

The Burger Court Opinion Writing Database

*Planned Parenthood Association of
Kansas City, Missouri, Inc. v. Ashcroft*
462 U.S. 476 (1983)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 1, 1983

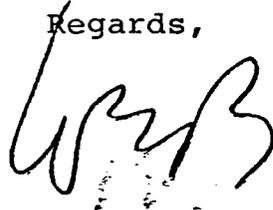
Re: No. 81-1255, Planned Parenthood of Kansas City, Mo. v. Ashcroft, AG of Mo.

81-1623, Ashcroft, AG of Mo. v. Planned Parenthood of Kansas City, Mo.

Dear Lewis:

I join.

Regards,



Justice Powell

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

May 23, 1983

Re: Nos. 81-1255 & 1623

Planned Parenthood Ass'n of
Kansas City, Mo. v. Ashcroft, etc.

Dear Harry:

Please join me in your opinion in
the above, concurring in part and
dissenting in part.

Sincerely,



Justice Blackmun

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 6, 1983

Re: 81-1255) Planned Parenthood Association of Kansas
City, et al. v. John Ashcroft, et al.
)
81-1623) John Ashcroft, et al. v. Planned Parenthood
Association of Kansas City, et al.

Dear Sandra:

Please add my name to your opinion in this case.

Sincerely,



Justice O'Connor

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 25, 1983

Re: Nos. 81-1255 and 81-1623 - Planned Parenthood
Association of Kansas City, Missouri v.
Ashcroft and Ashcroft v. Planned Parenthood
Association of Kansas City, Missouri

Dear Harry:

Please join me in your opinion.

Sincerely,



T.M.

Justice Blackmun

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

September 16, 1982

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

MEMORANDUM TO THE CONFERENCE

Re: No. 81-1255, Planned Parenthood
v. Ashcroft, Attorney General

This is one of the abortion cases as to which certiorari was granted last Term.

Counsel for the petitioner has now advised the Clerk that the formulation of the "Question Presented for Review" in both the petition for certiorari and the brief of petitioners (not yet circulated) is incorrect. He also states that the error does not affect the argument. Counsel for both sides, we are informed, have agreed upon a rephrasing of the Question.

I therefore have told Mr. Lorson that the rephrased Question may be affixed (in print with a gummed label) in both the petition and the brief for petitioners. Mr. Lorson suggests, and I agree, that the new phrasing not obliterate the old. All this has my approval, as Circuit Justice, and, on the assumption that there will be no objection on the part of any other Member of the Court, Mr. Lorson will advise counsel to proceed accordingly.

Harry

*9-28-82
will be signed
on one day*

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HAB

December 22, 1982

Re: Nos. 81-1255 and 81-1623, Missouri Abortion Cases

Dear Bill:

I shall be glad to undertake the dissent in these cases.

Sincerely,

HAB

Justice Brennan

cc: Justice Stevens

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 4, 1983

Re: No. 81-1255) Planned Parenthood of Kansas City v. Ashcroft
No. 81-1623) Ashcroft v. Planned Parenthood of Kansas City

Dear Lewis:

In due course, I shall be writing a partial dissent in these cases. This may take a while.

Sincerely,



Justice Powell

cc: The Conference

May 18, 1983

Re: No. 81-1255, Planned Parenthood Association
of Kansas City v. Ashcroft
No. 81-1623, Ashcroft v. Planned Parenthood
Association of Kansas City

Dear Bill and John:

The enclosed is what I propose to add to the opinion circulated May 17. This will replace the 4th, 5th, and 6th lines and the last four words of the 3rd line on page 10. There will be some minor changes made in the first few lines of page 11. Footnote 13, on page 13, will then be deleted.

If this is not in line with your own thinking, please let me know.

Sincerely,

HAB

*pk of [unclear]
6/1/83*

Justice Brennan
Justice Stevens

pp. 10-12, 14

Justice Brennan
Justice White
Justice Marshall
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Blackmun**

Circulated: _____

Recirculated: MAY 19 1983

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 81-1255 AND 81-1623

PLANNED PARENTHOOD ASSOCIATION OF
KANSAS CITY, MISSOURI, INC.,
ET AL., PETITIONERS

81-1255

v.

JOHN ASHCROFT, ATTORNEY GENERAL OF
MISSOURI, ET AL.

JOHN ASHCROFT, ATTORNEY GENERAL OF
MISSOURI, ET AL., PETITIONERS

81-1623

v.

PLANNED PARENTHOOD ASSOCIATION OF
KANSAS CITY, MISSOURI, INC., ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

[May —, 1983]

JUSTICE BLACKMUN, concurring in part and dissenting in part.

The Court's decision today in *Akron v. Akron Center for Reproductive Health, Inc.*, ante, invalidates the city of Akron's hospitalization requirement and a host of other provisions that infringe on a woman's decision to terminate her pregnancy through abortion. I agree with the Court that Missouri's hospitalization requirement is invalid under the *Akron* analysis, and I join Parts I and II of the Court's opinion in the present cases. I do not agree, however, that the remaining Missouri statutes challenged in these cases satisfy

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Blackmun

Circulated: _____

Recirculated: _____ MAY 23 1983

pp. 10-11

~~A~~

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 81-1255 AND 81-1623

PLANNED PARENTHOOD ASSOCIATION OF
KANSAS CITY, MISSOURI, INC.,
ET AL., PETITIONERS

81-1255

v.

JOHN ASHCROFT, ATTORNEY GENERAL OF
MISSOURI, ET AL.

JOHN ASHCROFT, ATTORNEY GENERAL OF
MISSOURI, ET AL., PETITIONERS

81-1623

v.

PLANNED PARENTHOOD ASSOCIATION OF
KANSAS CITY, MISSOURI, INC., ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

[May —, 1983]

JUSTICE BLACKMUN, concurring in part and dissenting in part.

The Court's decision today in *Akron v. Akron Center for Reproductive Health, Inc.*, ante, invalidates the city of Akron's hospitalization requirement and a host of other provisions that infringe on a woman's decision to terminate her pregnancy through abortion. I agree with the Court that Missouri's hospitalization requirement is invalid under the *Akron* analysis, and I join Parts I and II of the Court's opinion in the present cases. I do not agree, however, that the remaining Missouri statutes challenged in these cases satisfy

5/23/83

Pages: 1, 2, 4, 6, 7, 8, 9
 - Footnotes Renumbered
 - Stylistic Changes

Justice Brennan
 Justice White
 Justice Marshall
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice Blackmun**

Circulated: _____

Recirculated: JUN 10 1983

4th DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 81-1255 AND 81-1623

PLANNED PARENTHOOD ASSOCIATION OF
 KANSAS CITY, MISSOURI, INC.,
 ET AL., PETITIONERS

81-1255

v.

JOHN ASHCROFT, ATTORNEY GENERAL OF
 MISSOURI, ET AL.

JOHN ASHCROFT, ATTORNEY GENERAL OF
 MISSOURI, ET AL., PETITIONERS

81-1623

v.

PLANNED PARENTHOOD ASSOCIATION OF
 KANSAS CITY, MISSOURI, INC., ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE EIGHTH CIRCUIT

[June —, 1983]

JUSTICE BLACKMUN, with whom JUSTICE BRENNAN, JUSTICE MARSHALL, and JUSTICE STEVENS join, concurring in part and dissenting in part.

The Court's decision today in *Akron v. Akron Center for Reproductive Health, Inc.*, ante, invalidates the city of Akron's hospitalization requirement and a host of other provisions that infringe on a woman's decision to terminate her pregnancy through abortion. I agree that Missouri's hospitalization requirement is invalid under the *Akron* analysis, and I join Parts I and II of JUSTICE POWELL'S opinion in the present cases. I do not agree, however, that the remaining

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall ✓
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

AR 4 1983

From: Justice Powell

Circulated: MAR 4 1983

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 81-1255 AND 81-1623

PLANNED PARENTHOOD ASSOCIATION OF
KANSAS CITY, MISSOURI, INC.,
ET AL., PETITIONERS

81-1255

v.

JOHN ASHCROFT, ATTORNEY GENERAL OF
MISSOURI, ET AL.

JOHN ASHCROFT, ATTORNEY GENERAL OF
MISSOURI, ET AL., PETITIONERS

81-1623

v.

PLANNED PARENTHOOD ASSOCIATION OF
KANSAS CITY, MISSOURI, INC.,
ET AL., PETITIONERS

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

[Decided March —, 1983]

JUSTICE POWELL delivered the opinion of the Court:

These cases, like *City of Akron v. Akron Center for Reproductive Health, Inc.*, ante, p. —, and *Simopoulos v. Virginia*, post, p. —, present questions as to the validity of state statutes regulating the performance of abortions.

I

Planned Parenthood of Kansas City, Missouri, Inc., two physicians who perform abortions, and an abortion clinic ("plaintiffs") filed a complaint in the District Court for the Western District of Missouri challenging, as unconstitutional,

To: The Chief Justice
 Justice Brennan
 Justice White
 Justice Marshall ✓
 Justice Blackmun
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

JUN 7 1983

Changes: 1, 4, 6-17

From: Justice Powell

Circulated: _____

JUN 7 1983

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 81-1255 AND 81-1623

PLANNED PARENTHOOD ASSOCIATION OF
 KANSAS CITY, MISSOURI, INC.,
 ET AL., PETITIONERS

81-1255

v.

JOHN ASHCROFT, ATTORNEY GENERAL OF
 MISSOURI, ET AL.

JOHN ASHCROFT, ATTORNEY GENERAL OF
 MISSOURI, ET AL., PETITIONERS

81-1623

v.

PLANNED PARENTHOOD ASSOCIATION OF
 KANSAS CITY, MISSOURI, INC.,
 ET AL., PETITIONERS

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE EIGHTH CIRCUIT

[June —, 1983]

JUSTICE POWELL delivered the opinion of the Court with respect to Parts I, II, and VI, and an opinion with respect to Parts III, IV, and V, in which THE CHIEF JUSTICE joins.

These cases, like *City of Akron v. Akron Center for Reproductive Health, Inc.*, ante, p. —, and *Simopoulos v. Virginia*, post, p. —, present questions as to the validity of state statutes regulating the performance of abortions.

I

Planned Parenthood of Kansas City, Missouri, Inc., two physicians who perform abortions, and an abortion clinic

JUN 9 1983

Justice White
Justice Marshall
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

Change: p. 8

From: Justice Powell

Circulated: _____

Recirculated: JUN 10 1983

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 81-1255 AND 81-1623

PLANNED PARENTHOOD ASSOCIATION OF
KANSAS CITY, MISSOURI, INC.,
ET AL., PETITIONERS

81-1255

v.

JOHN ASHCROFT, ATTORNEY GENERAL OF
MISSOURI, ET AL.

JOHN ASHCROFT, ATTORNEY GENERAL OF
MISSOURI, ET AL., PETITIONERS

81-1623

v.

PLANNED PARENTHOOD ASSOCIATION OF
KANSAS CITY, MISSOURI, INC.,
ET AL., PETITIONERS

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

[June —, 1983]

JUSTICE POWELL delivered the opinion of the Court with respect to Parts I, II, and VI, and an opinioin with respect to Parts III, IV, and V, in which THE CHIEF JUSTICE joins.

These cases, like *City of Akron v. Akron Center for Reproductive Health, Inc.*, ante, p. —, and *Simopoulos v. Virginia*, post, p. —, present questions as to the validity of state statutes regulating the performance of abortions.

I

Planned Parenthood of Kansas City, Missouri, Inc., two physicians who perform abortions, and an abortion clinic

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 7, 1983

Re: Nos. 81-1255 & 81-1623 Planned Parenthood
Association of Kansas City v. Ashcroft

Dear Lewis:

I will await Sandra's writing in this case.

Sincerely,



Justice Powell

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

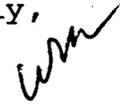
May 5, 1983

Re: No. 81-1255) Planned Parenthood v. Ashcroft
No. 81-1623) Ashcroft v. Planned Parenthood

Dear Sandra:

Please join me.

Sincerely,



Justice O'Connor

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 7, 1983

Re: 81-1255 and 81-1623 - Planned
Parenthood Assn. v. Ashcroft

Dear Lewis:

Although I expect to join Parts I thru IV of your opinion, I do not agree with the analysis in Part V and therefore shall await further writing.

Respectfully,



Justice Powell

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 18, 1983

Re: 81-1255 and 81-1623 - Planned
Parenthood Assn. v. Ashcroft

Dear Harry:

As I indicated on the telephone, I wonder if you would be willing to change the sentence that begins at the bottom of page 10 and runs over onto page 11 to read something like this:

"If the statute is construed in accordance with its plain language, it would be unconstitutional under the analysis set forth in either the opinion of JUSTICE POWELL, which was joined by three other Justices, or the opinion of JUSTICE STEVENS, which was also joined by three other Justices, in Bellotti v. Baird, 443 U.S. 622, 643-644, 647-648, 652-656 (Bellotti II) (1979)."

Respectfully,



Justice Blackmun

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 1, 1983

Re: 81-1255 - Planned Parenthood v. Ashcroft
81-1623 - Ashcroft v. Planned Parenthood

Dear Harry:

Please join me in your opinion.

Respectfully,



Justice Blackmun

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

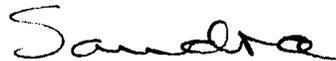
September 16, 1982

No. 81-1255 Planned Parenthood v. Ashcroft,
Attorney General

Dear Harry,

I have no objection to the proposed correction of the formulation of the "Question Presented for Review" as outlined in your memo.

Sincerely,



Justice Blackmun

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

March 7, 1983

No. 81-1255 Planned Parenthood Association of
Kansas City v. Ashcroft
No. 81-1623 Ashcroft v. Planned Parenthood
Association of Kansas City

Dear Lewis,

In due course, I will circulate something
concurring in part and dissenting in part.

Sincerely,



Justice Powell

Copies to the Conference

Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: Justice O'Connor

Circulated: MAY 5 1983

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 81-1255 AND 81-1623

PLANNED PARENTHOOD ASSOCIATION OF
KANSAS CITY, MISSOURI, INC.,
ET AL., PETITIONERS

81-1255

v.

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MISSOURI, ET AL.

JOHN ASHCROFT, ATTORNEY GENERAL OF
MISSOURI, ET AL., PETITIONERS

81-1623

v.

PLANNED PARENTHOOD ASSOCIATION OF
KANSAS CITY, MISSOURI, INC.,
ET AL., PETITIONERS

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

[May —, 1983]

JUSTICE O'CONNOR, concurring in part in the judgment
and dissenting in part.

For reasons stated in my dissent in No. 81-746, *Akron v. Akron Center for Reproductive Health* and in No. 81-1172, *Akron Center for Reproductive Health v. Akron*, I believe that the second-trimester hospitalization requirement imposed by § 188.025 does not impose an undue burden on the limited right to undergo an abortion. Assuming *arguendo* that the requirement was an undue burden, it would nevertheless "reasonably relate[] to the preservation and protection of maternal health." *Roe v. Wade*, 410 U. S. 113, 163

PP 1, 2

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: Justice O'Connor

Circulated: _____

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2d DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 81-1255 AND 81-1623

PLANNED PARENTHOOD ASSOCIATION OF
KANSAS CITY, MISSOURI, INC.,
ET AL., PETITIONERS

81-1255

v.

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81-1623

v.

PLANNED PARENTHOOD ASSOCIATION OF
KANSAS CITY, MISSOURI, INC.,
ET AL., PETITIONERS

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

[June 15, 1983]

JUSTICE O'CONNOR, with whom JUSTICE WHITE and JUSTICE REHNQUIST join, concurring in part in the judgment and dissenting in part.

For reasons stated in my dissent in No. 81-746, *Akron v. Akron Center for Reproductive Health* and in No. 81-1172, *Akron Center for Reproductive Health v. Akron*, I believe that the second-trimester hospitalization requirement imposed by § 188.025 does not impose an undue burden on the limited right to undergo an abortion. Assuming *arguendo* that the requirement was an undue burden, it would nevertheless "reasonably relate[] to the preservation and protec-