NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

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

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

No. 90–985. Argued October 15, 1991—Reargued October 6, 1992—
Decided January 13, 1993

Respondents, abortion clinics and supporting organizations, sued to enjoin petitioners, an association and individuals who organize and coordinate antiabortion demonstrations, from conducting demonstrations at clinics in the Washington, D. C., metropolitan area. The District Court held that, by conspiring to deprive women seeking abortions of their right to interstate travel, petitioners had violated the first clause of 42 U.S.C. §1985(3), which prohibits conspiracies to deprive ``any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws''; ruled for respondents on their pendent state-law claims of trespass and public nuisance; as relief on these three claims, enjoined petitioners from trespassing on, or obstructing access to, specified clinics; and, pursuant to 42 U.S.C. §1988, ordered petitioners to pay respondents attorney's fees and costs on the §1985(3) claim. The Court of Appeals affirmed.

Held:

1.The first clause of §1985(3) does not provide a federal cause of action against persons obstructing access to abortion clinics. Pp.2–14.

(a)Respondents have not shown that opposition to abortion qualifies alongside race discrimination as an ``otherwise class-based, invidiously discriminatory animus [underlying] the conspirators' action,'' as is required under *Griffin* v. *Breckenridge,* 403 U.S. 88, 102, in order to prove a private conspiracy in violation of §1985(3)'s first clause. Respondents' claim that petitioners' opposition to abortion reflects an animus against women in general must be rejected. The ``animus''

requirement demands at least a purpose that focuses upon women *by reason of their sex,* whereas the record indicates that petitioners' demonstrations are not directed specifically at women, but are intended to protect the victims of abortion, stop its practice, and reverse its legalization. Opposition to abortion cannot reasonably be presumed to reflect a sex-based intent; there are common and respectable reasons for opposing abortion other than a derogatory view of women as a class. This Court's prior decisions indicate that the disfavoring of abortion, although only women engage in the activity, is not *ipso facto* invidious discrimination against women as a class. Pp.3–9.

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(b)Respondents have also not shown that petitioners ``aimed at interfering with rights'' that are ``protected against private, as well as official, encroachment,'' a second prerequisite to proving a private conspiracy in violation of §1985(3)'s first clause. *Carpenters* v. *Scott,* 463 U.S. 825, 833. Although the right to interstate travel is constitutionally protected against private interference in at least some contexts, *Carpenters* makes clear that a §1985(3) private conspiracy must be ``aimed at'' that right. *Ibid.* That was not established here. Although respondents showed that substantial numbers of women travel interstate to reach the clinics in question, it was irrelevant to petitioners' opposition whether or not such travel preceded the intended abortions. Moreover, as far as appears from the record, petitioners' proposed demonstrations would erect ``actual barriers to . . . movement'' only intrastate. *Zobel* v. *Williams,* 457 U.S. 55, 60, n.6. Respondents have conceded that this intrastate restriction is not applied discriminatorily against interstate travelers, and the right to interstate travel is therefore not implicated. *Ibid.* Nor can respondents' §1985(3) claim be based on the right to abortion, which is a right protected only against state interference and therefore cannot be the object of a purely private conspiracy. See *Carpenters, supra,* at 833. Pp.9–14.

(c)The dissenters err in considering whether respondents have established a violation of §1985(3)'s second, ``hindrance'' clause, which covers conspiracies ``for the purpose of preventing or hindering . . . any State . . . from giving or securing to all persons . . . the equal protection of the laws.'' A ``hindrance''-clause claim was not stated in the complaint, was not considered by either of the lower courts, was not contained in the questions presented on certiorari, and was not suggested by either party as a question for argument or decision here. Nor is it readily determinable that respondents have established a ``hindrance''-clause violation. The language in the first clause of §1985(3) that is the source of the *Griffin* animus requirement also appears in the ``hindrance'' clause. Second, respondents' ``hindrance'' ``claim'' would fail unless the ``hindrance'' clause applies to private conspiracies aimed at rights constitutionally protected only against official encroachment. Cf. *Carpenters*. Finally, the district court did not find that petitioners' purpose was to prevent or hinder law enforcement. Pp.14–20.

2.The award of attorney's fees and costs under §1988 must be vacated because respondents were not entitled to relief under §1985(3). However respondents' §1985(3) claims were not, prior to this decision, ``wholly insubstantial and frivolous,''

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Bell v. *Hood,* 327 U.S. 678, 682–683, so as to deprive the District Court of subject-matter jurisdiction over the action. Consideration should be given on remand to the question whether the District Court's judgment on the state-law claims alone can support the injunction that was entered. Pp.20–21.

914 F.2d 582, reversed in part, vacated in part, and remanded.

SCALIA, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and WHITE, KENNEDY, and THOMAS, JJ., joined. KENNEDY, J., filed a concurring opinion. SOUTER, J., filed an opinion concurring in the judgment in part and dissenting in part. STEVENS, J., filed a dissenting opinion, in which BLACKMUN, J., joined. O'CONNOR, J., filed a dissenting opinion, in which BLACKMUN, J., joined.