The Burger Court Opinion Writing Database

Beal v. Doe

432 U.S. 438 (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: 75-554 - Beal v. Doe

Dear Lewis:

I join.

Regards,

WEB

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 27, 1977

Dear Harry:

Thinking ahead to the division of dissents, do you plan to do them in No. 75-554 Beal v. Doe, No. 75-1440 Maher v. Roe and No. 75-442 Poelker v. Doe?

Sincerely,

Mr. Justice Blackmun

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 2, 1977

RE: No. 75-554 Beal, et al. v. Doe, et al.

Dear Lewis:

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

Sincerely,

Bill

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: 4/28/77

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-554

Frank S. Beal, etc., et al., Petitioners, *v.* Ann Doe et al. | On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[May —, 1977]

MR. JUSTICE BRENNAN, dissenting.

The Court holds that the "necessary medical services" which Pennsylvania must fund for individuals eligible for Medicaid do not include services connected with elective abortions. I dissent.

Though the question presented by this case is one of statutory interpretation, a difficult constitutional question would be raised if the Act were read not to require funding of elective abortions. *Maher* v. *Roe*, — U. S. — (1977), *Doe* v. *Bolton*, 410 U. S. 179 (1973), *Roe* v. *Wade*, 410 U. S. 113 (1973). Since the Court should "first ascertain whether a construction of the statute is fairly possible by which the [constitutional] question may be avoided," *Ashwander* v. *TVA*, 297 U. S. 341, 348 (1936) (Brandeis, J., concurring), *Westby* v. *Doe*, 420 U. S. 968 (1975), the Act, in my view, read fairly in light of the principle of avoidance of unnecessary constitutional decisions, requires agreement with the Court of Appeals that the legislative history of the Medicaid statute and our abortion cases compel the conclusion that elective abortions constitute medically necessary treatment for the condition of pregnancy. I would therefore find that Title XIX of the Social Security Act, 42 U. S. C. § 1396, *et seq.*, requires that Pennsylvania pay the costs of elective abortions for women who are eligible participants in the Medicaid program.

— ✓
1-4

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: 6/14/77

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-554

Frank S. Beal, etc., et al., Petitioners, v. Ann Doe et al. } On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[May —, 1977]

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

The Court holds that the "necessary medical services" which Pennsylvania must fund for individuals eligible for Medicaid do not include services connected with elective abortions. I dissent.

Though the question presented by this case is one of statutory interpretation, a difficult constitutional question would be raised if the Act were read not to require funding of elective abortions. *Maher* v. *Roe*, — U. S. — (1977), *Doe* v. *Bolton*, 410 U. S. 179 (1973), *Roe* v. *Wade*, 410 U. S. 113 (1973). Since the Court should "first ascertain whether a construction of the statute is fairly possible by which the [constitutional] question may be avoided," *Ashwander* v. *TVA*, 297 U. S. 341, 348 (1936) (Brandeis, J., concurring), *Westby* v. *Doe*, 420 U. S. 968 (1975), the Act, in my view, read fairly in light of the principle of avoidance of unnecessary constitutional decisions, requires agreement with the Court of Appeals that the legislative history of the Medicaid statute and our abortion cases compel the conclusion that elective abortions constitute medically necessary treatment for the condition of pregnancy. I would therefore find that Title XIX of the Social Security Act, 42 U. S. C. § 1396, *et seq.*, requires that Pennsylvania pay the costs of elective abortions for women who are eligible participants in the Medicaid program.

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 3, 1977

75-554 - Beal v. Doe

Dear Lewis,

I am glad to join your opinion for the Court 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. 75-554 — Frank S. Beal, et al.
v. Ann Doe, et al.

Dear Lewis:

I agree with your circulation of May 2, 1977.

Sincerely,

Byron

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. 75-554, Beal v. Doe

Dear Bill:

Please join me.

Sincerely,

T. M.

Mr. Justice Brennan

cc: The Conference

stylistic changes throughout

4, 5, 7, 8

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 75–554, 75–1440, AND 75–442

Frank S. Beal, etc., et al., Petitioners, 75–554 *v.* Ann Doe et al.	On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.
Edward W. Maher, Commissioner of Social Services of Connecticut, Appellant, 75–1440 *v.* Susan Roe et al.	On Appeal from the United States District Court for the District of Connecticut.
John H. Poelker, etc., et al., Petitioners, 75–442 *v.* Jane Doe, etc.	On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

[June —, 1977]

MR. JUSTICE MARSHALL, dissenting.

It is all too obvious that the governmental actions in these cases, ostensibly taken to "encourage" women to carry pregnancies to term, are in reality intended to impose a moral viewpoint that no State may constitutionally enforce. *Roe* v. *Wade*, 410 U. S. 113 (1973); *Doe* v. *Bolton*, 410 U. S. 179 (1973). Since efforts to overturn those decisions have been unsuccessful, the opponents of abortion have attempted every imaginable means to circumvent the commands of the Constitution and impose their moral choices upon the rest of society. See, *e. g.*, *Planned Parenthood of Missouri* v. *Danforth*, 428 U. S. 52 (1976); *Singleton* v. *Wulff*, 428 U. S. 106 (1976); *Bellotti* v. *Baird*, 428 U. S. 132 (1976).

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 1, 1977

Re: No. 75-554 - Beal v. Doe

Dear Bill:

Please join me in your dissent.

Sincerely,

HAB

Mr. Justice Brennan

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

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

From: Mr. Justice Blackmun

Circulated: JUN 1 1977

Recirculated: _____

MR. JUSTICE BLACKMUN, dissenting.

The Court today, by its decisions in these cases, allows the States, and such municipalities as choose to do so, to accomplish indirectly what the Court in Roe v. Wade, 410 U.S. 113 (1973), and Doe v. Bolton, 410 U.S. 179 (1973) -- by a substantial majority and with some emphasis, I had thought -- said they could not do directly. The Court concedes the existence of a constitutional right but denies the realization and enjoyment of that right on the ground that existence and realization are separate and distinct. For the individual woman concerned, indigent and financially helpless, as the Court's opinions in the three cases concede her to be, the result is punitive and tragic.

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: _____

1st DRAFT

Recirculated: JUN 2 1977

SUPREME COURT OF THE UNITED STATES

Nos. 75–554, 75–1440, AND 75–442

Frank S. Beal, etc., et al., Petitioners, 75–554 *v.* Ann Doe et al.	On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.
Edward W. Maher, Commissioner of Social Services of Connecticut, Appellant, 75–1440 *v.* Susan Roe et al.	On Appeal from the United States District Court for the District of Connecticut.
John H. Poelker, etc., et al., Petitioners, 75–442 *v.* Jane Doe, etc.	On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

[June —, 1977]

MR. JUSTICE BLACKMUN, dissenting.

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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: APR 28 1977

1st DRAFT Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 75-554

Frank S. Beal, etc., et al., Petitioners, v. Ann Doe et al. | On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[April —, 1977]

MR. JUSTICE POWELL delivered the opinion of the Court.

The issue in this case is whether Title XIX of the Social Security Act, 42 U. S. C. § 1396 *et seq.*, requires States that participate in the Medical Assistance Program (Medicaid) to fund the cost of nontherapeutic abortions.

I

Title XIX establishes a Medical Assistance Program under which participating States may provide federally funded medical assistance to needy persons.[1] The statute requires participating States to provide qualified individuals with financial assistance in five general categories of medical treatment.[2]

[1] Title XIX establishes two groups of needy persons: (1) the "categorically" needy, which includes needy persons with dependent children and the aged, blind, and disabled, 42 U. S. C. § 1396a (a)(10)(A) (Supp. IV); and (2) the "medically" needy, which includes other needy persons, *id.*, § 1396a (10)(C). Participating States are not required to extend medicaid coverage to the "medically" needy, but Pennsylvania has chosen to do so.

[2] The general categories of medical treatment enumerated are:

"(1) inpatient hospital services (other than services in an institution for tuberculosis or mental diseases);

"(2) outpatient hospital services;

"(3) other laboratory and X-ray services;

"(4)(A) skilled nursing facility services (other than services in an

pp 7-8

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: MAY 4 1977

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-554

Frank S. Beal, etc., et al., Petitioners, v. Ann Doe et al. | On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

Want to dissent

[April —, 1977]

MR. JUSTICE POWELL delivered the opinion of the Court.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 2, 1977

No. 75-554 Beal v. Doe

MEMORANDUM TO THE CONFERENCE:

Please substitute the attached copies of pages 3 and 8 in the third draft of the opinion in this case which circulated this morning.

L.F.P.

L.F.P., Jr.

ss

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: _____

3rd DRAFT

Recirculated: JUN 2 1977

SUPREME COURT OF THE UNITED STATES

No. 75-554

Frank S. Beal, etc., et al., Petitioners, *v.* Ann Doe et al. | On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[April —, 1977]

MR. JUSTICE POWELL delivered the opinion of the Court.

The issue in this case is whether Title XIX of the Social Security Act, 42 U. S. C. § 1396 *et seq.*, requires States that participate in the Medical Assistance Program (Medicaid) to fund the cost of nontherapeutic abortions.

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Technical changes throughout

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 6 1977

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-554

Frank S. Beal, etc., et al., Petitioners, *v.* Ann Doe et al. | On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[April —, 1977]

MR. JUSTICE POWELL delivered the opinion of the Court.

The issue in this case is whether Title XIX of the Social Security Act, 42 U. S. C. § 1396 *et seq.*, requires States that participate in the Medical Assistance Program (Medicaid) to fund the cost of nontherapeutic abortions.

I

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"(3) other laboratory and X-ray services;

"(4)(A) skilled nursing facility services (other than services in an

pp. 4, 5, 9
Old fn 13 moved to p. 7 as fn. 11
Subsequent fns renumbered
fn. 15 is new.

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 17 1977

6th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-554

Frank S. Beal, etc., et al., Petitioners, *v.* Ann Doe et al. | On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[April —, 1977]

MR. JUSTICE POWELL delivered the opinion of the Court.

The issue in this case is whether Title XIX of the Social Security Act, 42 U. S. C. § 1396 *et seq.*, requires States that participate in the Medical Assistance Program (Medicaid) to fund the cost of nontherapeutic abortions.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 20, 1977

Cases held for Poelker v. Doe, No. 75-442; Beal v. Doe, No. 75-554; Maher v. Roe, No. 74-1440

MEMORANDUM TO THE CONFERENCE

No. 75-813, Westby v. Doe

South Dakota does not provide medicaid payments for nontherapeutic abortions under its rule that "[a]ny items or services which are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member" will not be covered. A three-judge DC held that this policy was a violation of the Equal Protection Clause. We remanded the case under Hagans v. Lavine, 415 U.S. 528 (1974), for consideration of the statutory issue. Relying on the decision below in Beal, the court then held that the policy was inconsistent with Title XIX. The decision also incorporated the previous equal protection analysis. I will vote to vacate and remand in light of Beal and Maher.

No. 75-1749, Toia v. Klein

New York does not provide medicaid payments for nontherapeutic abortions. A three-judge DC held that New York's policy was a violation of the Equal Protection Clause and enjoined further enforcement of it. The case presents exactly the issue decided in Maher, and I will vote to vacate and remand for reconsideration in light of that decision.

No. 75-6721, Doe v. Stewart

Louisiana does not provide medicaid payments for nontherapeutic abortions, defined (after some litigation) as those necessary to "prevent serious and permanent injury to the health of the mother." A three-judge DC held that this policy was consistent with the Social Security Act and with the Constitution. I will vote to affirm.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 3, 1977

Re: No. 75-554 - Beal v. Doe

Dear Lewis:

Please join me.

Sincerely,

WHR

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 29, 1977

Re: 75-554 - Beal v. Doe

Dear Lewis:

Please join me.

Respectfully,

John

Mr. Justice Powell

Copies to the Conference