

The Burger Court Opinion Writing Database

Board of Curators of University of Missouri v. Horowitz

435 U.S. 78 (1978)

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

April 13, 1977

RE: 76-695 - Board of Curators of the
University of Missouri v.
Charlotte Horowitz

Dear Bill:

I join.

Regards,

WRB

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM.J. BRENNAN, JR.

April 12, 1977

RE: No. 76-695 Board of Curators of the University of
Missouri v. Horowitz

Dear Thurgood:

Please join me in the dissenting opinion you have
prepared in the above.

Sincerely,

Brennan

Mr. Justice Marshall

cc: The Conference

✓

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

CHAMBERS OF
JUSTICE WM.J. BRENNAN, JR.

April 14, 1977

MEMORANDUM TO THE CONFERENCE

RE: No. 76-695 Board of Curators of the University of
Missouri v. Horowitz

In light of all the writing I want to record myself
(although I've already joined Thurgood's dissent) as willing
to dispose of this case on Lewis and John's grounds,
namely that the respondent received ample process.

W.J.B.Jr.

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 6, 1977

Re: No. 76-695, Board of Curators v. Horowitz

Dear Bill,

I agree with the Per Curiam you circulated
on April 5.

Sincerely yours,

P.S.

Mr. Justice Rehnquist

Copies to the Conference

1st DRAFT

SUPREME COURT OF THE UNITED STATES

BOARD OF CURATORS OF THE UNIVERSITY OF
MISSOURI ET AL. v. CHARLOTTE HOROWITZ

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 76-695. Decided April —, 1977

MR. JUSTICE MARSHALL, dissenting.

The Court's opinion is based on the assumption that respondent's expulsion from medical school foreclosed her opportunity to practice medicine only because her failure to graduate means that she cannot obtain a state license to practice. *Ante*, at 4. Were this the case, today's decision would follow directly from the Court's prior holding that "[i]t stretches the concept too far to suggest that a person is deprived of 'liberty' when he simply is not rehired in one job but remains as free as before to seek another." *Board of Regents v. Roth*, 408 U. S. 564, 575 (1972). I would not agree with that conclusion, see *id.*, at 587 (MARSHALL, J., dissenting), but at least it would represent no further diminution of the protections afforded by the Fourteenth Amendment.

It is plain, however, that petitioners have not left Ms. Horowitz "as free as before." The Court of Appeals found that it was "uncontroverted" that respondent's expulsion "will make it difficult or impossible for her to obtain employment in a medically related field or to enter another medical school." 538 F. 2d, at 1320.* Thus, petitioners' action has,

*As the Court of Appeals held, the record evidence supporting this conclusion distinguishes the present case from the cases on which the Court relies. Thus, in *Roth* the Court explicitly noted that the record did not support the District Court's "assumption" that nonretention would hurt Roth's prospects for future employment. 408 U. S., at 574 n. 13. Similarly, in *Bishop v. Wood*, 426 U. S. 341 (1976), there was "nothing involved except one job with one city." *Bishop v. Wood*, 377 F. Supp. 501, 504 (WDNC 1973). See also *Codd v. Velger*, — U. S. —,

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 11, 1977

Re: No. 76-695 - Board of Curators v. Horowitz

Dear Bill:

Please join me in your per curiam.

Sincerely,

Harry

Mr. Justice Rehnquist

cc: The Conference

April 12, 1977

No. 76-695 Board of Curators of the
University of Missouri v.
Horowitz

Dear Bill:

My vote at Conference was to grant this case and I am still inclined to think it should be argued and briefed if we are going to decide whether there is a liberty or property interest implicated when a pupil "flunks out" of a state college.

My tentative view is that no such interest exists. There can hardly be a right to graduate or to any opportunity to graduate not afforded all other students. But nevertheless I have reservations as to whether an issue of this general interest and importance should be decided without full briefing and argument.

I could dispose of this case on the narrower ground that even if we assume, arguendo, a liberty or property interest, Ms. Horowitz received all of the "process" that was due her. She had repeated notice of her deficiencies and abundant opportunities to correct them. She also was afforded a special examination by a board of seven, five of whom recommended that she not graduate.

I would not take the case, however, simply to consider the adequacy of the "process". If the Conference votes to grant, we should request the parties also to address the substantive issue.

Sincerely,

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

Ths P.C. never issued

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

From: Mr. Justice Rehnquist
 APR 5 1977
 Circulated: _____

1st DRAFT

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SUPREME COURT OF THE UNITED STATES

BOARD OF CURATORS OF THE UNIVERSITY OF
 MISSOURI ET AL. v. CHARLOTTE HOROWITZ

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
 COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 76-695. Decided April —, 1977

PER CURIAM.

Respondent, Charlotte Horowitz, was dismissed as a student at the University of Missouri/Kansas City Medical School during what would have been her final year of study. She brought the present action under 42 U. S. C. § 1983 against the school and certain of its officials, alleging that the dismissal was constitutionally required to be preceded by a hearing at which she would be allowed to appear and present evidence in her own behalf. After a full trial, the United States District Court for the Western District of Missouri entered judgment against respondent, explicitly finding that she was "afforded full procedural due process" by the Medical School. On appeal to the United States Court of Appeals for the Eighth Circuit, that judgment was reversed. 538 F. 2d 1317. The court held that the stigma attaching to her dismissal amounted to a deprivation of liberty, so that she was constitutionally entitled to prior notice and opportunity to be heard on the reasons for her dismissal. A motion for rehearing en banc was denied by a vote of five-to-three. Because we think that the Court of Appeals wrongly concluded that respondent had been deprived of any protected liberty interest, we vacate and remand for further proceedings.

The opinions of the Court of Appeals and the District Court indicate that there is little disagreement as to the factual background of this case. Respondent was admitted with advanced standing to the Medical School in the fall of 1971. Faculty dissatisfaction with her performance was called to her attention in the first year of her study, and she was advanced

Supreme Court of the United States

Washington, D. C. 20542

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 13, 1977

Re: 76-695 - Board of Curators of the University
of Missouri v. Horowitz

Dear Bill:

If this case is decided summarily, I propose to
file the enclosed brief concurring opinion.

Respectfully,



Mr. Justice Rehnquist

Copies to the Conference