

The Burger Court Opinion Writing Database

Doe v. Delaware

450 U.S. 382 (1981)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
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to: Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: The Chief Justice

Circulated: JAN 15 1981

1st DRAFT

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SUPREME COURT OF THE UNITED STATES

No. 79-5932

John Doe and Jane Roe,
Appellants,
v.
State of Delaware.

On Appeal from the Supreme
Court of Delaware.

[January —, 1981]

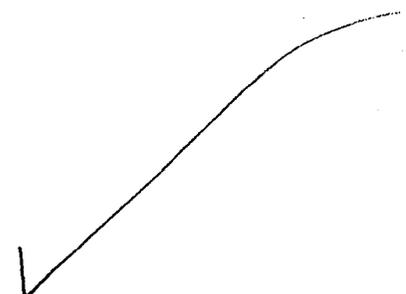
PER CURIAM.

The appeal is dismissed for want of a properly presented federal question.

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

CHAMBERS OF
THE CHIEF JUSTICE

February 19, 1981



Re: No. 79-5932, Doe v. Delaware

Dear Lewis:

I am totally at a loss to understand your January 22 memorandum. You want to deal with the merits by a "hint" of what we ought to do in some future case, properly presented!

Why?

Why not wait and avoid this pernicious business of advance "hints" that seems to be growing like weeds in a garden?!

Regards,

Justice Powell

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

CHAMBERS OF
THE CHIEF JUSTICE

February 19, 1981

Re: No. 79-5932, Doe v. Delaware

MEMORANDUM TO THE CONFERENCE

I stand on the "DFWPPFQ". I am at a loss to understand the idea that we "lack power".

There are at least a dozen situations in which this disposition would be warranted, e.g., failure to file a proper appendix or the original record. With all respect to Bill Brennan's dissenting view, both Cowgill and Rescue Mining support the dismissal here.

Regards,

WJB

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: FEB 11 1981

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-5932

John Doe and Jane Roe, }
Appellants, } On Appeal from the Supreme
v. } Court of Delaware.
State of Delaware. }

[February —, 1981]

JUSTICE BRENNAN, dissenting.

Appellants, a half-brother and sister, are the natural parents of five children who were in the custody of the Division of Social Services of the Delaware Department of Health and Social Services at the beginning of this litigation.¹ After determining that the children should be put up for adoption,² the Division filed suit pursuant to Delaware law to obtain termination of appellants' parental rights over their children. The Superior Court of Delaware ordered termination, and the Supreme Court of Delaware affirmed.³ Appellants appealed

¹ This Court granted appellants' motion to seal the record, 445 U. S. 949 (1980), and the pseudonyms John Doe and Jane Roe have been substituted for appellants' real names.

² See Tr. of Oral Arg., at 35. The Division has apparently not made any formal arrangements for adoptive homes for the children. See 13 Del. Code §§ 907-908 (1974) (making termination of the parental rights of the natural parents a prerequisite to adoption in the absence of the consent of the natural parents).

³ The order of termination issued orally by the Superior Court on September 12, 1975, App. to Jur. Stat., at 5b, was initially reversed by the Delaware Supreme Court for failure to decide whether termination of parental rights was in the best interests of the children, as required by 13 Del. Code § 1108. *Id.*, at 1c. On remand, the Superior Court concluded that Doe and Roe "are incapable of providing proper care for their children," and that "it is in the best interests of the children that their parental rights of the children be terminated." *Id.*, at 3d. The Delaware Supreme Court affirmed. 407 A. 2d 198 (Del. 1979).

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

2nd DRAFT

Revised: _____

SUPREME COURT OF THE UNITED STATES

Revised: FEB 17 1981

No. 79-5932

John Doe and Jane Roe, }
Appellants, } On Appeal from the Supreme
v. } Court of Delaware.
State of Delaware. }

[February —, 1981]

JUSTICE BRENNAN, with whom JUSTICE WHITE joins, dissenting.

Appellants, a half-brother and sister, are the natural parents of five children who were in the custody of the Division of Social Services of the Delaware Department of Health and Social Services at the beginning of this litigation.¹ After determining that the children should be put up for adoption,² the Division filed suit pursuant to Delaware law to obtain termination of appellants' parental rights over their children. The Superior Court of Delaware ordered termination, and the Supreme Court of Delaware affirmed.³ Appellants appealed

¹ This Court granted appellants' motion to seal the record, 445 U. S. 949 (1980), and the pseudonyms John Doe and Jane Roe have been substituted for appellants' real names.

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 15, 1981

Re: No. 79-5932, Doe v. Delaware

Dear Chief,

I agree with your proposed per curiam
order in this case.

Sincerely yours,

P.S.
/

The Chief Justice

Copies to the Conference

COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 16, 1981

Re: 79-5932 - Doe and Roe
v. Delaware

Dear Chief,

I shall be in dissent in this
case.

Sincerely yours,



The Chief Justice

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 12, 1981

Re: 79-5932 - Doe and Roe v.
Delaware

Dear Bill,

Please join me.

Sincerely yours,



Mr. Justice Brennan

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 4, 1981

Re: 79-5932 - Doe and Roe
v. Delaware

Dear Chief,

I shall not hold up this case any longer. I was considering writing separately, but have abandoned the idea.

Sincerely yours,



The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 22, 1981

Re: No. 79-5932 - Doe v. Delaware

Dear Chief:

I agree with your proposed Per Curiam.

Sincerely,

T.M.

T.M.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 16, 1981

Re: No. 79-5932 - Doe v. Delaware

Dear Chief:

I join the proposed per curiam.

Sincerely,

Handwritten signature of H.A.B. (Harry A. Blackmun) in cursive.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 22, 1981

79-5932 Doe v. Delaware

Dear Chief:

At Conference I agreed that I could join a dismissal for want of a properly presented federal question, although I stated that I had voted to grant the case because I thought the Delaware court had applied an incorrect standard.

As you have a Court for the dismissal, I am inclined to wait now to see what John has to say in his dissent. As I view the case, it could well be helpful if several of us did make clear in a dissent that before parents are separated permanently from their children, the state should show this need by "clear and convincing" evidence.

Sincerely,

Lewis

The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 5, 1981

79-5932 Doe and Roe v. Delaware

Dear Chief:

This has been a troublesome case for me. We took it to decide an important question. I think, as John argues persuasively, we could conclude that the question is here.

I also lean strongly to the view - as I stated at Conference - that a state should meet the higher standard of proof before permanently separating parents from their children.

But, I also stated at Conference that I could join a dismissal. Apart from other considerations (e.g., the new statute and the confused facts), it may be in the best interest of these parties not to prolong this litigation.

Accordingly, and rather than divide the Court further, I will adhere to my tentative Conference vote, and join the dismissal.

Sincerely,



The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 16, 1981

Re: No. 79-5932 Doe & Roe v. Delaware

Dear Chief:

I agree with your proposed per curiam order
in this case.

Sincerely,



The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 15, 1981

Re: 79-5932 - Doe and Roe v. Delaware

Dear Chief:

As I indicated at the Conference, I shall write briefly to explain why I believe a federal question is properly presented.

Respectfully,



The Chief Justice

Copies to the Conference

Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice

From: Mr. Justice Stevens

1st DRAFT

Circulated: FEB 25 '81

SUPREME COURT OF THE UNITED STATES

No. 79-5932

John Doe and Jane Roe, }
Appellants, } On Appeal from the Supreme
v. } Court of Delaware.
State of Delaware. }

[March —, 1981]

JUSTICE STEVENS, dissenting.

The wisdom of the Court's policy of avoiding the premature or unnecessary adjudication of constitutional questions is well established. See *Rescue Army v. Municipal Court of Los Angeles*, 331 U. S. 549, 568-575 (1947). That policy provides some support for the Court's otherwise inexplicable conclusion that the three federal questions raised by this appeal are somehow not "properly presented."¹ That policy also would provide some support for JUSTICE BRENNAN's view that this case should be remanded to the Delaware courts for

¹ Appellants raise three constitutional objections to the termination order entered against them. See BRENNAN, J., dissenting, *ante*, at 3. In their brief on the merits, appellants argue the following questions:

"1. Is the Delaware statute, which provides for the permanent termination of the parent-child relationship where the parent is 'not fitted,' unconstitutionally vague and indefinite in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution?"

"2. In light of the protected nature of the family relationship under decisions of this Court, does the Due Process Clause and this Court's decision in *Addington v. Texas*, 441 U. S. 418 (1979), preclude the termination of the parent-child relationship based upon a mere 'preponderance of the evidence'?"

"3. Under the Due Process Clause, must the state demonstrate a compelling state interest, by making specific findings of existing or threatened harm to the child, before terminating the parent-child relationship?"
Brief for Appellants, at 3.
See also Jur. Stat., at 2-3.

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