

# The Burger Court Opinion Writing Database

## *Jensen v. Quaring*

472 U.S. 478 (1985)

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



p. 8

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

From: **The Chief Justice**

Circulated: MAY 24 1985

Recirculated: \_\_\_\_\_

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 83-1944

**HOLLY JENSEN, ETC., ET AL., PETITIONERS v.  
FRANCES J. QUARING**

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

[May —, 1985]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to decide whether the Free Exercise Clause of the First Amendment, incorporated into the Fourteenth Amendment, requires a state to accommodate a religiously based objection to the state's requirement that all general driver's licenses bear a photograph of the licensee.

I

A

Nebraska law requires that all general driver's licenses display a color photograph of the licensee. Neb. Rev. Stat. § 60-406.04 (1984 reissue). The photograph requirement does not pertain to certain categories of licenses—school permits for children between the ages of 14 and 16 in rural areas, learner's permits for 15 and 16 year olds, farm machinery operating permits, special limited permits for those with restricted or minimal driving ability, and temporary licenses for individuals outside of the state whose licenses have expired. *Ibid.* There is no provision for individualized exemptions from the photograph requirement, and there is no evidence in the record that the state has granted any exemptions from the general requirement.

Respondent, Frances Quaring, and her husband Jerry operate a farm in Buffalo and Hall Counties, Nebraska, on

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

STYLISTIC CHANGES

From: The Chief Justice

Circulated: \_\_\_\_\_

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1944

HOLLY JENSEN, ETC., ET AL., PETITIONERS *v.*  
FRANCES J. QUARING

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

CHAMBERS OF  
THE CHIEF JUSTICE

May 31, 1985

PERSONAL

Re: 83-1944 - Jensen v. Quaring

Dear Lewis:

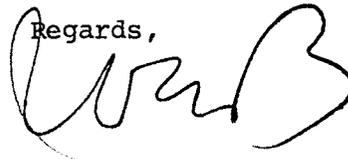
You have by now seen Harry's memo of today, which puts this case into a 4-4 affirmance. The vote was 5-3 with only Byron "tentative," and he joined promptly when the opinion was circulated.

This is a state case and the state, in my view, has a very high interest - and right - to a prompt resolution of this important issue.

In this setting, the Court owes a duty to resolve the issue.

I hope you will either move for reargument or vote for it when a motion is made - as it surely will be.

Regards,



P.S. Essentially the same issue is presented in an appeal, Heckler v. Roy, No. 84-780, which we held for Jensen. So the Court will have to face this issue next Term in any event. The issue will not go away.

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

CHAMBERS OF  
THE CHIEF JUSTICE

June 7, 1985

Re: No. 83-1944 - Jensen v. Quaring

MEMORANDUM TO THE CONFERENCE

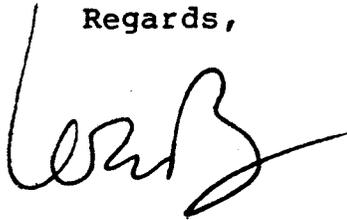
This case presents a unique problem, or may do so, if we grant 84-1944, Heckler v. Roy.

I know of no means--or precedent--for holding a 4-4 disposition, but before Jensen v. Quaring is announced, should we not wait until we know whether we will take Heckler v. Roy?

If we do take it, should we consider "holding" Quaring or possibly rearguing it in tandem with Roy?

I will put this on the agenda for Thursday.

Regards,



.82 1A-1 6112

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

From: The Chief Justice

Circulated: JUN 14 1985

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NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

## SUPREME COURT OF THE UNITED STATES

No. 83-1944

HOLLY JENSEN, ETC., ET AL., PETITIONERS *v.*  
FRANCES J. QUARING

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

[June 17, 1985]

PER CURIAM.

The judgment is affirmed by an equally divided Court.

JUSTICE POWELL took no part in the decision of this case.

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

January 22, 1985

No. 83-1944

Jensen v. Quaring

Dear Sandra,

You, Thurgood and I are in dissent  
in the above. Would you take on the  
dissent?

Sincerely,



Justice O'Connor

Justice Marshall

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

May 28, 1985

No. 83-1944

Holly Jensen, etc., et al.  
v. Frances J. Quaring

Dear Sandra,

Please join me.

Sincerely,

*Bill*

Justice O'Connor

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 29, 1985

83-1944 - Jensen v. Quaring

Dear Chief,

Please join me.

Sincerely,

The Chief Justice

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58 57 55 53 12

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 29, 1985

Re: No. 83-1944-Jensen v. Quaring

Dear Sandra:

Please join me in your dissenting opinion.

Sincerely,

*JM.*

T.M.

Justice O'Connor

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 31, 1985

Re: No. 83-1944, Jensen v. Quaring

Dear Chief:

I have encountered difficulty with this case. You will recall that my initial vote to reverse was tentative. After reading the respective opinions, and after further reflection, I have come down now to affirm. It seems to me that, as Byron said at conference, our prior precedents clearly point in that direction. And the record, as Sandra points out, presents a very weak case for Nebraska. The facts, another time, might be much stronger.

I realize, and am distressed, that this results in a 4-4 vote. Perhaps at the next conference we should discuss whether the case should be reargued or should be announced as an affirmance by an equally divided Court.

Sincerely,

H. A. B.

The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 24, 1985

83-1944 Jensen v. Quaring

Dear Chief:

Please add at the end of the next draft of your opinion that I took no part in the consideration or decision of the this case.

Sincerely,

*Lewis*

The Chief Justice

lfp/ss

cc: The Conference

83-1944 Jensen v. Quaring

June 4, 1985

84-780

83-1944 Jensen v. Quaring

Dear Chief:

This refers to your letter inquiring whether I would move to reargue this case. As I have not taken any part in the cases that were argued during my absence, I think it best for me not to depart from this precedent. You may remember, also, that when Bill Rehnquist and I came on the Court similar questions arose and we declined to vote for rehearings. The only exception was in the abortion cases when we talked to Harry Blackmun and found that he preferred a reargument. He wanted additional time during the summer to work on an opinion.

I am puzzled that you had rather have Jensen reargued than to note in Heckler v. Roy, 84-1944 - a case being held for Jensen. I will gladly vote to note probable jurisdiction in Roy. It presents substantially the same question involving a claimed religious belief of American Indians. I believe that the chances of your views prevailing would be at least as good - if not better - in Roy than on reargument of Jensen.

Sincerely,

The Chief Justice

lfp/ss

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 29, 1985

Re: 83-1944 - Jensen v. Quaring

Dear Chief:

Please join me.

Sincerely,

WHR/JE

The Chief Justice

cc: The Conference

30 11 85 11 11

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 28, 1985

Re: Jensen v. Quaring, 83-1944

Dear Chief:

Please join me.

Respectfully,



The Chief Justice

Copies to the Conference

.81 WA 58 W1 30

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

January 22, 1985

Re: 83-1944 Jensen v. Quaring

Dear Bill,

I will be happy to try to write a dissent  
in this case.

Sincerely,

*Sandra*

Justice Brennan

Copy to Justice Marshall ✓

81 JAN 23 1985

613

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

May 24, 1985

No. 83-1944 Jensen v. Quaring

Dear Chief,

I will circulate a dissent in this case  
probably today or tomorrow.

Sincerely,

*Sandra*

The Chief Justice

88 JUN 24 11:05 AM '85  
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To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens

From: Justice O'Connor

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SDO  
Please join me in your  
dissenting opinion  
[Signature]

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 83-1944

**HOLLY JENSEN, ETC., ET AL., PETITIONERS v.  
FRANCES J. QUARING**

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

[May —, 1985]

**JUSTICE O'CONNOR, dissenting.**

Frances Quaring owns and manages 200 head of dairy and beef cattle on a family farm located several miles from her rural residence in Buffalo County, Nebraska. 2 Record 20. In addition, she helps her husband farm over 1,000 acres of row crops on land 8 miles distant from her dairy herd. Mrs. Quaring is also employed part time as a bookkeeper in the town of Gibbon, 10 miles from her home. *Id.*, at 21. In the course of her day, she must operate her farm machinery, pick-up truck and car on the highways of Nebraska in order to get to and accomplish her work. *Id.*, at 20. To Mrs. Quaring, a motor vehicle operator's license is more than a privilege; it is a necessity of life. Mrs. Quaring has been driving for 20 years and has never received a traffic citation or been charged with a violation of any law. Only once in 20 years has a law enforcement officer at a safety check requested that she display her driver's license. *Id.*, at 30.

In 1978, Mrs. Quaring's license expired. Although she met every substantive test relating to driving safety, Nebraska refused to renew her license because she was unable on religious grounds to comply with a statutory requirement that photographs be affixed to all driver's licenses. See Neb. Rev. Stat. § 60-406.04 (1984). The statute allows exemptions from the photograph requirement for learner's permits, school permits, farm machinery permits, and tempo-