

Ferguson v. City of Charleston (2001) ^[1]

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The US Supreme Court case *Ferguson v. City of Charleston* (2001) established that public hospitals couldn't legally drug test pregnant women without their consent when those women sought prenatal care at those hospitals. The court held that such searches violated the pregnant women's protections under the Fourth Amendment to the US Constitution. The decisions also indicated those circumstances that qualified as special needs exceptions to the Fourth Amendment, and it highlighted the extent to which pregnant women are sovereign individuals in the eyes of the Court. *Ferguson v. City of Charleston* brought public attention to women's [reproductive rights](#) ^[3] and to fetal rights.

In the late 1980s, the Medical University of South Carolina (MUSC) in Charleston, South Carolina began a program to persuade pregnant women who had tested positive for cocaine to enter drug treatment programs. Under the program, prior to their infant's birth, women were tested for cocaine without their knowledge. If the results returned positive, the program referred them for counseling and treatment.

In August 1989, MUSC obstetrics case manager Shirley Brown learned that law officers in Greenville, South Carolina had arrested women who tested positive for cocaine and had charged them with child abuse on the basis that cocaine use was harmful to their fetuses. After hearing Brown's report, MUSC's general counsel approached local Charleston lawyer Charles Condon about a perceived increase in cocaine use among MUSC's pregnant patients. From there, Condon worked with MUSC staff, the City of Charleston Police Department, the Charleston County Substance Abuse Commission, and Child Protective Services to develop a policy for reporting women who had tested positive to law enforcement for arrest. Two months after MUSC's general counsel approached Condon, MUSC instituted Policy M-7, which outlined procedures for identifying pregnant drug users, for using nonconsensual urine screening of patients who met at least one of nine set criteria, for reporting results to law enforcement, and for using arrest on drug or child abuse charges as punishment or intimidation to facilitate drug treatment.

When MUSC first created Policy M-7, they created two separate protocols. The first protocol dealt with identifying substance abuse during [pregnancy](#) ^[4], and the second dealt with identifying substance abuse after labor. For those who initially tested positive during [pregnancy](#) ^[4], the police would be notified only if the patient tested positive for cocaine a second time or refused substance abuse treatment. Under the second protocol, however, patients who tested positive for illegal substances after labor would be reported immediately and then arrested. In 1990, MUSC revised the protocol for women who tested positive after labor to resemble the first protocol, granting women an opportunity to avoid arrest by consenting to drug counseling.

In June 1991, Crystal Ferguson was tested for drugs without her knowledge during a routine prenatal checkup at MUSC. When her drug screen returned with a positive result, Ferguson

agreed to attend substance abuse counseling. On 4 August 1991 when she delivered her child at MUSC, she was tested once again without her consent and the drug screen found traces of cocaine. MUSC officials told Ferguson to either enter a residential treatment program or face arrest and prosecution. Unable to find care for her two other children at home, Ferguson decided against the residential program, and she requested referral to an outpatient treatment program instead. MUSC rejected her request, notified the police, and she was arrested on 7 August 1991. Ferguson was among forty-one other women arrested under the collaborative policy between law enforcement officials in Charleston and MUSC.

In October 1993, the Center for Reproductive Law and Policy (CRLP) in New York, New York, filed a class action suit in South Carolina's federal district court against Condon, MUSC, the City of Charleston, and others on behalf of Ferguson. The CRLP demanded three million dollars in damages for the violation of the patients' Fourth Amendment rights and, as Ferguson was African-American, of Title VI of the Civil Rights Act of 1964, which prohibited discrimination on the basis of race, color, or national origin. Originally intended for Ferguson, the lawsuit expanded to include ten women who had been subjected to the nonconsensual drug test. Of these ten women, nine were African-American.

The Fourth Amendment states "the right of the people ^[5] to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation?" Courts often treat collection and testing of blood and/or urine by law enforcement as searches under the amendment, and they usually declare those tests unconstitutional if the law enforcement officials don't first obtain a warrant from a judge or grand jury or consent from the person tested. Ferguson's attorneys, Simon Heller and Julie Rikelman, argued that MUSC and the City of Charleston had violated Ferguson's Fourth Amendment rights, since MUSC and others did not have a warrant or probable cause for the searches. Those attorneys also noted that Ferguson did not consent to the initial search and that she also did not consent for the release of the results to law enforcement agencies.

The federal district court sided with MUSC and the other defendants on all issues, stating that by signing MUSC's consent to medical treatment forms, patients waived their right to privacy. Ferguson's attorney's then appealed the district court's decision to the US Court of Appeals for the Fourth Circuit in Richmond, Virginia. MUSC and others argued that their testing fell within the special needs exception of the Fourth Amendment, which can excuse the warrant and probable cause requirements. MUSC and others claimed that a special needs exception was justified due to a need to protect Ferguson's [fetus](#) ^[6].

The US Fourth Circuit affirmed the district courts' judgment on 13 July 1999 with a two-to-one vote on the grounds that the searches were reasonable given a set of case law that had held that special needs sometimes justify nonconsensual searches in exceptional circumstances. Applying a balance test set forth in previous US Supreme Court cases, the Fourth Circuit concluded that MUSC's pregnant patients and the public health problems of maternal cocaine use created a special need that outweighed the minimal intrusion suffered by tested patients.

Ferguson's lawyers appealed the Circuit Court's decision to the US Supreme Court in Washington, D.C., and the court heard oral arguments on 4 October 2000. Ferguson's lawyers argued that the Fourth Circuit Court had misapplied the special needs exception to a discretionary drug testing program that tested hospital patients, a program created and implemented to arrest and prosecute those patients. The Supreme Court overturned the

Fourth Circuit's ruling in a six-to-three vote, concluding that searches under the MUSC policy, unlike other special needs searches, were intended for law enforcement purposes, rather than for health care purposes. Justice John Paul Stevens wrote the majority opinion for the court, in which Justices Sandra Day O'Connor, David Souter, Ruth Bader Ginsburg, and Stephen Breyer joined. They concluded that MUSC's policy aimed to obtain evidence of a patient's criminal conduct for law enforcement purposes, evidence that could be admissible in later criminal prosecutions. Stevens further rejected the idea that the searches were minimally invasive because they happened in the context of routine medical care. If anything, he concluded, the searches were especially invasive due to the confidentiality and care expected when an individual receives health care. Justice [Anthony Kennedy](#) [7] agreed with the majority, but wrote a concurring opinion, while Justices Antonin Scalia, Clarence Thomas, and Chief Justice William Rehnquist dissented.

Ferguson v. City of Charleston tested the US Supreme Court's special needs exclusion to the Fourth Amendment, and the Court used the case to clarify the exclusion's scope. Only once in the twenty-five years prior to *Ferguson* did the Court not approve when the government claimed the special need. Furthermore, *Ferguson* developed partly out of US policy in its proclaimed War on Drugs during the late 1980s to early 1990s, and partly from a shift in strategy among anti-[abortion](#) [8] advocates, who focused less on banning [abortion](#) [8] and more on broadening fetal protections. The case also highlighted issues of racism, as MUSC's patients were mostly poor black women, and as MUSC's public Medicaid clinic, but not the hospital's private obstetric clinic, was subject to Policy M-7.

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