

The Burger Court Opinion Writing Database

Singleton v. Wulff

428 U.S. 106 (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

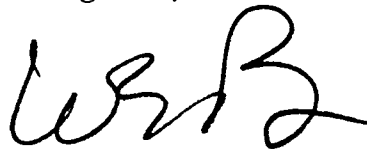
June 30, 1976

Re: 74-1393 - Singleton v. Wulff

Dear Lewis:

Please show me as joining your separate opinion in
this case, assuming you are still taking on passengers.

Regards,



Mr. Justice Powell

Copies to the Conference

file

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

✓
CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 9, 1976

RE: No. 74-1393 Singleton v. Wulff

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 28, 1976

74-1393, Singleton v. Wulff

Dear Lewis,

Please add my name to your separate opinion in this case.

Sincerely yours,

P.S.
/

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 25, 1976

Re: No. 74-1393 - Singleton v. Wulff

Dear Harry:

Prior to the conference on this case, I had thought that the doctors had standing to raise and have decided the validity of the Missouri statute and my conference vote assumed that much. The issue has proved more difficult than I thought; but the hour is late and I have decided to adhere to my conference vote. Hence, I join your opinion in this case.

Sincerely,



Mr. Justice Blackmun

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 10, 1976

Re: No. 74-1393 -- Singleton v. Walff

Dear Harry:

Please join me.

Sincerely,


T.M.

Mr. Justice Blackmun

c: 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: 6-8-76

Recirculated: _____

No. 74-1393 - Singleton v. Wulff

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

Like its companions, ^{1/} this case involves a claim of a State's unconstitutional interference with the decision to terminate pregnancy. The particular object of the challenge is a Missouri statute excluding abortions that are not "medically indicated" from the purposes for which Medicaid benefits are available to needy persons. In its present posture, however, the case presents two issues not going to the merits of this dispute. The first is whether the plaintiff-appellees, as physicians who perform non-medically indicated abortions, have standing to maintain the suit, to which we answer that they do. The second is whether the Court of Appeals, exercising jurisdiction

p. 12 &

STYLISTIC CHANGES

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: 6/17/76

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1393

Thomas E. Singleton, etc., Petitioner, v. George J. L. Wulff, Jr., et al.	}	On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.
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[June —, 1976]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

Like its companions,¹ this case involves a claim of a State's unconstitutional interference with the decision to terminate pregnancy. The particular object of the challenge is a Missouri statute excluding abortions that are not "medically indicated" from the purposes for which Medicaid benefits are available to needy persons. In its present posture, however, the case presents two issues not going to the merits of this dispute. The first is whether the plaintiff-appellees, as physicians who perform nonmedically indicated abortions, have standing to maintain the suit, to which we answer that they do. The second is whether the Court of Appeals, exercising jurisdiction because the suit had been dismissed in the District Court for lack of standing, properly proceeded to a determination of the merits, to which we answer that it did not.

I

Missouri participates in the so-called Medicaid pro-

¹ *Planned Parenthood of Missouri v. Danforth*, ante, p. —; *Bellotti v. Baird*, post, p. —.

June 18, 1975

Re: No. 74-1393 - Singleton v. Wulff

Dear Byron:

You will recall our concern about this case last week. It is relisted for tomorrow (List 3, Sheet 1). Enclosed is my feeble attempt at a proposed order. What do you think?

Sincerely,

HAB

Mr. Justice White

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 24, 1976

Re: No. 74-1393 - Singleton v. Wulff

Dear Lewis:

In response to your circulation, I am adding two new footnotes. Footnote 6, a copy of which is enclosed, will be appended to the end of the full paragraph on page 9. Footnote 7, a copy of which is also enclosed, will be appended to the word "text" as it appears in the next to the last line of Part II on page 10. The present footnote 6 will now become footnote 8.

Sincerely,



Mr. Justice Powell

cc: The Conference

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

File Copy

74-1393

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.

pp. 9, 10, 11, 12

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: 6/28/76

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1393

Thomas E. Singleton, etc., Petitioner, v. George J. L. Wulff, Jr., et al.	}	On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.
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[June —, 1976]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

Like its companions,¹ this case involves a claim of a State's unconstitutional interference with the decision to terminate pregnancy. The particular object of the challenge is a Missouri statute excluding abortions that are not "medically indicated" from the purposes for which Medicaid benefits are available to needy persons. In its present posture, however, the case presents two issues not going to the merits of this dispute. The first is whether the plaintiff-appellees, as physicians who perform nonmedically indicated abortions, have standing to maintain the suit, to which we answer that they do. The second is whether the Court of Appeals, exercising jurisdiction because the suit had been dismissed in the District Court for lack of standing, properly proceeded to a determination of the merits, to which we answer that it did not.

I

Missouri participates in the so-called Medicaid pro-

¹ *Planned Parenthood of Missouri v. Danforth*, ante, p. —; *Bellotti v. Baird*, post, p. —.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 29, 1976

MEMORANDUM TO THE CONFERENCE

Re: No. 74-1393 - Singleton v. Wulff

In checking through Planned Parenthood, there is at least one cross-reference to Singleton v. Wulff. It appears in footnote 2 on page 8. I believe, however, that if necessary this citation could be eliminated.

H. A. B.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 29, 1976

MEMORANDUM TO THE CONFERENCE

Re: No. 74-1393 - Singleton v. Wulff

I enclose Xerox copies of changes being made on pages 8, 9 and 12, together with a copy of the revision of the first paragraph of footnote 7 on page 11. This will replace the present first paragraph of that footnote.

These changes are prompted by Lewis' latest circulation.

H.A.

pp. 8, 9, 11, 12

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: 6/30/76

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1393

Thomas E. Singleton, etc.,	} On Writ of Certiorari to the
Petitioner,	
v.	
George J. L. Wulff, Jr.,	
et al.	} Appeals for the Eighth
	} Circuit.

[June —, 1976]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

Like its companions,¹ this case involves a claim of a State's unconstitutional interference with the decision to terminate pregnancy. The particular object of the challenge is a Missouri statute excluding abortions that are not "medically indicated" from the purposes for which Medicaid benefits are available to needy persons. In its present posture, however, the case presents two issues not going to the merits of this dispute. The first is whether the plaintiff-appellees, as physicians who perform nonmedically indicated abortions, have standing to maintain the suit, to which we answer that they do. The second is whether the Court of Appeals, exercising jurisdiction because the suit had been dismissed in the District Court for lack of standing, properly proceeded to a determination of the merits, to which we answer that it did not.

I

Missouri participates in the so-called Medicaid pro-

¹ *Planned Parenthood of Missouri v. Danforth*, ante, p. —; *Bellotti v. Baird*, post, p. —.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 10, 1976

No. 74-1393 Singleton v. Wulff

Dear Harry:

Although I will join Part III of your opinion, I am not yet persuaded that the plaintiffs (appellees) - two physicians who have neither been prosecuted nor threatened with prosecution - have standing to assert constitutional claims of pregnant women.

Accordingly, I presently plan to file a dissent to your Part II.

Sincerely,

Lewis

Mr. Justice Blackmun

lfp/ss

cc: The Conference

June 22, 1976

1393
No. 74-1319 Singleton v. Wulff

Dear Potter, Byron and Bill:

My recollection is that each of you has said that you are awaiting my dissenting opinion in this case.

It is herewith enclosed.

One or two of the footnotes express views that are unnecessary to the decision, and that reflect my own thinking. These can be modified or omitted if one or more of you should otherwise be disposed to join my opinion.

Sincerely,

Mr. Justice Stewart
Mr. Justice White
Mr. Justice Rehnquist

lfp/ss

lfp/ss 6/21/76

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

From: Mr. Justice Powell

Circulated: JUN 22 1976

Recirculated: _____

No. 74-1393 SINGLETON v. WULFF

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

The Court holds that the appellees have standing to bring this suit and to assert their own constitutional rights, if any, in an attack on Mo. Rev. Stat. § 208.152(12) (Supp. 1976). The Court also holds that the Court of Appeals erred in proceeding to the merits of appellees' challenge. I agree with both of these holdings and therefore concur in the judgment and Parts I, II-A and III of the Court's opinion, as well as in the first four sentences of Part II-B.

The Court further holds that after remand to the District Court the appellees may assert, in addition to their own rights, the constitutional rights of their patients who would be eligible for Medicaid assistance in obtaining elective abortions but for the exclusion of such abortions in § 208.152(12). I dissent from this holding.

lfp/ss 6/21/76

Second Xerox Draft
Substantial Revisions

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

From: Mr. Justice Powell

Circulated: _____

Recirculated: JUN 26 1976

No. 74-1393 SINGLETON v. WULFF

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

The Court holds that the appellees have standing to bring this suit and to assert their own constitutional rights, if any, in an attack on Mo. Rev. Stat. § 208.152(12) (Supp. 1976). The Court also holds that the Court of Appeals erred in proceeding to the merits of appellees' challenge. I agree with both of these holdings and therefore concur in the judgment and Parts I, II-A and III of the Court's opinion, as well as in the first four sentences of Part II-B.

The Court further holds that after remand to the District Court the appellees may assert, in addition to their own rights, the constitutional rights of their patients who would be eligible for Medicaid assistance in obtaining elective abortions but for the exclusion of such abortions in § 208.152(12). I dissent from this holding.

1, 8, 9

*Appropriate changes will
be made to reflect the
final "lineup"*

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

From: Mr. Justice Powell

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1393

Thomas E. Singleton, etc., Petitioner, v. George J. L. Wulff, Jr., et al.	}	On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.
---	---	--

[June —, 1976]

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

The Court holds that the appellees have standing to bring this suit and to assert their own constitutional rights, if any, in an attack on Mo. Rev. Stat. § 208.152 (12) (Supp. 1976). The Court also holds that the Court of Appeals erred in proceeding to the merits of appellees' challenge. I agree with both of these holdings and therefore concur in the judgment and Parts I, II-A, and III of the Court's opinion, as well as in the first four sentences of Part II-B.

The Court further holds that after remand to the District Court the appellees may assert, in addition to their own rights, the constitutional rights of their patients who would be eligible for Medicaid assistance in obtaining elective abortions but for the exclusion of such abortions in § 208.152 (12). I dissent from this holding.

I

As the Court notes, *ante*, at 2-3, appellees by complaint and affidavit established their Art. III standing to invoke the judicial power of the District Court. They have performed abortions for which Missouri's Medic-

the CHIEF JUSTICE

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 11, 1976

Re: No. 74-1393 - Singleton v. Wulff

Dear Harry:

I voted the other way in Conference on the standing issue, and so will await separate writing on that question. If I reach the merits, I agree with you as I indicated in my Conference vote.

Sincerely,



Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 28, 1976

Re: No. 74-1393 - Singleton v. Wulff

Dear Lewis:

Please join me in your dissenting opinion in this case.

Sincerely,



Mr. Justice Powell

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: JUN 9 1976

Recirculated: _____

No. 74-1393 - Singleton v. Wulff

MR. JUSTICE STEVENS, concurring.

In this case (1) the plaintiffs-physicians have a financial stake in the outcome of the litigation, and (2) they claim that the statute impairs their own constitutional rights. They therefore clearly have standing to bring this action.

Because these two facts are present, I agree that the analysis in Part II-B of the Court's opinion provides an adequate basis for considering the arguments based on the effect of the statute on the constitutional rights of their patients. Because I am not sure whether the analysis in Part II-B would, or should, sustain the doctors' standing, apart from those two facts, I join only Parts I, II-A, and III of the Court's opinion.

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: 6/24/76

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1393

Thomas E. Singleton, etc., Petitioner, v. George J. L. Wulff, Jr., et al.	}	On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.
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[June —, 1976]

MR. JUSTICE STEVENS, concurring.

In this case (1) the plaintiffs-physicians have a financial stake in the outcome of the litigation, and (2) they claim that the statute impairs their own constitutional rights. They therefore clearly have standing to bring this action.

Because these two facts are present, I agree that the analysis in Part II-B of the Court's opinion provides an adequate basis for considering the arguments based on the effect of the statute on the constitutional rights of their patients. Because I am not sure whether the analysis in Part II-B would, or should, sustain the doctors' standing, apart from those two facts, I join only Parts I, II-A, and III of the Court's opinion.