

5-18-1981

## 05-18-1981 Justice Stewart, Dissenting

Potter Stewart  
*US Supreme Court Justice*

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SUPREME COURT OF THE UNITED STATES

No. 80-420

Larry C. Flynt, Jimmy R. Flynt  
and Althea Leasure Flynt,  
Petitioners,  
v.  
State of Ohio.

On Writ of Certiorari to  
the Supreme Court of  
Ohio.

[May 18, 1981]

JUSTICE STEWART, with whom JUSTICE BRENNAN and JUSTICE MARSHALL join, dissenting.

I believe that a criminal trial of the petitioner under this Ohio obscenity law will violate the Constitution of the United States. See, *e. g.*, *Wood v. Georgia*, — U. S. —, —, — (separate opinion of JUSTICE BRENNAN) (separate opinion of JUSTICE STEWART); *Sewell v. Georgia*, 435 U. S. 982, 988 (dissenting opinion); *Splawn v. California*, 431 U. S. 595, 602 (dissenting opinion). It is clear to me, therefore, that “identifiable . . . constitutional policy” will be “undermined by the continuation of the litigation in the state courts.” *Ante*, p. —.

Accordingly, I think that under the very criteria discussed in the opinion of the Court, the judgment before us is “final for jurisdictional purposes.” *Ante*, p. —. Believing that the Ohio trial court acted correctly in dismissing the complaints, and that the state appellate courts were in error in overturning that dismissal, I would reverse the judgment.