

The Burger Court Opinion Writing Database

Thornburgh v. American College of Obstetricians and Gynecologists

476 U.S. 747 (1986)

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

April 10, 1985

Re: No. 84-495 - Thornburgh v. American College of
Obstetricians and Gynecologists

Dear Bill:

I join your April 10, dissent.

Regards,

A handwritten signature in black ink, appearing to be 'WRB', with a long horizontal stroke extending to the right.

Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 14, 1985

No. 84-495

Thornburgh, et al. v. American
College of Obstetricians and
Gynecologists, et al.

Dear John,

I agree.

Sincerely,

A handwritten signature in cursive script that reads "Bill".

Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 19, 1985

Re: No. 84-495-Thornburgh v. American College of
Obstetricians and Gynecologists et al.

Dear John:

I agree with your Per Curiam.

Sincerely,



T.M.

Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 14, 1985

Re: No. 84-495, Thornburgh v. American College
of Obstetricians and Gynecologists

Dear John:

Please join me in your per curiam.

Sincerely,

Harry

Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 10, 1985

Re: No. 84-495 Thornburg v. American College, Et Al.

Dear John,

It seems to me that the reasons you state in your Per Curiam for dismissing the appeal in this case are not reasons which fall within any of the traditional categories under which we have dismissed appeals in the past: "not a proper appeal," "no jurisdiction" and the like. The "policies disfavoring piecemeal appellate review and premature adjudication of constitutional question" to which you refer on page 2 of the Per Curiam are supported by citations to an appeal from a state court which was dismissed for lack of a substantial record, Rescue Army v. Municipal Court of Los Angeles, 331 U.S. 549, a writ of certiorari to a state court which was dismissed, Minnick v. California Department of Corrections, 452 U.S. 105, and an appeal from the Court of Appeals to the Fifth Circuit which was decided on the merits, New Orleans v. Dukes, 427 U.S. 297 (1976). Whatever may be the jurisprudential considerations that counsel against piecemeal review or avoidance of constitutional questions, I would think that Congress has finally answered this question when it gave these particular appellants the right to appeal under §1254(2). I am going to continue to vote to note probable jurisdiction.

Sincerely,



Justice Stevens

cc: The Conference

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

ZJP

*This is the P.G.
abortion case &
that I hoped to
avoiding. My vote
was to Affirm.
(There are 4
votes to
Postpone)*

From: Justice Stevens

Circulated: JAN 10 1985

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

**RICHARD THORNBURGH ET AL. v. AMERICAN
COLLEGE OF OBSTETRICIANS AND
GYNECOLOGISTS ET AL.**

**ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

No. 84-495. Decided January —, 1985

PER CURIAM.

Appellants, seven State and local governmental officials from Pennsylvania, have invoked this Court's jurisdiction under 28 U. S. C. § 1254(2),¹ seeking review of a judgment of the United States Court of Appeals for the Third Circuit² which directed the District Court to enter a preliminary injunction against enforcement of various provisions of Pennsylvania's 1982 Abortion Control Act, 18 Pa. Cons. Stat. Ann. §§ 3201-3220 (Purdon 1983). Because the judgment of the Court of Appeals is not final, it is not entirely clear that we have jurisdiction under § 1254(2).³ Even assuming that jurisdiction exists under § 1254(2), however, in the particular

¹Section 1254(2) provides:

"Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(2) By appeal by a party relying on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States, but such appeal shall preclude review by writ of certiorari at the instance of such appellant, and the review on appeal shall be restricted to the Federal questions presented." 28 U. S. C. § 1254(2).

²737 F. 2d 283 (1984) (appendix contains relevant sections of the Act).

³See *Doran v. Salem Inn, Inc.*, 422 U. S. 922, 927 (1975); *City of El Paso v. Simmons*, 379 U. S. 497, 501-503 (1965); *South Carolina Electric and Gas Co. v. Flemming*, 351 U. S. 901, 901 (1956) (*per curiam*); *Slaker v. O'Connor*, 278 U. S. 188, 189-190 (1929) (interpreting predecessor to § 1254(2)). But see *New Orleans v. Dukes*, 427 U. S. 297, 301-302 (1976) (*per curiam*); *Chicago v. Atchison, T. & S. F. R. Co.*, 357 U. S. 77, 82-83 (1958).

*No one
has joined
J.P.S., &
altho I'd
like to
agree with
Dismissal
of Appeal
& Denial
of Cert.,
I'm not
persuaded
John is
right.*

*There were
four votes
to Postpone
WEB
BRW
WFR
SOC*

*I'll stay with
Affirm or
possibly join
John. 3/26*

*See
Dan's
memo
attached*

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

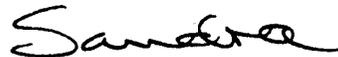
April 10, 1985

No. 84-495 Thornburgh v. American College of
Obstetricians and Gynecologists

Dear Bill,

Please join me in your dissent.

Sincerely,



Justice Rehnquist

Copies to the Conference