourth Circuit affirmed, *National Organization for Women* v. *Operation Rescue*, 914 F. 2d 582 (CA4 1990), and we granted certiorari, 498 U. S. ___ (1991). The case was argued in the October 1991 Term, and pursuant to our direction, see 504 U. S. ___ (1992), was reargued in the current Term.

Our precedents establish that in order to prove a private conspiracy in violation of the first clause of §1985(3),[1] a plaintiff must show, *inter alia*, (1) that

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[1]Section 1985(3) provides as follows:

"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 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 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; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or

"some racial, or perhaps otherwise class-based, invidiously discriminatory animus [lay] behind the conspirators' action," *Griffin* v. *Breckenridge*, 403 U. S. 88, 102 (1971), and (2) that the conspiracy "aimed at interfering with rights" that are "protected against private, as well as official, encroachment," *Carpenters* v. *Scott*, 463 U. S. 825, 833 (1983). We think neither showing has been made in the present case.

In *Griffin* this Court held, reversing a 20-year-old precedent, see *Collins* v. *Hardyman*, 341 U. S. 651 (1951), that §1985(3) reaches not only conspiracies under color of state law, but also purely private conspiracies. In finding that the text required that expanded scope, however, we recognized the "constitutional shoals that would lie in the path of interpreting §1985(3) as a general federal tort law." *Griffin*, 403 U. S., at 102. That was to be avoided, we said, "by requiring, as an element of the cause of action, the kind of invidiously discriminatory motivation stressed by the sponsors of the limiting

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property on account of such support or advocacy; 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 one or more of the conspirators." 42 U. S. C. §1985(3).

amendment," *ibid.*—citing specifically Representative Shellabarger's statement that the law was restricted "`to the prevention of deprivations which shall attack the equality of rights of American citizens; that any violation of the right, the *animus* and effect of which is to strike down the citizen, to the end that he may not enjoy equality of rights as contrasted with his and other citizens' rights, shall be within the scope of the remedies . . . .'" *Id.*, at 100 (emphasis in original), quoting Cong. Globe, 42d Cong., 1st Sess., App. 478 (1871). We said that "[t]he language [of §1985(3)] 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." 403 U. S., at 102 (emphasis in original).

We have not yet had occasion to resolve the "perhaps"; only in *Griffin* itself have we addressed and upheld a claim under §1985(3), and that case involved race discrimination. Respondents assert that there qualifies alongside race discrimination, as an "otherwise class-based, invidiously discriminatory animus" covered by the 1871 law, opposition to abortion. Neither common sense nor our precedents support this.

To begin with, we reject the apparent conclusion of the District Court (which respondents make no effort to defend) that opposition to abortion constitutes discrimination against the "class" of "women seeking abortion." Whatever may be the precise meaning of a "class" for purposes of *Griffin*'s speculative extension of §1985(3) beyond race, the term unquestionably connotes something more than a group of individuals who share a desire to engage in conduct that the §1985(3) defendant disfavors. Otherwise, innumerable tort plaintiffs would be able to assert causes of action under §1985(3) by simply defining the aggrieved class as those seeking to

engage in the activity the defendant has interfered with. This definitional ploy would convert the statute into the "general federal tort law" it was the very purpose of the animus requirement to avoid. *Ibid.* As JUSTICE BLACKMUN has cogently put it, the class "cannot be defined simply as the group of victims of the tortious action." *Carpenters*, *supra*, at 850 (BLACKMUN, J., dissenting). "Women seeking abortion" is not a qualifying class.

Respondents' contention, however, is that the alleged class-based discrimination is directed not at "women seeking abortion" but at women in general. We find it unnecessary to decide whether *that* is a qualifying class under §1985(3), since the claim that petitioners' opposition to abortion reflects an animus against women in general must be rejected. We do not think that the "animus" requirement can be met only by maliciously motivated, as opposed to assertedly benign (though objectively invidious), discrimination against women. It does demand, however, at least a purpose that focuses upon women *by reason of their sex*—for example (to use an illustration of assertedly benign discrimination), the purpose of "saving" women *because they are women* from a combative, aggressive profession such as the practice of law. The record in this case does not indicate that petitioners' demonstrations are motivated by a purpose (malevolent *or* benign) directed specifically at women as a class; to the contrary, the District Court found that petitioners define their "rescues" not with reference to women, but as physical intervention "`between abortionists and the innocent victims,'" and that "all [petitioners] share a deep commitment to the goals of stopping the practice of abortion and reversing its legalization." 726 F. Supp., at 1488. Given this record, respondents' contention that a class-based animus has been established can be true 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. Neither proposition is supportable.

As to the first: Some activities may be such an irrational object of disfavor that, if they are targeted, and if they also happen to be engaged in exclusively or predominantly by a particular class of people, an intent to disfavor that class can readily be presumed. A tax on wearing yarmulkes is a tax on Jews. But opposition to voluntary abortion cannot possibly be considered such an irrational surrogate for opposition to (or paternalism towards) women. Whatever one thinks of abortion, it cannot be denied that there are common and respectable reasons for opposing it, other than hatred of or condescension toward (or indeed any view at all concerning) women as a class —as is evident from the fact that men and women are on both sides of the issue, just as men and women are on both sides of petitioners' unlawful demonstrations. See *Planned Parenthood of Southeastern Pennsylvania* v. *Casey*, 505 U. S. ___, ___ (1992).

Respondents' case comes down, then, to the proposition that intent is legally irrelevant; that since voluntary abortion is an activity engaged in only by women,[2] to disfavor it is *ipso facto* to discriminate

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[2]Petitioners and their *amici* argue that the intentional destruction of human fetuses, which is the target of their protests, is engaged in not merely by the women who seek and receive abortions, but by the medical and support personnel who provide abortions, and even by the friends and relatives who escort the women to and from the clinics. Many of those in the latter categories,

invidiously against women as a class. Our cases do not support that proposition. In *Geduldig* v. *Aiello*, 417 U. S. 484 (1974), we rejected the claim that a state disability insurance system that denied coverage to certain disabilities resulting from pregnancy discriminated on the basis of sex in violation of the Equal Protection Clause of the Fourteenth Amendment. "While it is true," we said, "that only women can become pregnant, it does not follow that every legislative classification concerning pregnancy is a sex-based classification." *Id.*, at 496, n. 20. We reached a similar conclusion in *Personnel Administrator of Mass.* v. *Feeney*, 442 U. S. 256 (1979), sustaining against an Equal Protection Clause challenge a Massachusetts law giving employment preference to military veterans, a class which in Massachusetts was over 98% male, *id.*, at 270. "`Discriminatory purpose,'" we said, "implies more than intent as volition or intent as awareness of

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petitioners point out, are men, and petitioners block their entry to the clinics no less than the entry of pregnant women. Respondents reply that the essential object of petitioners' conspiracy is to prevent women from intentionally aborting their fetuses. The fact that the physical obstruction targets some men, they say, does not render it any less "class-based" against women—just as a racial conspiracy against blacks does not lose that character when it targets in addition white supporters of black rights, see *Carpenters* v. *Scott*, 463 U. S. 825, 836 (1971). We need not resolve this dispute, but assume for the sake of argument that respondents' characterization is correct.

consequences. It implies that the decisionmaker . . . selected or reaffirmed a particular course of action at least in part `because of,' not merely `in spite of,' its adverse effects upon an identifiable group." *Id.*, at 279 (citation omitted).[3] The same principle applies to the "class-based, invidiously discriminatory animus" requirement of §1985(3).[4] Moreover, two of our cases deal specifically with the disfavoring of abortion, and

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[3]JUSTICE STEVENS asserts that, irrespective of intent or motivation, a classification is sex-based if it has a sexually discriminatory effect. *Post*, at 20–26. The cases he puts forward to confirm this revisionist reading of *Geduldig* v. *Aiello*, 417 U. S. 484 (1974), in fact confirm the opposite. *Nashville Gas Co.* v. *Satty*, 434 U. S. 136 (1977), cited *Geduldig* only once, in *endorsement* of *Geduldig*'s ruling that a facially neutral benefit plan is not sex-based unless it is shown that "`distinctions involving pregnancy are mere pretexts designed to effect an invidious discrimination against the members of one sex or the other.'" *Id.*, at 145 (quoting *Geduldig*, *supra*, at 496–497, n. 20) (internal quotation marks omitted). *Satty* said that the Court "need not decide" whether "it is necessary to prove intent to establish a prima facie violation of §703(a)(1)," 434 U. S., at 144, because "[r]espondent failed to prove *even* a discriminatory *effect*," *id.*, at 145 (emphasis added). It is clear from this that sex-based discriminatory intent is something beyond sexually discriminatory

establish conclusively that it is not *ipso facto* sex discrimination. In *Maher* v. *Roe*, 432 U. S. 464 (1977), and *Harris* v. *McRae*, 448 U. S. 297 (1980), we held that the constitutional test applicable to government abortion-funding restrictions is not the heightened-scrutiny standard that our cases demand for sex-based discrimination, see *Craig* v. *Boren*, 429 U. S. 190, 197–199 (1976), but the ordinary ration-ality

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effect. The Court found liability in *Satty* "[n]otwithstanding *Geduldig*," *post*, at 22, *not* (as JUSTICE STEVENS suggests) because *Geduldig* is compatible with the belief that effects alone constitute the requisite intent, but rather because §703(a)(*2*) of Title VII *has no intent requirement*. 434 U. S., at 139–141. In his discussion of the (inapplicable) Pregnancy Discrimination Act, 92 Stat. 2076, JUSTICE STEVENS acknowledges that *Congress* understood *Geduldig* as we do, see *post*, at 25, and nn. 29–30. As for the cases JUSTICE STEVENS relegates to footnotes: *Turner* v. *Department of Employment Security of Utah*, 423 U. S. 44 (1975), was not even a discrimination case; *General Electric Co.* v. *Gilbert*, 429 U. S. 125, 135 (1976), describes the holding of *Geduldig* precisely as we do; and *Newport News Shipbuilding & Dry Dock Co.* v. *EEOC*, 462 U. S. 669 (1983), casts no doubt on the continuing vitality of *Geduldig*.

[4]We think this principle applicable to §1985(3) *not* because we believe that Equal Protection Clause jurisprudence is automatically incorporated into §1985(3),

standard. See *Maher*, *supra*, at 470–471, 478; *Harris*, *supra*, at 322–324.

The nature of the "invidiously discriminatory animus" *Griffin* had in mind is suggested both by the language used in that phrase ("invidious . . . [t]ending to excite odium, ill will, or envy; likely to give offense; esp., unjustly and irritatingly discriminating," Webster's Second International Dictionary 1306

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but rather because it is inherent in the requirement of a class-based animus, *i.e.*, an *animus based on class*. We do not dispute JUSTICE STEVENS' observation, *post*, at 20, that Congress "may offer relief from discriminatory effects," without evidence of intent. The question is whether it has done so, and if we are faithful to our precedents we must conclude that it has not.

JUSTICE STEVENS and JUSTICE O'CONNOR would replace discriminatory purpose with a requirement of intentionally class-specific (or perhaps merely disparate) impact. *Post*, at 16–26 (STEVENS, J., dissenting); *post*, at 6–10 (O'CONNOR, J., dissenting). It is enough for these dissenters that members of a protected class are "targeted" for unlawful action "by virtue of their class characteristics," *post*, at 8 (O'CONNOR, J., dissenting), see also *post*, at 10, regardless of what the motivation or animus underlying that unlawful action might be. Accord, *post*, at 16–17 (STEVENS, J., dissenting). This approach completely eradicates the distinction, apparent in the statute itself, between

(1954)) and by the company in which the phrase is found ("there must be *some racial, or perhaps otherwise class-based*, invidiously discriminatory animus," *Griffin*, 403 U.S., at 102 (emphasis added)). Whether one agrees or disagrees with the goal of preventing abortion, that goal in itself (apart from the use of unlawful means to achieve it, which is not relevant to our discussion of animus) does not

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purpose and effect. Under JUSTICE STEVENS' approach, petitioners' admitted purpose of preserving fetal life (a "*legitimate and nondiscriminatory goal*," *post*, at 17 (emphasis added)) becomes the "*indirect consequence* of petitioners' blockade," while the discriminatory effect on women seeking abortions is now "the conspirators' *immediate purpose*." *Ibid* (emphasis added). JUSTICE O'CONNOR acknowledges that petitioners' "target[-ing]" is motivated by "opposition to the practice of abortion." *Post*, at 7.

In any event, the characteristic that formed the basis of the targeting here was not womanhood, but the seeking of abortion — so that the class the dissenters identify is the one we have rejected earlier: women seeking abortion. The approach of equating opposition to an activity (abortion) that can be engaged in only by a certain class (women) with opposition to that class leads to absurd conclusions. On that analysis, men and women who regard rape with revulsion harbor an invidious antimale animus. Thus, if state law should provide that convicted rapists must be paroled so long

remotely qualify for such harsh description, and for such derogatory association with racism. To the contrary, we have said that "a value judgment favoring childbirth over abortion" is proper and reasonable enough to be implemented by the allocation of public funds, see *Maher*, *supra*, at 474, and Congress itself has, with our approval, discriminated against abortion in its provision of financial support for medical procedures, see *Harris*, *supra*, at 325. This is not the stuff out of which a §1985(3) "invidiously discriminatory animus" is created.

Respondents' federal claim fails for a second, independent reason: A §1985(3) private conspiracy "for the purpose of depriving . . . any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws," requires an intent to deprive persons of a right guaranteed against private

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as they attend weekly counseling sessions; and if persons opposed to such lenient treatment should demonstrate their opposition by impeding access to the counseling centers; those protesters would, on the dissenters' approach, be liable under §1985(3) because of their antimale animus.

impairment. See *Carpenters*, 463 U. S., at 833. No intent to deprive of such a right was established here.

Respondents, like the courts below, rely upon the right to interstate travel—which we have held to be, in at least some contexts, a right constitutionally protected against private interference. See *Griffin*, *supra*, at 105–106. But all that respondents can point to by way of connecting petitioners' actions with that particular right is the District Court's finding that "[s]ubstantial numbers of women seeking the services of [abortion] clinics in the Washington Metropolitan area travel interstate to reach the clinics." 726 F. Supp., at 1489. That is not enough. As we said in a case involving 18 U. S. C. §241, the criminal counterpart of §1985(3):

> "[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 . . . the conspiracy becomes a proper object of the federal law under which the indictment in this case was brought." *United States* v. *Guest*, 383 U. S. 745, 760 (1966).[5]

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[5]JUSTICE STEVENS finds "most significant . . . the dramatic difference between the language of 18 U. S. C. §241" and that of §1985(3), in that the former "includes an unequivocal `intent' requirement." *Post*, at 29. He has it precisely backwards. The *second* paragraph of §241 does contain an explicit "intent" requirement, but the *first* paragraph, which was the only one at issue in *Guest*, see 383 U.S., at 747, does not; whereas §1985(3) does explicitly require a "purpose." As for

Our discussion in *Carpenters* makes clear that it does not suffice for application of §1985(3) that a protected right be incidentally affected. A conspiracy is not "for the purpose" of denying equal protection simply because it has an effect upon a protected right. The right must be "*aimed at*," 463 U. S., at 833 (emphasis added); its impairment must be a conscious objective of the enterprise. Just as the "invidiously discriminatory animus" requirement, discussed above, requires that the defendant have taken his action "at least in part `because of,' not merely `in spite of,' its adverse effects upon an identifiable group," *Feeney*, 442 U. S., at 279, so also the "intent to deprive of a right" requirement demands that the defendant do more than merely be aware of a deprivation of right that he causes, and more than merely accept it; he must act at least in part for the very purpose of producing it.[6] That was not shown to

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JUSTICE STEVENS' emphasis upon the fact that §1985(3), unlike §241, embraces "a purpose to deprive another of a protected privilege `either directly or indirectly'," *post*, at 29: that in no way contradicts a specific intent requirement. The phrase "either directly or indirectly" modifies "depriving," not "purpose." The deprivation, whether direct or indirect, must still have been the *purpose* of the defendant's action.

[6]To contradict the plain import of our cases on this point, JUSTICE STEVENS presses into service a footnote in *Griffin*. *Post*, at 30–31, n. 33. In addressing "[t]he motivation requirement introduced by the word `equal' into . . . §1985(3)," *Griffin* said that *this* was not to be confused with a test of "specific intent

be the case here, and is on its face implausible. Petitioners oppose abortion, and it is irrelevant to their opposition whether the abortion is performed after interstate travel. Respondents have failed to show a conspiracy to violate the right of interstate travel for yet another reason: petitioners' proposed demonstrations would not implicate that right. The federal guarantee of interstate travel does not

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to deprive a person of a federal right made definite by decision or other rule of law"; §1985(3) "contains no specific requirement of `wilfulness'," and its "motivation aspect . . . focuses not on scienter in relation to deprivation of rights but on invidiously discriminatory animus." *Griffin*, 403 U.S., at 102, n. 10. This is supremely irrelevant to the present discussion, since (1) we are not considering "the motivation requirement introduced by the word `equal'," but rather the intent requirement introduced by the word "purpose," and (2) we are not asserting that the right in question must have been "made definite by decision or other rule of law," but only that it must have been "*aimed at*," with or without knowledge that it is a federally protected right, cf. *Screws* v. *United States*, 325 U.S. 91, 103-107 (1945)—a requirement not of "wilfulness," in other words, but only of "purpose." The requisite "purpose" was of course pleaded in *Griffin*, as we specifically noted. See 403 U. S., at 103. JUSTICE STEVENS makes no response whatever to the plain language of *Carpenters*, except to contend

transform state-law torts into federal offenses when they are intentionally committed against interstate travelers. Rather, it protects interstate travelers against two sets of burdens: "the erection of actual barriers to interstate movement" and "being treated differently" from intrastate travelers. *Zobel* v. *Williams*, 457 U. S. 55, 60, n. 6 (1982). See *Paul* v. *Virginia*, 8 Wall. 168, 180 (1868) (Art. IV, §2 "inhibits discriminating legislation against [citizens of other States and] gives them the right of free ingress into other States, and egress from them"); *Toomer* v. *Witsell*, 334 U. S. 385, 395 (1948) (Art. IV, §2 "insure[s] to a citizen of State A who ventures into State B the same privileges which the citizens of State B enjoy"). As far as appears from this record, the only "actual barriers to movement" that would have resulted from Petitioners' proposed demonstrations would have been in the immediate vicinity of the abortion clinics, restricting movement from one portion of the Commonwealth of Virginia to another. Such a purely intrastate restriction does not implicate the right of interstate travel, even if it is applied intentionally against travelers from other States, unless it is applied *discriminatorily* against them. That would not be the case here, as respondents conceded at oral argument.[7]

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that the same irrelevant footnote 10 reaches forward 12 years in time, to prevent *Carpenters* from meaning what it obviously says ("*aimed at*"). Although a few lower courts at one time read the *Griffin* footnote as JUSTICE STEVENS does, see *post*, at 31, n. 33, those cases were all decided years before this Court's opinion in *Carpenters*, which we follow.

[7]JUSTICE STEVENS expresses incredulity at the rule we have described. It is, he

The other right alleged by respondents to have been intentionally infringed is the right to abortion. The District Court declined to rule on this contention, relying exclusively upon the right-of-interstate-travel theory; in our view it also is an inadequate basis for respondents' §1985(3) claim. Whereas, unlike the right of interstate travel, the asserted right to abortion was assuredly "aimed at" by the petitioners, deprivation of that federal right (whatever its contours) cannot be the object of a purely private conspiracy. In *Carpenters*, we rejected a claim that an alleged private conspiracy to infringe First Amendment rights violated §1985(3). The statute does not apply, we said, to private conspiracies that are "aimed at a right that is by definition a right only against state interference," but applies only to such

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says, "unsupported by precedent or reason," *post*, at 28, which show that the right of interstate travel is violated even by "conduct that evenhandedly disrupts both local and interstate travel," *id.*, at 32. We cite right-to-travel cases for our position; he cites nothing but negative Commerce Clause cases for his. While it is always pleasant to greet such old Commerce Clause warhorses as *Pike* v. *Bruce Church, Inc.*, 397 U. S. 137 (1970), *Dean Milk Co.* v. *Madison*, 340 U. S. 349 (1951), and *Southern Pacific Co.* v. *Arizona ex rel. Sullivan*, 325 U. S. 761 (1945), cited *post*, at 32, surely they are irrelevant to the individual right of interstate travel we are here discussing. That right does not derive from the negative Commerce Clause, or else it could be eliminated by Congress.

conspiracies as are "aimed at interfering with rights . . . protected against private, as well as official, encroachment." 463 U. S., at 833. There are few such rights (we have hitherto recognized only the Thirteenth Amendment right to be free from involuntary servitude, *United States* v. *Kozminski*, 487 U. S. 931, 942 (1988), and, in the same Thirteenth Amendment context, the right of interstate travel, see *United States* v. *Guest*, *supra*, at 759, n. 17). The right to abortion is not among them. It would be most peculiar to accord it that preferred position, since it is much less explicitly protected by the Constitution than, for example, the right of free speech rejected for such status in *Carpenters*. Moreover, the right to abortion has been described in our opinions as one element of a more general right of privacy, see *Roe* v. *Wade*, 410 U. S. 113, 152–153 (1973), or of Fourteenth Amendment liberty, see *Planned Parenthood of Southeastern Pennsylvania*, 505 U. S., at ___; and the other elements of those more general rights are obviously *not* protected against private infringement. (A burglar does not violate the Fourth Amendment, for example, nor does a mugger violate the Fourteenth.) Respondents' §1985(3) "deprivation" claim must fail, then, because they have identified no right protected against private action that has been the object of the alleged conspiracy.

Two of the dissenters claim that respondents have established a violation of the second, "hindrance" clause of §1985(3), which covers conspiracies "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." 42 U. S. C. §1985(3).

This "claim" could hardly be presented in a posture less suitable for our review. As respondents frankly

admitted at both argument and reargument, their complaint did not set forth a claim under the "hindrance" clause. Tr. of Oral Arg. 27 ("the complaint did not make a hinder or prevent claim"); Tr. of Reargument 33–34.[8] Not surprisingly, therefore, neither the District Court nor the Court of Appeals considered the application of that clause to the current facts. The "hindrance"-clause issue is not fairly included within the questions on which petitioners sought certiorari, see Pet. for Cert. i; this Court's Rule 14.1(a),[9] which is alone enough to exclude it from our consideration.[10] Nor is it true that

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[8]These admissions were accurate. The amended complaint alleged, in its two federal causes of action, that petitioners "have conspired to deprive women of their right to travel" and "have conspired . . . for the purpose of denying women seeking abortions . . . their rights to privacy." App. 15–16. These are both "deprivation" claims; neither one makes any allusion to hindrance or prevention of state authorities.

[9]JUSTICE SOUTER contends, *post*, at 3, that that the "hindrance"-clause issue was embraced within question four, which asked: "Are respondents' claims under 42 U. S. C. §1985(3) so insubstantial as to deprive the federal courts of subject matter jurisdiction?" Pet. for Cert. i. This argument founders on the hard (and admitted) reality that "respondents' claims" did not include a "hindrance" claim.

[10]Contrary to JUSTICE SOUTER's suggestion,

"[t]he issue was briefed, albeit sparingly, by the parties prior to the first oral argument in this case," *post*, at 3. To the contrary, neither party initiated even the slightest suggestion that the "hindrance" question was an issue to be argued and decided here.[11] That possibility was suggested for the first time by questions from the bench during argument, and was reintroduced, again from the bench, during

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post, at 3, the provision of our Rules giving respondents the right, in their Brief in Opposition, to restate the questions presented, Rule 24.2, does not give them the power *to expand* the questions presented, as the Rule itself makes clear. In any event, neither of the questions set forth in the Brief in Opposition fairly raises the "hindrance" claim. And there is no support whatever for JUSTICE SOUTER's reliance upon the formulation of the question in respondents' brief on the merits, *post*, at 3, as the basis for deeming the question properly presented—though on the merits, once again, the question referred to by JUSTICE SOUTER is unhelpful.

[11]Respondents' brief asserted that, if the Court did not affirm the judgment on the basis of the "deprivation" clause, then a remand would be necessary, so that respondents could "present a number of contentions respecting [their right-to-privacy] claim" which had not been reached below, including the contention "that petitioners, by means of their blockades, had hindered the police in securing to women their right to

reargument. (Respondents sought to include a "hindrance"-clause section in their Supplemental Brief on Reargument, but the Court declined to accept that section for filing. See 505 U. S. ___ (1992).) In sum, the Justices reaching the "hindrance"-clause issue in this case must find in the complaint claims that the respondents themselves have admitted are not there; must resolve a question not presented to or ruled on by any lower court; must revise the rule that it is the Petition for Certiorari (not the Brief in Opposition and later briefs) that determines the questions presented; and must penalize the parties for not addressing an issue on which the Court specifically denied

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privacy." Brief for Respondents 43. Petitioners' reply brief responded that the complaint did not contain such a "hindrance" claim, and that there was "no reason to believe" that the "hindrance" clause "would not entail the same statutory requirements of animus and independent rights which respondents have failed to satisfy under the first clause of the statute." Reply Brief for Petitioners 14–15. These were obviously *not* arguments for resolution of the "hindrance" claim here.

supplemental briefing.[12] That is extraordinary. See, *e.g.*, *R. A. V.* v. *St. Paul*, 505 U. S. ___, ___, n. 3 (1992) (citing cases and treatises); *Kamen* v. *Kemper Financial Services, Inc.*, 500 U. S. ___, ___, n. 4 (1991); *Browning-Ferris Industries of Vt., Inc.* v. *Kelco Disposal, Inc.*, 492 U. S. 257, 277, and n. 23 (1989).

The dissenters' zeal to reach the question whether there was a "hindrance"-clause violation would be more understandable, perhaps, if the affirmative answer they provided were an easy one. It is far from that. Judging from the statutory text, a cause of action under the "hindrance" clause would seem to require the same "class-based, invidiously discriminatory animus" that the "deprivation" clause requires, and that we have found lacking here. We said in *Griffin* that the source of the animus requirement is "[t]he language requiring intent to deprive of *equal* protection, or *equal* privileges and immunities," 403 U. S., at 102 (emphasis in original) —and such language appears in the "hindrance" clause as well.[13] At oral argument, respondents

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[12]We are unable to grasp the logic whereby JUSTICE SOUTER, who would have us *conclusively resolve* the "hindrance"-clause legal issue against petitioners (despite their lack of opportunity to address it, both here and below), criticizes our opinion, see *post*, at 4, for merely *suggesting* (without resolving the "hindrance"-clause issue) the difficulties that inhere in his approach.

[13]In straining to argue that the "hindrance" clause does not have the same animus requirement as the first clause of §1985(3), JUSTICE STEVENS makes an argument extrapolating from the reasoning of *Kush*

conceded applicability of the animus requirement, though they withdrew this concession on reargument. Without a race- or class-based animus requirement, the "hindrance" clause of this post-Civil War statute would have been an available weapon against the mass "sit-ins" that were conducted for purposes of promoting desegregation in the 1960's—a wildly improbable result.[14]

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v. *Rutledge*, 460 U. S. 719 (1983), which held that the animus requirement expounded in *Griffin* did not apply to a claim under the first clause of §1985(2). *Post*, at 35–36. But the heart of *Kush*—what the case itself considered "of greatest importance"—was the fact that *Griffin*'s animus requirement rested on "the `equal protection' language" of §1985(3), which the first clause of §1985(2) did not contain. 460 U. S., at 726. Since the "hindrance" clause of §1985(3) does contain that language, the straightforward application of *Kush* to this case is quite the opposite of what JUSTICE STEVENS asserts.

[14]JUSTICE SOUTER contends the sit-in example is inapposite because the sit-ins did not "depriv[e] the owners of the segregated lunch counters of any independently protected constitutional right." *Post*, at 18, n. 10. In the very paragraph to which that footnote is appended, however, JUSTICE SOUTER purports to *leave open* the question whether the "hindrance" clause would apply when the conspiracy "amount[s] to a denial of police protection to individuals who are not

Even, moreover, if the "hindrance"-clause claim did not fail for lack of class-based animus, it would still fail unless the "hindrance" clause applies to a private conspiracy aimed at rights that are constitutionally protected only against official (as opposed to private) encroachment. JUSTICE STEVENS finds it "clear" that it does, see *post*, at 34, citing, surprisingly, *Carpenters*. To the extent that case illuminates this question at all,

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attempting to exercise a constitutional right," *id.*, at 17, n. 9—such as (presumably) the rights guaranteed by state trespass laws. Certainly the sit-ins violated such state-law rights, or else there would have been no convictions. It is not true, in any case, that the sit-ins did not invade constitutional rights, if one uses that term (as JUSTICE SOUTER does) to include rights constitutionally protected only against official (as opposed to private) encroachment. Surely property owners have a constitutional right not to have government physically occupy their property without due process and without just compensation.

JUSTICE SOUTER's citation of *Roberts* v. *United States Jaycees*, 468 U. S. 609 (1984), *post*, at 18, n. 10, and *Lane* v. *Cotton*, 12 Mod. 472 (K.B. 1701), *post*, at 18, n. 10, requires no response. He cites *Heart of Atlanta Motel, Inc.* v. *United States*, 379 U. S. 241 (1964), for the proposition that the 1964 Civil Rights Act's elimination of restaurant-owners' right to exclude blacks from their establishments did not violate the

it is clearly contrary to the dissent's view, holding that the "deprivation" clause, at least, does *not* cover private conspiracies aimed at rights protected only against state encroachment. JUSTICE O'CONNOR simply asserts without analysis that the "hindrance" clause nonetheless applies to those rights, *post*, at 11–12—although the operative language of the two clauses ("equal protection of the laws") is identical. JUSTICE SOUTER disposes of the rights-guaranteed-against-private-encroachment requirement, and the class-based animus requirement as well, only by (1) undertaking a full-dress reconsideration of *Griffin* and *Carpenters*, (2) concluding that both those cases were wrongly decided, and (3) limiting the damage of those supposed errors by embracing an interpretation of the statute that concededly gives the same language in two successive clauses completely different meanings.[15] See *post*, at 5–16.

Due Process or Takings Clauses. Assuredly not. But government regulation of commercial use through valid legislation is hardly comparable to government action that would have been the equivalent of what those conducting the sit-ins did: physically occupy private property, against the consent of the owner, without legal warrant. JUSTICE SOUTER cites *Shelley* v. *Kraemer*, 334 U. S. 1 (1948), *post*, at 19, n. 10, to establish (in effect) that there *was*, even before the Civil Rights Act, legal warrant for the physical occupation. Any argument driven to reliance upon an extension of that volatile case is obviously in serious trouble.

[15]JUSTICE SOUTER contends that even without the animus and rights-guaranteed-against-

This formidable task has been undertaken and completed, we reiterate, uninvited by party or *amicus*, and with respect to a cause of action not presented in the pleadings, not asserted or ruled upon below, and not contained in the questions presented on certiorari.

Equally troubling as the dissenters' questionable resolution of a legal issue never presented, is their

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private-encroachment requirements, the "hindrance" clause will still be "significantly limit[ed]" in scope, covering only "conspiracies to act with enough *force* . . . to *overwhelm* the capacity of legal authority to act evenhandedly in administering the law," *post*, at 13 (emphasis added). JUSTICE STEVENS discerns a similar limitation, see *post*, at 36. Only JUSTICE SOUTER attempts to find a statutory basis for it. He argues that since §1985(1) prohibits a conspiracy to prevent "*any person*" (emphasis added) from "discharging any duties," §1985(3)'s prohibition of a conspiracy directed against "*the constituted authorities*" (emphasis added) must be speaking of something that affects more than a single official, *post*, at 13. This seems to us a complete *non sequitur*. The difference between "any person" and "constituted authorities" would contain such a significant limitation (if at all) only if the remaining language of the two sections was roughly parallel. But it is not. Section 1985(1), for example, speaks of categorically "prevent[ing]" a

conclusion that the lower court found (or, in the case of JUSTICE SOUTER, can reasonably be thought to have found) the facts necessary to support the (nonexistent) "hindrance" claim. They concede that this requires a finding that the protesters' *purpose* was to prevent or hinder law enforcement officers; but discern such a finding in the District Court's footnote recitation that "the rescuers outnumbered

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person's exercise of his duties, whereas §1985(3) speaks of "preventing *or hindering*" the constituted authorities. (Emphasis added.) Obviously, one can "hinder" the authorities by "preventing" an individual officer. If these dissenters' interpretation of §1985(3) were adopted, conspiracies to prevent individual state officers from acting would be left entirely uncovered. (Section 1985(1) applies only to officers *of the United States*—which is, of course, the basic distinction between the two provisions.)

Neither dissent explains why the application of enough force to *impede* law enforcement, though not to "overwhelm" or "supplant" it, does not constitute a "hindering"; or, indeed, why only "force" and not bribery or misdirection must be the means of hindrance or prevention. Nothing in the text justifies these limitations. JUSTICE SOUTER's faith in the "severely limited" character of the hindrance clause also depends upon his taking no position on whether the clause protects federal statutory rights and state-protected rights, *post*, at 17, n.

the . . . police officers" and that "the police were unable to prevent the closing of the clinic for more than six (6) hours." *National Organization for Women* v. *Operation Rescue*, 726 F. Supp., at 1489, n. 4. See *post*, at 34 (STEVENS, J., dissenting); *post*, at 12 (O'CONNOR, J., dissenting); *post*, at 19 (SOUTER, J., concurring in the judgment in part and dissenting in part). This renders the distinction between "purpose" and "effect" utterly meaningless. Here again, the dissenters (other than JUSTICE SOUTER) would give respondents more than respondents themselves dared to ask. Respondents frankly admitted at the original argument, and even at reargument, that the District Court never concluded that impeding law enforcement was the *purpose* of petitioners' protests, and that the "hindrance" claim, if valid in law, required a remand. They were obviously correct.[16]

9.

[16]Because of our disposition of this case, we need not address whether the District Court erred by issuing an injunction, despite the language in §1985(3) authorizing only "an action for the recovery of damages occasioned by such injury or deprivation." It is curious, however, that the dissenters, though quick to reach and resolve the unpresented "hindrance" issue, assume without analysis the propriety of the injunctive relief that they approve—though the contrary was asserted by the United States as *amicus* in support of petitioners, and the issue was addressed by both parties in supplemental briefs on reargument. See Supplemental Brief for Petitioners on Reargument 4–9; Brief for Respondents on Reargument 9.

Because respondents were not entitled to relief under §1985(3), they were also not entitled to attorney's fees and costs under 42 U. S. C. §1988. We therefore vacate that award.

Petitioners seek even more. They contend that respondents' §1985(3) claims were so insubstantial that the District Court lacked subject-matter jurisdiction over the action, including the pendent state claims; and that the injunction should therefore be vacated and the entire action dismissed. We do not agree. While respondents' §1985(3) causes of action fail, they were not, prior to our deciding of this case, "wholly insubstantial and frivolous," *Bell* v. *Hood*, 327 U. S. 678, 682–683 (1946), so as to deprive the District Court of jurisdiction.

It may be, of course, that even though the District Court had jurisdiction over the state-law claims, judgment on those claims alone cannot support the injunction that was entered. We leave that question for consideration on remand.

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JUSTICE STEVENS' dissent observes that this is "a case about the exercise of federal power to control an interstate conspiracy to commit illegal acts," *post*, at 39, and involves "no ordinary trespass," or "picketing of a local retailer," but "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," *post*, at 7. Those are certainly evocative assertions, but as far as the point of law we have been asked to decide is concerned, they are irrelevant. We construe the statute, not the views of "most members of the citizenry." *Post*, at 39. By its terms, §1985(3) covers concerted action by as few as two persons, and does not require even interstate (much less nationwide) scope. It applies no more and no less to completely local action by two part-time protesters than to

nationwide action by a full-time force of thousands.[17] And under our precedents it simply does not apply to the sort of action at issue here.

Trespassing upon private property is unlawful in all States, as is, in many States and localities, intentionally obstructing the entrance to private premises. These offenses may be prosecuted criminally under state law, and may also be the basis for state civil damages. They do not, however, give rise to a federal cause of action simply because their objective is to prevent the performance of abortions, any more than they do so (as we have held) when their objective is to stifle free speech.

The judgment of the Court of Appeals is reversed in part and vacated in part, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

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[17] JUSTICE STEVENS chides us for invoking text here, whereas (he says) we rely instead upon "statutory purpose" for our class-based animus requirement—"selectively employ[ing] both approaches to give [§1985(3)] its narrowest possible construction." *Post*, at 37–38, n. 37. That is not so. For our class-based animus requirement we rely, plainly and simply, upon our holding in *Griffin*, *whatever* approach *Griffin* may have used. That holding is (though JUSTICE STEVENS might wish otherwise) an integral part of our jurisprudence extending §1985(3) to purely private conspiracies.