

The Burger Court Opinion Writing Database

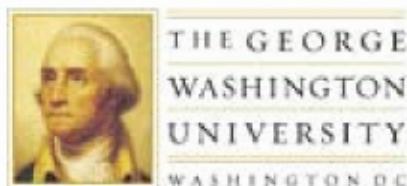
Gibson v. Berryhill

411 U.S. 564 (1973)

Paul J. Wahlbeck, George Washington University

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To: ~~See Other Justice~~
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
~~Mr. Justice~~ Powell
Mr. Justice Rehnquist

From: White, J.

Circulated: 2-24-72

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No. 71-653 - Gibson v. Berryhill

Mr. Justice White, dissenting.

The facts and issues in this case may be simply stated. Appellants, officers of the Alabama State Board of Optometry, have sought to conduct a hearing to determine whether appellees are violating Alabama law in their methods of conducting the regulated business of optometry. The appellees, on receipt of a notice of the hearing date and charges filed, forestalled the inquiry by obtaining a federal three-judge court order enjoining the proceeding on the ground that it would not comply with federal due process standards. The federal decision is in square conflict with a 1965 Alabama decision sustaining the Optometry Board's procedures against constitutional attack. Compare McCrory v. Wood, 277 Ala. 426, 171, So. 241 (1965), with the instant decision.

The foregoing would itself be ample basis for hearing argument rather than issuing a summary judgment in this case. But aside from a normal reluctance to affirm