



## Doe v. Wigginton

21 F.3d 733 (1994)

**Country:** United States

**Region:** Americas

**Year:** 1994

**Court:** 6th Circuit Court of Appeal

**Health Topics:** Health care and health services, Health information, HIV/AIDS, Infectious diseases, Medicines, Prisons

**Human Rights:** Right of access to information, Right to due process/fair trial, Right to liberty and security of person, Right to privacy

### Facts

The Appellant, Doe, a prisoner incarcerated in Kentucky, brought this challenge alleging his constitutional rights under the Eighth and Fourteenth Amendments were violated by Policy 13.5 (the Policy), a Kentucky rule which restricted the eligibility of inmates for "at-request" HIV testing.

In January 1989, at an initial medical screening following his incarceration, Doe requested that his blood be tested for the presence of HIV antibodies. The request was denied because Doe did not meet the testing criteria established in the Policy.

The Policy provided that:

No routine testing for the presence of HIV antibodies would be undertaken.

The physician could order the test for an individual under the following circumstances:

The inmate presented clinical symptoms.

The inmate provided a presumptive history of exposure.

An inmate was pregnant and reported a history of intravenous drug use, prostitution or sexual activity with an intravenous drug user.

Over the next two years, Doe received medical treatment for a number of ailments, and in March 1991 requested a doctor to test his blood for the presence of HIV antibodies. He claimed he had slept with a number of drug-addicted prostitutes prior to his incarceration; on the basis of this disclosure, the doctor ordered a test that ultimately indicated Doe was HIV positive. After seeing a specialist, further tests indicated that Doe's immune system had seriously deteriorated by the time the infection was discovered.

Doe also brought a claim alleging that a corrections officer violated his constitutional right to privacy when the officer opened his medical file, which was stamped "confidential," and discussed his HIV test results in the presence of others without his consent.

The magistrate judge granted summary judgment in favor of the Respondents. This appeal followed.

### Decision and Reasoning

The court held that enforcement of the Policy did not violate Doe's constitutional right to be free from cruel and unusual punishment under the Eighth Amendment. The court held that enforcement of the Policy did not require conduct amounting to cruel and unusual punishment. It held that cruel and unusual punishment could be established through "deliberate indifference to the strong likelihood that a prisoner was afflicted with a serious illness, such as HIV infection." It concluded that the Policy did "not manifest indifference as to the likelihood that a prisoner was infected with HIV, but [rather] made the availability of HIV testing dependent upon that likelihood."

The court explained that under the Policy, prisoners with a strong likelihood of infection were tested upon request while those prisoners with only a relatively slight chance of exposure to HIV were not tested. It added that Doe fell into the latter group because he initially failed to provide prison officials with any information that

indicated he might have had a heightened risk of exposure to HIV.

The court further held that enforcement of the Policy did not deprive Doe of his constitutional right to life, under the Fourteenth Amendment's Due Process Clause. The court rejected Doe's argument that the delay in testing violated his constitutional right to life by causing his infection to remain untreated in the interval between the date of his first request for an HIV test and the date he was tested. It held that prison officials did not "deprive" Doe of life within the meaning of the due process clause because the prison officials did not "deliberately decide to reduce Doe's life expectancy" and because "they did not know that their actions would have that effect."

The court also held that the Policy did not violate Doe's constitutional right to equal protection, under the Fourteenth Amendment. The court rejected Doe's equal protection claim on the basis that the Policy did not single out a "suspect class" or impinge upon a fundamental constitutional right, but rather was rationally furthered a legitimate State purpose.

The court held that the rational review test was to be applied and that the test was satisfied because the Policy ensured that "scarce medical resources [were] used in an efficient manner." The court stated that persons "who [did] not provide a presumptive history of exposure to HIV" had not previously constituted a "suspect class," and that "the actual text of the Constitution [did] not guarantee a right to on-demand HIV testing."

Finally, the court held that the correction officer's disclosure of Doe's HIV status did not violate his constitutional right to privacy. It held that the constitutional right to privacy did not protect inmates from disclosure of their HIV status. It concluded that "the Constitution [did] not encompass a general right to nondisclosure of private information."<sup>[1]</sup> The court reiterated its reasoning in an earlier case, *JP v. DeSanti*, 653 F.2d 1080 (1981), stating that "recognition of a constitutional right of non-disclosure would force courts to balance almost every act of government, both state and federal, against its intrusion on a concept so vague, undefinable, and all-encompassing as individual privacy."

[1] Other federal courts of appeals have recognized a constitutional right to privacy. See *Doe v. City of New York*, 15 F.3d 264 (2d Cir.1994); *Harris v. Thigpen*, 941 F. 2d 1495 (11th Cir.1991); *Douglas v. Dobbs*, 419 F.3d 1097 (10th Cir.2005).

## Decision Excerpts

"We see no principled basis to distinguish between a prison official's deliberate indifference to the strong likelihood that a prisoner will commit suicide or be assaulted and a prison official's deliberate indifference to the strong likelihood that a prisoner is afflicted with a serious illness, such as HIV infection." 21 F.3d, p. 738.

"[P]rotections of the Due Process Clause are not "triggered by lack of due care by prison officials." []. Here, the defendants did not deliberately decide to reduce Doe's life expectancy, because, though their actions were intentional, they did not know that their actions would have that effect." 21 F.3d, p. 739.

"We think it plain that the actual text of the Constitution does not guarantee a right to on-demand HIV testing. We think it just as plain that this supposed right is not "deeply rooted in this Nation's history and tradition," . . . which excludes the possibility that it is a "fundamental" right implicitly guaranteed by the Constitution." 21 F.3d, p. 739-40.