

ORDERS OF JUNE 25, 1973

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Dismissals Under Rule 60

No. 72-984. GAF CORP. *v.* CIRCLE FLOOR CO., INC., ET AL. C. A. 2d Cir. Petition for writ of certiorari dismissed under Rule 60 of the Rules of this Court. Reported below: 463 F. 2d 752.

No. 72-6640. WALKER *v.* COINER, WARDEN. C. A. 4th Cir. Petition for writ of certiorari dismissed under Rule 60 of the Rules of this Court. Reported below: 474 F. 2d 887.

No. 72-6746. JOHNSON *v.* DELAWARE. Sup. Ct. Del. Petition for writ of certiorari dismissed under Rule 60 of the Rules of this Court. Reported below: — Del. —, 305 A. 2d 622.

Affirmed on Appeal

No. 72-166. KELLY ET AL. *v.* BUMPERS, GOVERNOR OF ARKANSAS, ET AL. Affirmed on appeal from D. C. E. D. Ark. Reported below: 340 F. Supp. 568.

No. 72-452. POWELL *v.* WEST, GOVERNOR OF SOUTH CAROLINA, ET AL. Affirmed on appeal from D. C. S. C. Mr. JUSTICE DOUGLAS dissents from affirmance.

No. 72-1139. GRIT ET AL. *v.* WOLMAN ET AL. Affirmed on appeal from D. C. S. D. Ohio. For the reasons stated in the dissenting opinions in *Committee for Public Education & Religious Liberty v. Nyquist* and companion cases, and *Sloan v. Lemon* and companion case, *ante*, pp. 798, 805, 813, Mr. JUSTICE WHITE would reverse the judgment of the District Court. Reported below: 353 F. Supp. 744.

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No. 72-1170. *ELDER v. RAMPTON, GOVERNOR OF UTAH, ET AL.* Affirmed on appeal from D. C. Utah. MR. JUSTICE DOUGLAS dissents from affirmance.

No. 72-1360. *NELSON, ATTORNEY GENERAL OF ARIZONA, ET AL. v. MIRANDA ET AL.* Appeal from D. C. Ariz. Motion of appellee Miranda for leave to proceed *in forma pauperis* granted. Judgment affirmed. Reported below: 351 F. Supp. 735.

Appeals Dismissed

No. 70-41. *MEYER ET AL. v. AUSTIN ET AL.* Appeal from D. C. M. D. Fla. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 319 F. Supp. 457.

No. 72-1026. *DURHAM v. MCLEOD, ATTORNEY GENERAL OF SOUTH CAROLINA, ET AL.* Appeal from Sup. Ct. S. C. dismissed for want of substantial federal question. MR. JUSTICE DOUGLAS, MR. JUSTICE BRENNAN, and MR. JUSTICE MARSHALL would note probable jurisdiction and set case for oral argument. Reported below: 259 S. C. 409, 192 S. E. 2d 202.

No. 72-1223. *DESKINS v. KENTUCKY.* Appeal from Ct. App. Ky. dismissed for want of substantial federal question. Reported below: 488 S. W. 2d 697.

Reversed on Appeal

No. 72-205. *STEVENSON ET AL. v. WEST, GOVERNOR OF SOUTH CAROLINA, ET AL.* Appeal from D. C. S. C. Judgment reversed. *Swann v. Adams*, 385 U. S. 440 (1967); and *Reynolds v. Sims*, 377 U. S. 533 (1964).

Vacated and Remanded on Appeal

No. 70-1. *GROVE PRESS, INC., ET AL. v. FLASK ET AL.* Appeal from D. C. N. D. Ohio. Judgment vacated and

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case remanded for further consideration in light of *Miller v. California*, ante, p. 15; *Paris Adult Theatre I v. Slaton*, ante, p. 49; *Kaplan v. California*, ante, p. 115; *United States v. 12 200-ft. Reels Film*, ante, p. 123; *United States v. Orito*, ante, p. 139; *Heller v. New York*, ante, p. 483; *Roaden v. Kentucky*, ante, p. 496; and *Alexander v. Virginia*, ante, p. 836. MR. JUSTICE BRENNAN, joined by MR. JUSTICE STEWART and MR. JUSTICE MARSHALL, would vacate the judgment and remand case for further proceedings not inconsistent with his dissent in *Paris Adult Theatre I v. Slaton*, ante, p. 73. See *Miller v. California*, ante, p. 47. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this appeal. Reported below: 326 F. Supp. 574.

No. 70-10. FLORIDA EX REL. SHEVIN, ATTORNEY GENERAL OF FLORIDA, ET AL. v. M & W THEATRES, INC., ET AL. Appeal from D. C. N. D. Fla. Judgment vacated and case remanded for further consideration in light of *Miller v. California*, ante, p. 15; *Paris Adult Theatre I v. Slaton*, ante, p. 49; *Kaplan v. California*, ante, p. 115; *United States v. 12 200-ft. Reels Film*, ante, p. 123; *United States v. Orito*, ante, p. 139; *Heller v. New York*, ante, p. 483; *Roaden v. Kentucky*, ante, p. 496; and *Alexander v. Virginia*, ante, p. 836. MR. JUSTICE DOUGLAS would vacate the judgment and remand case to determine whether after a delay of over three years the case is moot. MR. JUSTICE BRENNAN, joined by MR. JUSTICE STEWART and MR. JUSTICE MARSHALL, would vacate the judgment and remand case for further proceedings not inconsistent with his dissent in *Paris Adult Theatre I v. Slaton*, ante, p. 73. See *Miller v. California*, ante, p. 47.

No. 70-23. THOMPSON ET AL. v. UNITED ARTISTS THEATRE CIRCUIT, INC.; and

No. 70-30. UNITED ARTISTS THEATRE CIRCUIT, INC. v. THOMPSON ET AL. Appeals from D. C. W. D. Ark.

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Judgment vacated and cases remanded for further consideration in light of *Miller v. California*, ante, p. 15; *Paris Adult Theatre I v. Slaton*, ante, p. 49; *Kaplan v. California*, ante, p. 115; *United States v. 12 200-ft. Reels Film*, ante, p. 123; *United States v. Orito*, ante, p. 139; *Heller v. New York*, ante, p. 483; *Roaden v. Kentucky*, ante, p. 496; and *Alexander v. Virginia*, ante, p. 836. MR. JUSTICE DOUGLAS would affirm the judgment in No. 70-23. He would reverse the judgment in No. 70-30. See *Miller v. California*, ante, p. 37. MR. JUSTICE BRENNAN, joined by MR. JUSTICE STEWART and MR. JUSTICE MARSHALL, would vacate the judgment and remand cases for further consideration in light of *Mitchum v. Foster*, 407 U. S. 225 (1972). Reported below: 316 F. Supp. 815.

No. 70-24. *GROVE PRESS, INC. v. BAILEY, SHERIFF*. Appeal from D. C. N. D. Ala. Judgment vacated and case remanded for further consideration in light of *Miller v. California*, ante, p. 15; *Paris Adult Theatre I v. Slaton*, ante, p. 49; *Kaplan v. California*, ante, p. 115; *United States v. 12 200-ft Reels Film*, ante, p. 123; *United States v. Orito*, ante, p. 139; *Heller v. New York*, ante, p. 483; *Roaden v. Kentucky*, ante, p. 496; and *Alexander v. Virginia*, ante, p. 836. MR. JUSTICE BRENNAN, joined by MR. JUSTICE STEWART and MR. JUSTICE MARSHALL, would vacate the judgment and remand case for further consideration in light of *Mitchum v. Foster*, 407 U. S. 225 (1972). MR. JUSTICE DOUGLAS took no part in the consideration or decision of this appeal. Reported below: 318 F. Supp. 244.

No. 70-25. *SPIVAK v. SHRIVER ET AL.* Appeal from D. C. M. D. Tenn. Reported below: 315 F. Supp. 695;

No. 71-515. *ART THEATER GUILD, INC., DBA STUDIO ART THEATER, ET AL. v. TENNESSEE EX REL. RHODES.*

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Appeal from Sup. Ct. Tenn. Reported below: 225 Tenn. 399, 469 S. W. 2d 669;

No. 71-599. MOTION PICTURE FILM ENTITLED "VIXEN," ET AL. v. OHIO EX REL. KEATING. Appeal from Sup. Ct. Ohio. Reported below: 27 Ohio St. 2d 278, 272 N. E. 2d 137;

No. 72-683. WATKINS v. SOUTH CAROLINA. Appeal from Sup. Ct. S. C. Reported below: 259 S. C. 185, 191 S. E. 2d 135;

No. 72-815. STAR, DBA GAYETY BOOKS, INC., ET AL. v. PRELLER ET AL. Appeal from D. C. Md. Reported below: 352 F. Supp. 530; and

No. 72-1256. BLAIR v. OHIO. Appeal from Sup. Ct. Ohio. Reported below: 32 Ohio St. 2d 237, 291 N. E. 2d 451. Motion of appellants to strike appellee's supplemental brief in No. 71-599 denied. Judgments vacated and cases remanded for further consideration in light of *Miller v. California*, ante, p. 15; *Paris Adult Theatre I v. Slaton*, ante, p. 49; *Kaplan v. California*, ante, p. 115; *United States v. 12 200-ft. Reels Film*, ante, p. 123; *United States v. Orito*, ante, p. 139; *Heller v. New York*, ante, p. 483; *Roaden v. Kentucky*, ante, p. 496; and *Alexander v. Virginia*, ante, p. 836. MR. JUSTICE DOUGLAS would reverse the judgments. See *Miller v. California*, ante, p. 37. MR. JUSTICE BRENNAN, joined by MR. JUSTICE STEWART and MR. JUSTICE MARSHALL, would vacate the judgments and remand cases for further proceedings not inconsistent with his dissent in *Paris Adult Theatre I v. Slaton*, ante, p. 73. See *Miller v. California*, ante, p. 47.

No. 70-35. AUSTIN ET AL. v. MEYER ET AL. Appeal from D. C. M. D. Fla. Reported below: 319 F. Supp. 457;

No. 71-304. BYRNE, DISTRICT ATTORNEY OF SUFFOLK

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COUNTY *v.* P. B. I. C., INC., ET AL. Appeal from D. C. Mass. Reported below: 313 F. Supp. 757; and

No. 71-1318. DAVIS *v.* PARKER. Appeal from D. C. C. D. Cal. Judgments vacated and cases remanded for further consideration in light of *Miller v. California*, *ante*, p. 15; *Paris Adult Theatre I v. Slaton*, *ante*, p. 49; *Kaplan v. California*, *ante*, p. 115; *United States v. 12 200-ft. Reels Film*, *ante*, p. 123; *United States v. Orito*, *ante*, p. 139; *Heller v. New York*, *ante*, p. 483; *Roaden v. Kentucky*, *ante*, p. 496; and *Alexander v. Virginia*, *ante*, p. 836. MR. JUSTICE DOUGLAS would affirm the judgments. MR. JUSTICE BRENNAN, joined by MR. JUSTICE STEWART and MR. JUSTICE MARSHALL, would vacate the judgments and remand the cases for further proceedings not inconsistent with his dissent in *Paris Adult Theatre I v. Slaton*, *ante*, p. 73. See *Miller v. California*, *ante*, p. 47.

No. 71-1190. SUMMERS ET AL. *v.* CENARRUSA, SECRETARY OF STATE OF IDAHO, ET AL. Appeal from D. C. Idaho. Judgment vacated and case remanded for further consideration in light of *Mahan v. Howell*, 410 U. S. 315 (1973); *Gaffney v. Cummings*, 412 U. S. 735 (1973); and *White v. Regester*, 412 U. S. 755 (1973). Reported below: 342 F. Supp. 288.

MR. JUSTICE WHITE, with whom THE CHIEF JUSTICE joins, dissenting.

This case should be affirmed. The jurisdictional statement fails to identify any substantial factual or legal error committed by the District Court and does not warrant a remand for further consideration in the light of recently decided reapportionment cases.

Appellants complain of a maximum total deviation of 19.41% from the ideal population figure, resulting from one district's allegedly being 10.62% overrepresented and

another 8.79% underrepresented (appellants assert the deviations actually were 10.57% overrepresentation and 8.88% underrepresentation, with a total variation of 19.45%). The jurisdictional statement asserts that the 10.62% overrepresentation exists in District No. 22 and that it was sought to be justified by the State on the grounds that the population of Mountain Home Air Force Base, located in the District, had increased by 2,000 since the 1970 census, that an irrigation project would cause further population growth in the District, and that detaching certain areas from a particular county was undesirable.

The appellants assert, in conclusory manner, that "the population growth at Mountain Home Air Force Base is disputed" and that "the anticipated growth in population was not predicted with a high degree of accuracy." The District Court, however, accepted the justification, specifically referring to increases in population as being among the justifications offered for various population deviations. 342 F. Supp. 288, 289 (Idaho 1972). In any event, I find no basis in the jurisdictional statement for our disagreeing with the District Court or with the legislature. If there had been a 2,000 increase in population since 1970 the legislature was quite right in taking it into account, and the alleged deviation disappears. Also, if population increases were correctly anticipated, they need not have been ignored.

The alleged underrepresentation is claimed to exist in District No. 28 because of improper exclusion from the population count of "out-of-state and foreign students" attending a private college within the District. Appellants complain that there should have been more effort to determine whether each individual student so excluded had in fact satisfied the residence requirements for voting. The District Court noted and accepted the

justifying factor of the "exclusion of non-resident college students, which were included in the 1970 census." *Id.*, at 289. There is no basis for upsetting the legislative estimate as to how many students at this particular college should be treated as nonresident, non-voting persons making up part of the 1970 census count. Thus, again, appellants fail to present a sound reason for overturning the judgment of the District Court.

The jurisdictional statement does not specify the extent of the deviation in any other specific district. It is said that "11 legislative districts are underrepresented by 3 percent or more" and that "7 legislative districts are overrepresented by 3 percent or more." But the extent of the deviation in any district is not presented; there is no indication that the deviation in any particular district would exceed those that are permissible without further justification. *Gaffney v. Cummings*, 412 U. S. 735 (1973), and *White v. Regester*, 412 U. S. 755 (1973).

Finally, appellants assert that Custer County should have been included in District No. 9 rather than in District No. 20 and that it is no excuse that a wilderness area separated Custer County from the main population centers of District No. 9. Again, however, appellants give no indication of whether or to what extent either District No. 9 or District No. 20 varied in population from the ideal district.

Insofar as can be ascertained from the jurisdictional statement, therefore, it appears that maintaining county or other local subdivision lines had very little to do with any of the population deviations in specific districts that are challenged by appellants. Appellants have not presented a case that warrants a remand in light of *Mahan v. Howell*, 410 U. S. 315 (1973), *Gaffney*, or *White*.

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No. 72-76. FORTSON, SECRETARY OF STATE OF GEORGIA *v.* MILLICAN ET AL. Appeal from D. C. N. D. Ga. Judgment vacated and case remanded for further consideration in light of *Gaffney v. Cummings*, 412 U. S. 735 (1973); and *White v. Regester*, 412 U. S. 755 (1973). Reported below: 351 F. Supp. 447.

No. 72-853. UNITED STATES *v.* B & H DIST. CORP. ET AL. Appeal from D. C. W. D. Wis. Judgment vacated and case remanded for further consideration in light of *Miller v. California*, ante, p. 15; *Paris Adult Theatre I v. Slaton*, ante, p. 49; *Kaplan v. California*, ante, p. 115; *United States v. 12 200-ft. Reels Film*, ante, p. 123; *United States v. Orito*, ante, p. 139; *Heller v. New York*, ante, p. 483; *Roaden v. Kentucky*, ante, p. 496; and *Alexander v. Virginia*, ante, p. 836. MR. JUSTICE DOUGLAS would affirm. MR. JUSTICE BRENNAN, joined by MR. JUSTICE STEWART and MR. JUSTICE MARSHALL, dissents and would affirm the judgment of dismissal of the indictment charging appellees with a violation of 18 U. S. C. § 1462. See *Miller v. United States*, ante, p. 47. Reported below: 347 F. Supp. 905.

No. 72-932. BIGELOW *v.* VIRGINIA. Appeal from Sup. Ct. Va. Judgment vacated and case remanded for further consideration in light of *Roe v. Wade*, 410 U. S. 113 (1973); and *Doe v. Bolton*, 410 U. S. 179 (1973).

No. 72-1053. MICHIGAN *v.* BLOSS ET AL. Appeal from Sup. Ct. Mich. Judgment vacated and case remanded for further consideration in light of *Miller v. California*, ante, p. 15; *Paris Adult Theatre I v. Slaton*, ante, p. 49; *Kaplan v. California*, ante, p. 115; *United States v. 12 200-ft. Reels Film*, ante, p. 123; *United States v. Orito*, ante, p. 139; *Heller v. New York*, ante, p. 483; *Roaden v. Kentucky*, ante, p. 496; and *Alexander v. Virginia*,

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ante, p. 836. MR. JUSTICE DOUGLAS would dismiss the appeal for want of a substantial federal question. Reported below: 388 Mich. 409, 201 N. W. 2d 806.

MR. JUSTICE BRENNAN, joined by MR. JUSTICE STEWART and MR. JUSTICE MARSHALL, dissenting.

In these criminal prosecutions for the sale of certain allegedly obscene publications in violation of Mich. Stat. Ann. § 28.575 (1), the Supreme Court of Michigan reversed the convictions on the ground that suppression of sexually oriented expression cannot be reconciled with the guarantees of the First Amendment in the absence of evidence that the materials were distributed to juveniles or offensively exposed to unconsenting adults. In recognizing this limitation on state power the Michigan Supreme Court adopted an approach consistent with the one I have urged today. See *Paris Adult Theatre I v. Slaton*, *ante*, p. 73. Accordingly, I would dismiss the appeal for want of a substantial federal question, or if the jurisdictional statement be treated as a petition for certiorari, would deny the petition.

No. 72-5939. JIMERSON ET AL. *v.* NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES ET AL. Appeal from D. C. W. D. N. Y. Motion for leave to proceed *in forma pauperis* granted. Judgment vacated and case remanded for further consideration in light of *New York Dept. of Social Services v. Dublino*, *ante*, p. 405. MR. JUSTICE DOUGLAS would note probable jurisdiction and set case for oral argument. Reported below: 348 F. Supp. 290. *Certiorari Granted—Affirmed.* (See No. 72-1396, *ante*, p. 838.)

Certiorari Granted—Vacated and Remanded

In each of the following cases (beginning with No. 71-411 on p. 911 and extending through No. 72-1330 on p. 913), certiorari is granted, the judgment is vacated,

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and the case is remanded for further consideration in light of *Miller v. California*, ante, p. 15; *Paris Adult Theatre I v. Slaton*, ante, p. 49; *Kaplan v. California*, ante, p. 115; *United States v. 12 200-ft. Reels Film*, ante, p. 123; *United States v. Orito*, ante, p. 139; *Heller v. New York*, ante, p. 483; *Roaden v. Kentucky*, ante, p. 496; and *Alexander v. Virginia*, ante, p. 836. MR. JUSTICE DOUGLAS in each case would grant certiorari and reverse the judgment. See *Miller v. California*, ante, p. 37. MR. JUSTICE BRENNAN, joined by MR. JUSTICE STEWART and MR. JUSTICE MARSHALL, in each case would grant certiorari, vacate the judgment, and remand the case for further proceedings not inconsistent with his dissent in *Paris Adult Theatre I v. Slaton*, ante, p. 73. See *Miller v. California*, ante, p. 47.

No. 71-411. *COURT v. WISCONSIN*. Sup. Ct. Wis. Reported below: 51 Wis. 2d 683, 188 N. W. 2d 475;

No. 71-701. *REITANO v. CALIFORNIA*. App. Dept., Super. Ct. Cal., County of Orange;

No. 71-739. *VILLAGE BOOKS, INC., ET AL. v. MARSHALL, STATE'S ATTORNEY FOR PRINCE GEORGES COUNTY*. Ct. App. Md. Reported below: 263 Md. 76, 282 A. 2d 126;

No. 71-773. *ADULT BOOK STORE ET AL. v. SENSEN-BRENNER, MAYOR OF COLUMBUS*. Sup. Ct. Ohio. Reported below: See 26 Ohio App. 2d 183, 271 N. E. 2d 13;

No. 71-844. *MARKS ET AL. v. CITY OF NEWPORT*. Ct. App. Ky.;

No. 71-984. *WASSERMAN v. MUNICIPAL COURT OF ALHAMBRA JUDICIAL DISTRICT*. C. A. 9th Cir. Reported below: 449 F. 2d 787;

No. 71-1201. *STROUD v. INDIANA*. Sup. Ct. Ind. Reported below: 257 Ind. 204, 273 N. E. 2d 842;

No. 71-1347. *MOHNEY v. INDIANA*. Sup. Ct. Ind. Reported below: 257 Ind. 394, 276 N. E. 2d 517;

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No. 71-1368. *BROWN v. UNITED STATES*. C. A. 4th Cir.;

No. 71-1458. *MITCHUM v. TENNESSEE*. Ct. Crim. App. Tenn.;

No. 71-1464. *JOHNSON ET AL. v. KENTUCKY*. Ct. App. Ky. Reported below: 475 S. W. 2d 893;

No. 71-1587. *TOBALINA v. CALIFORNIA*. App. Dept., Super. Ct. Cal., County of Los Angeles;

No. 71-1641. *ADLER ET AL. v. CALIFORNIA*. App. Dept., Super. Ct. Cal., County of Sacramento. Reported below: 25 Cal. App. 3d Supp. 24, 101 Cal. Rptr. 726;

No. 71-1674. *GETMAN ET AL. v. MINNESOTA*. Sup. Ct. Minn. Reported below: 293 Minn. 11, 195 N. W. 2d 827;

No. 71-1702. *P. A. J. THEATRES CORP. v. NEW YORK*. App. Term, Sup. Ct. N. Y., 1st Jud. Dept.;

No. 72-124. *RIDENS ET AL. v. ILLINOIS ET AL.* Sup. Ct. Ill. Reported below: 51 Ill. 2d 410, 282 N. E. 2d 691;

No. 72-172. *KNOXVILLE BOOKMART, INC., ET AL. v. TENNESSEE EX REL. WEBSTER, DISTRICT ATTORNEY GENERAL*. Sup. Ct. Tenn.;

No. 72-357. *PRICE v. VIRGINIA*. Sup. Ct. Va. Reported below: 213 Va. 113, 189 S. E. 2d 324;

No. 72-538. *ALBINI ET AL. v. OHIO ET AL.* Sup. Ct. Ohio. Reported below: 31 Ohio St. 2d 27, 285 N. E. 2d 327;

No. 72-539. *MACKEN ET AL. v. OHIO ET AL.* Ct. App. Ohio, Summit County;

No. 72-558. *ELSTER v. CALIFORNIA*. App. Dept., Super. Ct. Cal., County of San Francisco;

No. 72-569. *GOLDSTEIN v. VIRGINIA*. Sup. Ct. Va.;

No. 72-591. *KEITH v. CALIFORNIA*. App. Dept., Super. Ct. Cal., County of Los Angeles;

No. 72-859. *YANNUCCI v. NEW YORK*. App. Term, Sup. Ct. N. Y., 2d & 11th Jud. Dists.;

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No. 72-872. G. I. DISTRIBUTORS, INC., ET AL. *v.* MURPHY, POLICE COMMISSIONER OF CITY OF NEW YORK, ET AL. C. A. 2d Cir. Reported below: 469 F. 2d 752;

No. 72-918. LITTLE *v.* CALIFORNIA. App. Dept., Super. Ct. Cal., County of Orange;

No. 72-961. DE SANTIS *v.* NEW JERSEY. Super. Ct. N. J.;

No. 72-994. WINSLOW *v.* VIRGINIA. Sup. Ct. Va.;

No. 72-1062. TOUTANT *v.* CALIFORNIA. App. Dept., Super. Ct. Cal., County of San Bernardino;

No. 72-1071. KUHNS ET AL. *v.* CALIFORNIA. App. Dept., Super. Ct. Cal., County of Santa Cruz;

No. 72-1072. CASTNER ET AL. *v.* CALIFORNIA. App. Dept., Super. Ct. Cal., County of Santa Cruz;

No. 72-1221. GULF STATES THEATRES OF LOUISIANA, INC., ET AL. *v.* LOUISIANA ET AL. Sup. Ct. La. Reported below: 270 So. 2d 547; and

No. 72-1330. BRYANT ET AL. *v.* NORTH CAROLINA. Ct. App. N. C. Reported below: 16 N. C. App. 456, 192 S. E. 2d 693.

No. 70-43. MILLER ET AL. *v.* UNITED STATES. C. A. 9th Cir. Reported below: 431 F. 2d 655;

No. 71-40. KAPLAN *v.* UNITED STATES. Ct. App. D. C. Reported below: 277 A. 2d 477;

No. 71-182. EWING, DBA ACTION PUBLISHING CO. *v.* UNITED STATES. C. A. 10th Cir. Reported below: 445 F. 2d 945;

No. 71-1517. MILLER *v.* UNITED STATES. C. A. 9th Cir. Reported below: 455 F. 2d 899; and

No. 72-154. CANGIANO ET AL. *v.* UNITED STATES. C. A. 2d Cir. Reported below: 475 F. 2d 1393. Certiorari granted, judgments vacated, and cases remanded to the respective United States Courts of Appeals for further consideration in light of *Miller v. California*, ante, p. 15; *Paris Adult Theatre I v. Slaton*, ante, p. 49;

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Kaplan v. California, ante, p. 115; *United States v. 12 200-ft. Reels Film*, ante, p. 123; *United States v. Orito*, ante, p. 139; *Heller v. New York*, ante, p. 483; *Roaden v. Kentucky*, ante, p. 496; and *Alexander v. Virginia*, ante, p. 836. MR. JUSTICE DOUGLAS would grant certiorari and reverse the judgments. See *Miller v. California*, ante, p. 37.

MR. JUSTICE BRENNAN, joined by MR. JUSTICE STEWART and MR. JUSTICE MARSHALL, dissenting.

Miller v. United States, No. 70-43, involves convictions under 18 U. S. C. §§ 1461 and 1462. *Kaplan v. United States*, No. 71-40, involves a conviction under D. C. Code Ann. § 22-2001 (Supp. III, 1970). *Ewing v. United States*, No. 71-182, and *Miller v. United States*, No. 71-1517, involve convictions under 18 U. S. C. § 1461. *Cangiano v. United States*, No. 72-154, involves convictions under 18 U. S. C. § 1465. Under the view expressed in my dissent in *Paris Adult Theatre I v. Slaton*, ante, p. 73, it is clear that the statutes involved in these cases cannot stand. Whatever the extent of the Federal Government's power to bar the distribution of allegedly obscene material to juveniles or the offensive exposure of such material to unconsenting adults, each of these statutes is clearly overbroad and unconstitutional on its face. See my dissents in *Miller v. California*, ante, p. 47, and *United States v. Orito*, ante, p. 147. I would therefore grant the petition for certiorari in each case and reverse each judgment of conviction.

No. 71-1353. *ROMANUS ET AL. v. CALIFORNIA*. Ct. App. Cal., App. Dist.; and

No. 71-6287. *GOWER v. UNITED STATES*. C. A. D. C. Cir. Motions to dispense with printing petitions granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Miller v.*

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California, ante, p. 15; *Paris Adult Theatre I v. Slaton*, ante, p. 49; *Kaplan v. California*, ante, p. 115; *United States v. 12 200-ft. Reels Film*, ante, p. 123; *United States v. Orito*, ante, p. 139; *Heller v. New York*, ante, p. 483; *Roaden v. Kentucky*, ante, p. 496; and *Alexander v. Virginia*, ante, p. 836. MR. JUSTICE DOUGLAS would grant certiorari and reverse the judgment in each case. See *Miller v. California*, ante, p. 37. MR. JUSTICE BRENNAN, joined by MR. JUSTICE STEWART and MR. JUSTICE MARSHALL, would grant certiorari, vacate the judgments, and remand cases for further proceedings not inconsistent with his dissent in *Paris Adult Theatre I v. Slaton*, ante, p. 73. See *Miller v. California*, ante, p. 47.

No. 71-728. *DAVISON v. FLORIDA*. Sup. Ct. Fla. Reported below: 251 So. 2d 841; and

No. 72-1120. *COTE v. UNITED STATES*. C. A. 5th Cir. Reported below: 470 F. 2d 755. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Miller v. California*, ante, p. 15; *Paris Adult Theatre I v. Slaton*, ante, p. 49; *Kaplan v. California*, ante, p. 115; *United States v. 12 200-ft. Reels Film*, ante, p. 123; *United States v. Orito*, ante, p. 139; *Heller v. New York*, ante, p. 483; *Roaden v. Kentucky*, ante, p. 496; and *Alexander v. Virginia*, ante, p. 836. MR. JUSTICE DOUGLAS would grant certiorari and reverse the judgment in each case. See *Miller v. California*, ante, p. 37. MR. JUSTICE BRENNAN, MR. JUSTICE STEWART, and MR. JUSTICE MARSHALL would deny certiorari.

No. 71-1293. *FOERSTER v. UNITED STATES*. C. A. 9th Cir. Reported below: 455 F. 2d 981; and

No. 72-5329. *BOWEN v. UNITED STATES*. C. A. 9th Cir. Reported below: 462 F. 2d 347. Motion of petitioner in No. 72-5329 for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments va-

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cated, and cases remanded for further consideration in light of *Almeida-Sanchez v. United States*, ante, p. 266.

No. 72-190. *SMITH ET AL. v. BOARD OF EDUCATION, INDEPENDENT SCHOOL DISTRICT No. 1, TULSA COUNTY, OKLAHOMA, ET AL.* C. A. 10th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Keyes v. School District No. 1*, ante, p. 189. MR. JUSTICE WHITE took no part in the consideration or decision of this case. Reported below: 459 F. 2d 720.

No. 72-1446. *UNITED STATES v. PALLADINO ET AL.* C. A. 1st Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Miller v. California*, ante, p. 15; *Paris Adult Theatre I v. Slaton*, ante, p. 49; *Kaplan v. California*, ante, p. 115; *United States v. 12 200-ft. Reels Film*, ante, p. 123; *United States v. Orito*, ante, p. 139; *Heller v. New York*, ante, p. 483; *Roaden v. Kentucky*, ante, p. 496; and *Alexander v. Virginia*, ante, p. 836. MR. JUSTICE DOUGLAS would deny certiorari. MR. JUSTICE BRENNAN, joined by MR. JUSTICE STEWART and MR. JUSTICE MARSHALL, would grant the petition, vacate the judgment, and remand case for further proceedings not inconsistent with his dissent in *Paris Adult Theatre I v. Slaton*, ante, p. 73. See *Miller v. California*, ante, p. 47. Reported below: 475 F. 2d 65.

Miscellaneous Orders

No. A-1164. *MARBURGER, COMMISSIONER OF EDUCATION OF NEW JERSEY, ET AL. v. PUBLIC FUNDS FOR PUBLIC SCHOOLS OF NEW JERSEY ET AL.* D. C. N. J. Application for stay of injunction heretofore granted by this Court on May 29, 1973 [412 U. S. 916], vacated. For the reasons stated in the dissenting opinions in *Committee for Public Education & Religious Liberty v. Ny-*

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quist, and companion cases, and *Sloan v. Lemon*, and companion case, *ante*, pp. 798, 805, 813, THE CHIEF JUSTICE, MR. JUSTICE WHITE, and MR. JUSTICE REHNQUIST dissent from the vacation of stay of the District Court's preliminary injunction. Reported below: 358 F. Supp. 29.

No. A-1220 (72-6675). *LEAMER v. DERAMUS, CORRECTIONAL SUPERINTENDENT*. C. A. 3d Cir. Application for bail denied.

No. A-1233 (72-6900). *DOE v. PLANNED PARENTHOOD ASSOCIATION OF UTAH*. Appeal from Sup. Ct. Utah. Application for stay presented to MR. JUSTICE BRENNAN, and by him referred to the Court, denied. Reported below: 29 Utah 2d 356, 510 P. 2d 75.

No. A-1234 (72-562). *ABERDEEN & ROCKFISH RAILROAD CO. ET AL. v. STUDENTS CHALLENGING REGULATORY AGENCY PROCEDURES (SCRAP) ET AL.*; and

No. A-1239 (72-535). *INTERSTATE COMMERCE COMMISSION v. STUDENTS CHALLENGING REGULATORY AGENCY PROCEDURES (SCRAP) ET AL.* D. C. D. C. Application of SCRAP et al. to vacate stay entered by THE CHIEF JUSTICE on June 8, 1973, denied. MR. JUSTICE DOUGLAS would vacate the stay. MR. JUSTICE POWELL took no part in the consideration or decision of this application.

No. A-1260 (72-6871). *BELL v. UNITED STATES*. C. A. 7th Cir. Application for stay presented to MR. JUSTICE DOUGLAS, and by him referred to the Court, denied. Reported below: 476 F. 2d 1046.

No. A-1273 (72-1712). *IN RE HOROWITZ*. C. A. 2d Cir. Application for stay presented to MR. JUSTICE MARSHALL, and by him referred to the Court, denied. MR. JUSTICE DOUGLAS and MR. JUSTICE BRENNAN would grant the application. Reported below: 482 F. 2d 72.

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No. 36, Orig. *TEXAS v. LOUISIANA*. Motion of the State of Louisiana to enlarge the reference to the Special Master to fix the extension of Louisiana's island boundary into the Gulf of Mexico between Louisiana, Texas, and the United States to the extent of Louisiana's title under the Submerged Lands Act, or other alternative relief, is referred to the Special Master. The Solicitor General is invited to file a brief expressing the views of the United States. In due course, after receipt of the brief of the United States, the Special Master shall submit his report to the Court on the motion. [See 410 U. S. 702.]

No. 64, Orig. *NEW HAMPSHIRE v. MAINE*. Motion for preliminary injunction denied. MR. JUSTICE DOUGLAS and MR. JUSTICE BLACKMUN would grant the motion conditioned upon the imposition upon all fishermen operating in the disputed area of the more onerous of the conditions presently imposed by either New Hampshire or Maine.

No. 72-955. *SPOMER, STATE'S ATTORNEY OF ALEXANDER COUNTY, ILLINOIS v. LITTLETON ET AL.* C. A. 7th Cir. [Certiorari granted, 411 U. S. 915.] Motion of the Attorney General of California for leave to participate in oral argument as *amicus curiae* and for additional time for oral argument denied.

No. 72-1513. *SHEA, EXECUTIVE DIRECTOR, DEPARTMENT OF SOCIAL SERVICES OF COLORADO, ET AL. v. VIALPANDO*. C. A. 10th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States. Reported below: 475 F. 2d 731.

No. 72-1613. *HUFFMAN v. UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO ET AL.* Application for stay or writ of injunction presented to MR. JUSTICE STEWART, and by him referred to the Court,

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and the motion to advance, denied. Motion of Pursue, Ltd., to participate as a party respondent granted.

Certiorari Granted

No. 72-914. SCHEUER, ADMINISTRATRIX *v.* RHODES, GOVERNOR OF OHIO, ET AL. C. A. 6th Cir. Certiorari granted and case set for oral argument with No. 72-1318 [immediately *infra*]. Reported below: 471 F. 2d 430.

No. 72-1318. KRAUSE, ADMINISTRATOR, ET AL. *v.* RHODES, GOVERNOR OF OHIO, ET AL. C. A. 6th Cir. Certiorari granted and case set for oral argument with No. 72-914 [immediately *supra*]. Reported below: 471 F. 2d 430.

Certiorari Denied. (See also No. 70-41, *supra*).

No. 71-1240. BIRD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 456 F. 2d 1023.

No. 71-6355. BAMBERGER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 456 F. 2d 1119.

No. 71-6579. SHEFFIELD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 458 F. 2d 1049.

No. 71-6812. REED *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 460 F. 2d 1277.

No. 71-6879. SCHLOMANN *v.* MOSELEY, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 457 F. 2d 1223.

No. 72-84. McDANIEL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 463 F. 2d 129.

No. 72-341. GUINN, SUPERINTENDENT OF SCHOOLS, ET AL. *v.* KELLY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 456 F. 2d 100.

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No. 72-667. SCHOOL BOARD OF THE CITY OF NEWPORT NEWS, VIRGINIA, ET AL. *v.* THOMPSON ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 465 F. 2d 83.

No. 72-668. CISNEROS ET AL. *v.* CORPUS CHRISTI INDEPENDENT SCHOOL DISTRICT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 467 F. 2d 142.

No. 72-1197. BARRON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 472 F. 2d 1215.

No. 72-1450. BOARD OF SCHOOL COMMISSIONERS OF THE CITY OF INDIANAPOLIS ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 474 F. 2d 81.

No. 72-5367. JOHNSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 467 F. 2d 630.

No. 72-5379. BRANDON *v.* NEW JERSEY. C. A. 3d Cir. Certiorari denied. Reported below: 461 F. 2d 764.

No. 72-5480. CONWAY *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 15 Md. App. 198, 289 A. 2d 862.

No. 72-6057. GREELEY *v.* UNITED STATES; and
No. 72-6299. GREELEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 471 F. 2d 25.

No. 72-6099. SINGLETON *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 210 Kan. 815, 504 P. 2d 224.

No. 72-6101. JOHNSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 470 F. 2d 858.

No. 72-6185. SEARCY *v.* PINNOCK. C. A. 9th Cir. Certiorari denied.

No. 72-6265. CLAYTON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

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No. 72-6310. *WIMBERLEY v. RICHARDSON, SECRETARY OF DEFENSE, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 472 F. 2d 923.

No. 72-6396. *SCRUGGS v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 473 F. 2d 911.

No. 71-572. *SCHOOL DISTRICT No. 1, DENVER, COLORADO, ET AL. v. KEYES ET AL.* C. A. 10th Cir. Certiorari denied. MR. JUSTICE WHITE took no part in the consideration or decision of this petition. Reported below: 445 F. 2d 990.

No. 72-48. *LAWLOR ET AL. v. BOARD OF EDUCATION OF THE CITY OF CHICAGO ET AL.* C. A. 7th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 458 F. 2d 660.

No. 72-1023. *THOMAS v. WASHINGTON.* Ct. App. Wash. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-1316. *SWINNEY v. UNTREINER, SHERIFF, ET AL.* Sup. Ct. Fla. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 272 So. 2d 805.

No. 72-5375. *MARQUEZ v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 462 F. 2d 620.

No. 72-5998. *COLEMAN v. UNITED STATES.* Ct. App. D. C. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 298 A. 2d 40.

No. 72-6377. *HOLT, AKA SUMMERS v. CALIFORNIA.* Ct. App. Cal., 1st App. Dist. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 28 Cal. App. 3d 343, 104 Cal. Rptr. 572.

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No. 72-385. TATE EDUCATIONAL FOUNDATION, INC. *v.* MCNEAL ET AL. C. A. 5th Cir. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 460 F. 2d 568.

No. 72-835. PETTIBONE, DIRECTOR, DIVISION OF PAROLE AND PROBATION, DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES OF MARYLAND *v.* WOODALL. C. A. 4th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 465 F. 2d 49.

No. 72-1187. COMBS, SUPERINTENDENT, GRAND PRAIRIE INDEPENDENT SCHOOL DISTRICT, ET AL. *v.* JOHNSON ET AL. C. A. 5th Cir. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 471 F. 2d 84.

No. 72-1473. UNITED STATES *v.* ROTHFELDER. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 474 F. 2d 606.

No. 72-1474. UNITED STATES *v.* KING. C. A. 4th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 474 F. 2d 1343.

No. 72-649. CORPUS CHRISTI INDEPENDENT SCHOOL DISTRICT ET AL. *v.* CISNEROS ET AL. C. A. 5th Cir. Certiorari denied. THE CHIEF JUSTICE, MR. JUSTICE STEWART, MR. JUSTICE BLACKMUN, and MR. JUSTICE REHNQUIST, feeling that no useful purpose is to be served by setting the case for oral argument, would nevertheless grant the petition, vacate the judgment, and remand case for further consideration in light of *Keyes v. School District No. 1, ante*, p. 189. Reported below: 467 F. 2d 142.

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No. 72-739. BOARD OF EDUCATION OF THE LITTLE ROCK SCHOOL DISTRICT ET AL. *v.* CLARK ET AL. C. A. 8th Cir. Certiorari denied. MR. JUSTICE MARSHALL took no part in the consideration or decision of this petition. Reported below: 465 F. 2d 1044.

No. 72-5348. COOLEY *v.* STRICKLAND TRANSPORTATION CO. ET AL. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari and reverse the judgment. Reported below: 459 F. 2d 779.

Rehearing Denied

No. 71-1664. ESSEX, SUPERINTENDENT OF PUBLIC INSTRUCTION, ET AL. *v.* WOLMAN ET AL., 409 U. S. 808. Motion for leave to file petition for rehearing denied.

No. 72-146. HUNTER, DBA COURIER *v.* UNITED STATES, 409 U. S. 934. Motion for leave to file petition for rehearing denied. MR. JUSTICE DOUGLAS, MR. JUSTICE STEWART, and MR. JUSTICE BLACKMUN would grant the motion.