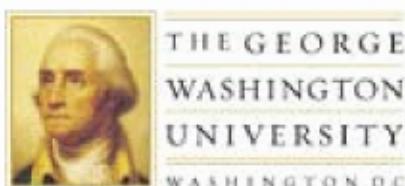


# The Burger Court Opinion Writing Database

*Planned Parenthood of Central Missouri v. Danforth*

428 U.S. 52 (1976)

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

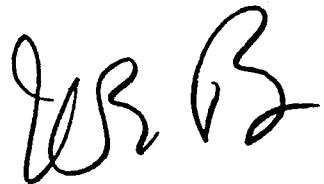
June 30, 1976

Re: ( 74-1141 - Planned Parenthood v. Danforth  
( 74-1419 - Danforth v. Planned Parenthood

Dear Byron:

Please show me joining your opinion.

Regards,



Mr. Justice White

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

May 28, 1976

RE: No. 74-1151 and 74-1419 Planned Parenthood v.  
Danforth

Dear Harry:

I'll send you some suggestions early next week  
for your consideration but thought I'd circulate the  
attached to the Conference to get the ball rolling.

Sincerely,



Mr. Justice Blackmun

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

May 28, 1976

RE: No. 74-1151 and 74-1419 Planned Parenthood v.  
Danforth

Dear Harry:

I agree.

Sincerely,

*Bill*

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

June 1, 1976

Re: Nos. 74-1151 and 74-1419  
Planned Parenthood v. Danforth

Dear Harry,

I shall await John's separate  
opinion in these cases.

Sincerely yours,

P.S.  
11

Mr. Justice Blackmun

Copies to the Conference

To: The Chief Justice  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Black  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Stewart

No. 74-1151, PLANNED PARENTHOOD OF CENTRAL MISSOURI v. DANFORTH

No. 74-1419, DANFORTH v. PLANNED PARENTHOOD OF CENTRAL MISSOURI

MR. JUSTICE STEWART, concurring in part and dissenting in part:

While I agree with much of the Court's reasoning and most of its conclusions, I write separately to indicate my understanding of the constitutional issues raised by this case and to register my dissent from Part IV(E) of the Court's opinion.

With respect to the definition of viability in Section 2(2) of the Act, it seems to me that the critical consideration is that the statutory definition has almost no operative significance. The State has merely required physicians performing abortions to certify that the fetus to be aborted is not viable. While the physician may be punished for failing to issue a certification, he may not be punished for erroneously concluding that the fetus is not viable. There is thus little chance that a physician's professional decision to perform an abortion will be "chilled."

P. 3

To: The Chief Justice  
 Mr. Justice BREWSTER  
 Mr. Justice BLACK  
 Mr. Justice BRENNAN  
 Mr. Justice MARSHALL  
 Mr. Justice POWELL  
 Mr. Justice REHNQUIST  
 Mr. Justice STEWART

Re: Mr. Justice BREWSTER

Re: Mr. Justice BLACK

*printed*  
 1st DRAFT

## SUPREME COURT OF THE UNITED STATES

Nos. 74-1151 AND 74-1419

Planned Parenthood of Central Missouri et al.,  
 Appellants,

74-1151 *v.*

John C. Danforth, Attorney General of the State of Missouri, et al.

John C. Danforth, Attorney General of the State of Missouri, Appellant,

74-1419 *v.*

Planned Parenthood of Central Missouri et al.

On Appeals from the United States District Court for the Eastern District of Missouri.

[June —, 1976]

MR. JUSTICE STEWART, with whom MR. JUSTICE POWELL joins, concurring in part and dissenting in part.

While I agree with much of the Court's reasoning and most of its conclusions, I write separately to indicate my understanding of the constitutional issues raised by this case and to register my dissent from Part IV (E) of the Court's opinion.

With respect to the definition of viability in § 2 (2) of the Act, it seems to me that the critical consideration is that the statutory definition has almost no operative significance. The State has merely required physicians performing abortions to *certify* that the fetus to be aborted is not viable. While the physician may be punished for failing to issue a certification, he may not be punished for erroneously concluding that the fetus is not viable. There is thus little chance that a physician's

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

CHAMBERS OF  
JUSTICE POTTER STEWART

June 28, 1976

Re: Nos. 74-1151 and 74-1419  
Planned Parenthood of Missouri v. Danforth

Dear Harry,

Upon the understanding that you will delete the last paragraph beginning on page 13 and running over onto page 14 (including note 8) and will revise the last paragraph on page 22 in accord with our telephone conversation, I am glad to join your opinion for the Court in this case. I shall shortly send to the printer a concurring opinion, which will be an abbreviated version of my previous circulation but which will make clear that I join your opinion for the Court.

Sincerely yours,

P.S.

Mr. Justice Blackmun

Copies to the Conference

1, 2, 3, 4

To: The Honorable Congress  
Mr. Speaker, House  
Mr. President, Senate  
Mr. John Danforth, Missouri  
Mr. George H. Mahon, Missouri  
Mr. John G. Hart, Missouri  
Mr. John C. Danforth, Missouri  
Mr. John C. Danforth, Missouri  
Mr. John C. Danforth, Missouri

Subject: Bill to Amend Title X

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2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 74-1151 AND 74-1419

Planned Parenthood of Central Missouri et al.,  
Appellants,

74-1151 v.

John C. Danforth, Attorney  
General of the State of  
Missouri, et al.

John C. Danforth, Attorney  
General of the State of  
Missouri, Appellant,

74-1419 v.

Planned Parenthood of Central Missouri et al.

On Appeals from the  
United States District  
Court for the Eastern  
District of Missouri.

[June —, 1976]

MR. JUSTICE STEWART, with whom MR. JUSTICE POWELL joins, concurring.

While joining the Court's opinion, I write separately to indicate my understanding of some of the constitutional issues raised by this case.

With respect to the definition of viability in § 2 (2) of the Act, it seems to me that the critical consideration is that the statutory definition has almost no operative significance. The State has merely required physicians performing abortions to *certify* that the fetus to be aborted is not viable. While the physician may be punished for failing to issue a certification, he may not be punished for erroneously concluding that the fetus is not viable. There is thus little chance that a physician's professional decision to perform an abortion will be "chilled."

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 4, 1976

Re: Nos. 74-1151 & 74-1419 - Planned Parenthood  
of Central Missouri v. Danforth

Dear Harry:

I shall write in partial dissent in this  
case.

Sincerely,



Mr. Justice Blackmun

Copies to Conference

No. 74-1151)      Planned Parenthood of Central  
                  }      Missouri, et al. v. Danforth  
                  }  
No. 74-1419)      Danforth v. Planned Parenthood  
                  }      of Central Missouri, et al.

To: The Chief Justice  
      Mr. Justice Brennan  
      Mr. Justice Stewart  
      Mr. Justice Marshall  
      Mr. Justice Blackmun  
      Mr. Justice Powell  
      Mr. Justice Rehnquist  
      Mr. Justice Stevens

From: Mr. Justice White

Circulated: 6-16-76

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

MR. JUSTICE WHITE, dissenting, in part:

In Roe v. Wade, 410 U.S. 113, this Court created a right to an abortion free from state prohibition. The task of policing this limitation on state police power is and will be a difficult and continuing venture in substantive due process. However, even accepting Roe v. Wade, there is nothing in the opinion in that case and nothing articulated in the Court's opinion in this case which justifies the invalidation of five provisions of House Committee Substitute for House Bill No. 1211 enacted by the Missouri Seventh-Seventh General Assembly in 1974 in response to Roe v. Wade (hereafter referred to as "the Act"). Accordingly, I dissent, in part.

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
~~Mr.~~ Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice White

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

Recirculated: 6-28-76

2d ~~1st~~ DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 74-1151 AND 74-1419

Planned Parenthood of Cen-  
tral Missouri et al.,  
Appellants,

74-1151 *v.*

John C. Danforth, Attorney  
General of the State of  
Missouri, et al.

John C. Danforth, Attorney  
General of the State of  
Missouri, Appellant,

74-1419 *v.*

Planned Parenthood of Cen-  
tral Missouri et al.

On Appeals from the  
United States District  
Court for the Eastern  
District of Missouri.

[June —, 1976]

MR. JUSTICE WHITE, dissenting in part.

In *Roe v. Wade*, 410 U. S. 113, this Court created a right to an abortion free from state prohibition. The task of policing this limitation on state police power is and will be a difficult and continuing venture in substantive due process. However, even accepting *Roe v. Wade*, there is nothing in the opinion in that case and nothing articulated in the Court's opinion in this case which justifies the invalidation of five provisions of House Committee Substitute for House Bill No. 1211 enacted by the Missouri Seventy-Seventh General Assembly Assembly in 1974 in response to *Roe v. Wade* (hereafter referred to as "the Act"). Accordingly, I dissent, in part.

I

*Roe v. Wade*, 410 U. S. 113, 163, holds that until a

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

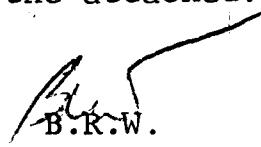
CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 29, 1976

Memorandum to the Conference

Re: Nos. 74-1151 & 74-1419 - Planned Parenthood  
v. Danforth

In response to Brother Blackmun's latest amendments in the above case, Insert A contained in my dissent as circulated on June 28, has now been amended in accordance with the attached.

  
B.R.W.

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
~~Mr.~~ Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice White

Circulated:

Recirculated: 6-30-76

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 74-1151 AND 74-1419

Planned Parenthood of Central Missouri et al.,  
Appellants,

74-1151 *v.*

John C. Danforth, Attorney General of the State of Missouri, et al.

John C. Danforth, Attorney General of the State of Missouri, Appellant,

74-1419 *v.*

Planned Parenthood of Central Missouri et al.

On Appeals from the United States District Court for the Eastern District of Missouri.

WITH WHOM THE CHIEF JUSTICE AND MR. JUSTICE REHNQUIST JOINING

[June —, 1976]

MR. JUSTICE WHITE, dissenting in part.

In *Roe v. Wade*, 410 U. S. 113, this Court created a right to an abortion free from state prohibition. The task of policing this limitation on state police power is and will be a difficult and continuing venture in substantive due process. However, even accepting *Roe v. Wade*, there is nothing in the opinion in that case and nothing articulated in the Court's opinion in this case which justifies the invalidation of five provisions of House Committee Substitute for House Bill No. 1211 enacted by the Missouri Seventy-Seventh General Assembly Assembly in 1974 in response to *Roe v. Wade* (hereafter referred to as "the Act"). Accordingly, I dissent, in part.

I

*Roe v. Wade*, 410 U. S. 113, 163, holds that until a

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 2, 1976

Re: Nos. 74-1151 and 74-1419 -- Planned Parenthood v.  
Danforth

Dear Harry:

Please join me.

Sincerely,

*JM*  
T. M.

Mr. Justice Blackmun

cc: The Conference

To: The Chief Justice  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Powell  
 Mr. Justice Rehnquist  
 Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: 5/26/76

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

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 74-1151 AND 74-1419

Planned Parenthood of Central Missouri et al.,  
 Appellants,

74-1151 v.

John C. Danforth, Attorney  
 General of the State of  
 Missouri, et al.

John C. Danforth, Attorney  
 General of the State of  
 Missouri, Appellant.

74-1419 v.

Planned Parenthood of Central Missouri et al.

On Appeals from the  
 United States District  
 Court for the Eastern  
 District of Missouri.

[June —, 1976]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case is a logical and anticipated corollary to the decisions in *Roe v. Wade*, 410 U. S. 113 (1973), and *Doe v. Bolton*, 410 U. S. 179 (1973), for it raises issues secondary to those that were then before the Court. Indeed, some of the questions now presented were forecast and reserved in *Roe* and *Doe*. 410 U. S., at 165 n. 67.

I

After the decisions in *Roe* and *Doe*, this Court remanded for reconsideration a pending Missouri federal case in which the State's then existing abortion legislation, Mo. Rev. Stat. §§ 559.100, 542.380, and 563.300

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 21, 1976

MEMORANDUM TO THE CONFERENCE

Re: No. 74-1151 - Planned Parenthood v. Danforth  
No. 74-1419 - Danforth v. Planned Parenthood

In view of the separate opinions, and the lateness of the hour, even though the Chief's vote is still outstanding, I think it necessary to attempt to recast what I have written in an endeavor to avoid as much fractionization as possible.

Accordingly, I am sending a revision to the Printer. The changes, apart from some typos and a stylistic one here and there, include:

1. On page 8, the first paragraph of Part IV is revised to exclude § 7 so far as standing of the physicians is concerned.
2. I drop a new footnote there to the effect that the physicians have no standing to challenge § 7 and that the issue of Planned Parenthood's standing as to that section is open to consideration on remand.
3. On page 21, the full paragraph, being the last paragraph in D, is deleted.
4. Part IV E, running from page 21 to page 24, is deleted.
5. There will be a change in the last paragraph on page 26.
6. On page 28, last line, the words "professionally sound and" will be deleted.

- 2 -

I suspect that this will require some revision, as you anticipate, in the several other writings. I must leave that, however, to the respective authors.

I take it that Potter's opinion, which Lewis has joined, joins no part whatsoever of the one I attempted to formulate for the Court. I am not certain as to this, however, and thus am unable to advise Mr. Putzel as to the lineup. Perhaps either Potter or Lewis, in due course, will advise him as to their posture so that the lineup will be correct. I do not wish to assume responsibility for that.

H. W. [initials]

pp. 1, 8, 9, 12, 13, 17, 22, 25, 27

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Blackmun

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

Recirculated: 6/26/76

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 74-1151 AND 74-1419

Planned Parenthood of Central Missouri et al.,  
Appellants,

74-1151 *v.*

John C. Danforth, Attorney  
General of the State of  
Missouri, et al.

John C. Danforth, Attorney  
General of the State of  
Missouri, Appellant,

74-1419 *v.*

Planned Parenthood of Central Missouri et al.

On Appeals from the  
United States District  
Court for the Eastern  
District of Missouri.

[June —, 1976]

MR. JUSTICE BLACKMUN delivered the opinion of the  
Court.

This case is a logical and anticipated corollary to *Roe v. Wade*, 410 U. S. 113 (1973), and *Doe v. Bolton*, 410 U. S. 179 (1973), for it raises issues secondary to those that were then before the Court. Indeed, some of the questions now presented were forecast and reserved in *Roe* and *Doe*. 410 U. S., at 165 n. 67.

I

After the decisions in *Roe* and *Doe*, this Court remanded for reconsideration a pending Missouri federal case in which the State's then existing abortion legislation, Mo. Rev. Stat. §§ 559.100, 542.380, and 563.300

11

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 26, 1976

MEMORANDUM TO THE CONFERENCE

Re: Holds for the Abortion Cases

With the avalanche of paper the print shop has been compelled to process this last week in cases earmarked for announcement, the shop was delayed until this past weekend in getting out the revisions in Planned Parenthood. I had intended to hold any memorandum on abortion holds until there was some indication of the ultimate decision on the revision. With Bill Brennan's departure now imminent, and even though the Chief's vote remains outstanding, I feel I should no longer withhold this memorandum.

---

There are five cases concerning the exclusion of "elective" abortions from the category of medical services provided to indigents. Four of these, No. 75-554, Beal v. Doe; No. 75-709, Beal v. Franklin; No. 75-813, Westby v. Doe; and No. 75-1440, Maher v. Doe, concern denials of Medicaid payments for elective abortions. So does No. 75-6721, Doe v. Stewart, which appears on Summer List 2, Sheet 1. In addition, No. 75-442, Poelker v. Doe, concerns a city policy against the use of municipal hospitals for elective abortions.

Beal v. Franklin also has an issue concerning restrictions on advertising of abortion services; this issue has nothing to do with state subsidies and is not treated in Planned Parenthood. In addition, Beal v. Franklin and No. 75-772, Franklin v. Fitzpatrick, and No. 75-713, Gerstein v. Coe, concern issues resolved in Planned Parenthood.

---

1. No. 75-442, Poelker v. Doe. This one, of course, is familiar to all of us. The CA 8 held unconstitutional a policy of the city of Saint Louis against the use of municipal hospitals for the performance of elective abortions. Byron's per curiam well describes the case, including the issue as to attorneys' fees. There may or may not be a standing problem, depending on the resolution of Singleton v. Wulff.

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 28, 1976

MEMORANDUM TO THE CONFERENCE

Re: No. 74-1151 - Planned Parenthood v. Danforth  
No. 74-1419 - Danforth v. Planned Parenthood

A suggestion has been made that the last sentence of the paragraph at the top of page 28 be replaced with:

"Obviously, the State may not require execution of spousal and parental consent forms that have been invalidated today."

This is a good suggestion, and I shall adopt it.

H. A. B.

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 28, 1976

MEMORANDUM TO THE CONFERENCE

Re: No. 74-1151 - Planned Parenthood v. Danforth  
No. 74-1419 - Danforth v. Planned Parenthood

Potter and I have agreed that the paragraph beginning at the bottom of page 13 and carrying over to page 14 should be eliminated.

With respect to the full paragraph on page 22, we have agreed to retain the first sentence, the citation to Bellotti v. Baird, and the two final sentences. This means that there will be eliminated the second sentence of the paragraph and the three sentences following the Bellotti citation, and the citation to Mo. Laws.

*H. A.*  
—



CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

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

June 29, 1976

MEMORANDUM TO THE CONFERENCE

Re: No. 74-1151 - Planned Parenthood v. Danforth  
No. 74-1419 - Danforth v. Planned Parenthood

I shall add a new footnote appended to the last full sentence on page 24. The footnote is enclosed.

*Hab.*

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 18, 1976

No. 74-1151 Planned Parenthood v. Danforth  
No. 74-1419 Danforth v. Planned Parenthood

Dear Potter:

I would appreciate your adding my name to your opinion in the above cases, concurring in part and dissenting in part.

I understand that you are making the changes we discussed.

Sincerely,

*Lewis*

Mr. Justice Stewart

1fp/ss

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 28, 1976

No. 74-1151 Planned Parenthood v. Danforth  
No. 74-1419 Danforth v. Planned Parenthood

Dear Harry:

I will now join your opinion for the Court, as it has been revised.

I also will remain with Potter's brief concurrence.

Sincerely,



Mr. Justice Blackmun

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 17, 1976

Re: Nos. 74-1151 & 74-1419 - Planned Parenthood v.  
Danforth, et al.

Dear Byron:

Please join me in your dissenting opinion.

Sincerely,

*WRW*

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 28, 1976

Re: 74-1151 and 74-1419 - Planned Parenthood v.  
Danforth

Dear Harry:

Except for Parts IV D and IV F, I will join your excellent opinion. I will soon circulate a short opinion dissenting from Part IV D and concurring in the result in Part IV F.

Sincerely,



Mr. Justice Blackmun

Copies to the Conference

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

From: Mr. Justice Stevens

Circulated: 6/1/76

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

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

Nos. 74-1151 AND 74-1419

Planned Parenthood of Central Missouri et al.,  
Appellants,

74-1151 *v.*

John C. Danforth, Attorney General of the State of Missouri, et al.

John C. Danforth, Attorney General of the State of Missouri, Appellant,

74-1419 *v.*

Planned Parenthood of Central Missouri et al.

On Appeals from the United States District Court for the Eastern District of Missouri.

[June —, 1976]

MR. JUSTICE STEVENS, concurring in part and dissenting in part.

In *Roe v. Wade*, 410 U. S. 113, the Court held that a woman's right to decide whether to abort a pregnancy is entitled to constitutional protection. That decision, which is now part of our law, answers the question discussed in Part IV-F of the Court's opinion, but merely poses the question decided in Part IV-D.

If two abortion procedures had been equally accessible to Missouri women, in my judgment the United States Constitution would not prevent the state legislature from outlawing the one it found to be the less safe even though its conclusion might not reflect a unanimous consensus of informed medical opinion. However, the record indicates that when the Missouri statute was enacted, a prohibition of the *saline amniocentesis*

1-4  
Pg. 1-4

To: The Chief Justice  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist

From: Mr. Justice Stevens

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

Recirculated: 6/4/76

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 74-1151 AND 74-1419

Planned Parenthood of Central Missouri et al.,  
 Appellants,

74-1151 *v.*

John C. Danforth, Attorney General of the State of Missouri, et al.

John C. Danforth, Attorney General of the State of Missouri, Appellant,

74-1419 *v.*

Planned Parenthood of Central Missouri et al.

On Appeals from the United States District Court for the Eastern District of Missouri.

[June —, 1976]

MR. JUSTICE STEVENS, concurring in part and dissenting in part. With the exception of Parts IV-D and IV-F, I join the Court's opinion.

In *Roe v. Wade*, 410 U. S. 113, the Court held that a woman's right to decide whether to abort a pregnancy is entitled to constitutional protection. That decision, which is now part of our law, answers the question discussed in Part IV-F of the Court's opinion, but merely poses the question decided in Part IV-D.

If two abortion procedures had been equally accessible to Missouri women, in my judgment the United States Constitution would not prevent the state legislature from outlawing the one it found to be the less safe even though its conclusion might not reflect a unanimous consensus of informed medical opinion. However, the record indicates that when the Missouri statute

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

June 17, 1976

Re: 74-1151 and 74-1419 - Planned Parenthood v. Danforth

Dear Harry:

Confirming my comment at Conference this morning, I am persuaded by Part III of Byron's dissent and therefore withdraw my concurrence in Part IV-E of your opinion.

Since it seems likely that Byron's position on this issue may command a majority, I will not make any change in the partial dissent which I have already circulated until after the dust settles.

Sincerely,



Mr. Justice Blackmun

Copies to the Conference