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## *Bray v. Alexandria Women's Health Clinic*

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CASES PENDING

**Bray v. Alexandria Women's Health Clinic**

Ruling below: National Organization for Women v. Operation Rescue,  
914 F.2d 582 (4th Cir. 1990).

**The Fourth Circuit upheld a challenge to abortion opponents' actions blocking  
access to abortion facilities in the Washington D.C. metropolitan area.**

The Fourth Circuit held that these actions violate the rights of women who seek abortions by infringing on their right to travel, in violation of 42 U.S.C. 1985(3). This statute forbids conspiracy for the purpose of depriving any person (or class of persons) of equal protection or equal privileges and immunities. The Court held that a gender-based animus satisfied the "purpose" element of Section 1985(3).

Certiorari was granted on the following questions: 1) Do "women seeking abortion" constitute a valid class for the purposes of the "class animus" requirement of 42 U.S.C. §1985(3); 2) Is opposition to abortion "per se" discrimination against women for the purpose of the "class animus" requirement of 42 U.S.C. §1985(3); and 3) Do purely private actors who hinder access to abortion facilities violate the federal constitutional right to interstate travel since some patrons come from out-of state? See 59 U.S.L.W. 3576 (Feb. 26, 1991)

Oral arguments were heard on October 16, 1991. See 60 U.S.L.W. 3331 (Nov. 5, 1991) (summary of the oral arguments presented). Counsel for Operation Rescue argued that opposition to abortion and the intention to stop abortion "practices" is not invidious discrimination against women. He also argued that pregnancy-based classifications are not gender-based because Operation Rescue blockades bar access to everyone--men and women. Further, the right of interstate travel is not implicated because the intent was not to block access solely to non-residents.

Counsel for the plaintiffs said the issue was whether a federal court has jurisdiction to protect federal rights when mob action prevents local authorities from maintaining law and order. He also argued that the class involved was not a subset of women, but all women. When one attempts to abolish a right of a class, the class is targeted. Although women have not yet been held to be a protected class under Section 1985(3), they qualify as having immutable characteristics. Plaintiff's counsel also asserted that travel for the purpose of exercising constitutional rights is entitled to protection. Because the defendants knew that 30 percent of the clinic's patients came from out-of-state, they intended to deprive plaintiffs of their right to interstate travel.