

The Burger Court Opinion Writing Database

Poelker v. Doe

432 U.S. 519 (1977)

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 1, 1977

Re: 75-442 - Poelker v. Doe

Dear Lewis:

I join.

Regards,

CRB

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 2, 1977

RE: No. 75-442 Poelker, et al. v. Doe, etc.

Dear Lewis:

In due course I shall circulate a dissent in
the above.

Sincerely,

Br. J.

Mr. Justice Powell

cc: The Conference

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

From: Mr. Justice Brennan

Circulated: 5/2/77

Enc. renumbered

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-442

John H. Poelker, etc., et al.,
 Petitioners,
 v.
 Jane Doe, etc. } On Writ of Certiorari to the
 } United States Court of Appeals for the Eighth Circuit.

[May —, 1977]

MR. JUSTICE BRENNAN, dissenting.

The Court holds that St. Louis may constitutionally refuse to permit the performance of elective abortions in its city-owned hospitals while providing hospital services to women who carry their pregnancies to term. As stated by the Court of Appeals,

"Stripped of all rhetoric, the city here, through its policy and staffing procedure, is simply telling indigent women, like Doe, that if they choose to carry their pregnancies to term, the city will provide physicians and medical facilities for full maternity care; but if they choose to exercise their constitutionally protected right to determine that they wish to terminate the pregnancy, the city will not provide physicians and facilities for the abortion procedure, even though it is probably safer than going through a full pregnancy and childbirth." 515 F. 2d 541, 544 (1975).

The Court of Appeals held that St. Louis could not in this way "interfer[e] in her decision of whether to bear a child or have an abortion simply because she is indigent and unable to afford private treatment," *ibid.*, because it was constitutionally impermissible that indigent women be "subjected to State coercion to bear children which they do not wish to bear [while] no other women similarly situated are so coerced," *id.*, at 545.

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

CHAMBERS OF
JUSTICE WM.J. BRENNAN, JR.

June 13, 1977

RE: Nos. 75-442 Poelker v. Doe
75-554 - Beal v. Doe
75-1440 Maher v. Roe

Dear Lewis:

I find it necessary to make these rather extensive changes in my dissent to respond effectively to some of your arguments. Not completely polished, but I wanted you to have them as quickly as possible if you want to bring them down on Thursday. I'll be sending copies to the printer shortly.

Sincerely,

Mr. Justice Powell

1-3

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

Re: *John H. Poelker, etc., et al., v. Jane Doe, etc.*

Argued:

Recirculated:

6/14/77

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-442

John H. Poelker, etc., et al.,
 Petitioners,
 v.
 Jane Doe, etc. } On Writ of Certiorari to the
 } United States Court of Ap-
 } peals for the Eighth Circuit.

[May —, 1977]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE MARSHALL and MR. JUSTICE BLACKMUN join, dissenting.

The Court holds that St. Louis may constitutionally refuse to permit the performance of elective abortions in its city-owned hospitals while providing hospital services to women who carry their pregnancies to term. As stated by the Court of Appeals,

"Stripped of all rhetoric, the city here, through its policy and staffing procedure, is simply telling indigent women, like Doe, that if they choose to carry their pregnancies to term, the city will provide physicians and medical facilities for full maternity care; but if they choose to exercise their constitutionally protected right to determine that they wish to terminate the pregnancy, the city will not provide physicians and facilities for the abortion procedure, even though it is probably safer than going through a full pregnancy and childbirth." 515 F. 2d 541, 544 (1975).

The Court of Appeals held that St. Louis could not in this way "interfer[e] in her decision of whether to bear a child or have an abortion simply because she is indigent and unable to afford private treatment," *ibid.*, because it was constitutionally impermissible that indigent women be "subjected to State coercion to bear children which they do not wish to

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

CHAMBERS OF
JUSTICE WM.J. BRENNAN, JR.

June 14, 1977

RE: No. 75-442 Poelker v. Doe
No. 75-554 Beal v. Doe
No. 75-1440 Maher v. Roe

Dear Harry:

Please join me in the dissent you have prepared in
the above cases.

Sincerely,

Bill

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

✓
✓

May 3, 1977

75-442 - Poelker v. Doe

Dear Lewis,

I agree with the Per Curiam you
have circulated 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 1, 1977

Re: No. 75-442 — John H. Poelker, et al.
v. Jane Doe, etc.

Dear Lewis:

I agree with your proposed per curiam in
the above case.

Sincerely,



Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 31, 1977

Re: No. 75-442, Poelker v. Doe

Dear Bill:

Please join me.

Sincerely,

J.M.
T. M.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 14, 1977

Re: No. 75-442, Poelker V. Doe
No. 75-554, Beal v. Doe
No. 75-1440, Maher v. Roe

Dear Harry:

Please join me in the dissent you have prepared in
the above cases.

Sincerely,

JM

T. M.

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 1, 1977

Re: No. 75-442 - Poelker v. Doe

Dear Bill:

Please join me in your dissent.

Sincerely,



Mr. Justice Brennan

cc: The Conference

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
MAY 2 1977

Circulated: _____

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-442

John H. Poelker, etc., et al., Petitioners,
v.
Jane Doe, etc. } On Writ of Certiorari to the
United States Court of Appeals for the Eighth Circuit.

[April —, 1977]

PER CURIAM.

Respondent Jane Doe, an indigent, sought unsuccessfully to obtain a nontherapeutic abortion at Starkloff Hospital, one of two city-owned public hospitals in St. Louis, Mo. She subsequently brought this class action under 42 U. S. C. § 1983 against the Mayor of St. Louis and the Director of Health and Hospitals, alleging that the refusal by Starkloff Hospital to provide the desired abortion violated her constitutional rights. Although the District Court ruled against Doe following a trial, the Court of Appeals for the Eighth Circuit reversed in an opinion that accepted both her factual and legal arguments. 515 F. 2d — (197-).¹

The Court of Appeals concluded that Doe's inability to obtain an abortion resulted from a combination of a policy directive by the Mayor and a longstanding staffing practice at Starkloff Hospital. The directive, communicated to the Director of Health and Hospitals by the Mayor, prohibited the performance of abortions in the city hospitals except when there was a threat of grave physiological injury or death.

¹ The facts concerning Doe's visit to the hospital and the reason for her inability to obtain an abortion are hotly disputed. Our view that the Court of Appeals erred in the application of the law to the facts as stated in its opinion makes it unnecessary to describe or resolve this conflict.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 3, 1977

Re: No. 75-442 - Poelker v. Doe

Dear Lewis:

Please join me.

Sincerely,

WR

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 3, 1977

Re: 75-442 - Poelker v. Doe

Dear Lewis:

Please join me.

Respectfully,



Mr. Justice Powell

Copies to the Conference