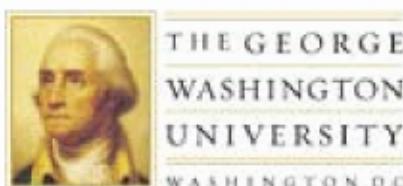


The Burger Court Opinion Writing Database

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

January 25, 1978

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

Dear Bill:

I join.

Regards,

WSB

Mr. Justice Rehnquist

Copies to Conference

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

CHAMBERS OF
JUSTICE WM.J. BRENNAN, JR.

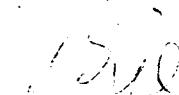
January 23, 1978

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

Dear Bill:

I share Thurgood's reservation and will await
his opinion.

Sincerely,



Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE W. J. BRENNAN, JR.

February 10, 1978

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

Dear Harry:

Please join me. I'd prefer not to underscore
"assuming" (I may feel there is a protected interest)
but I'll accept your decision.

Sincerely,

Bill

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 19, 1978

No. 76-695, Bd. of Curators Univ. of Mo.
v. Horowitz

Dear Bill,

I am glad to join your opinion for the
Court in this case.

Sincerely yours,

P.S.

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 23, 1978

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

Dear Bill,

I shall await Thurgood's concurrence.

Sincerely,



Mr. Justice Rehnquist

Copies to the Conference

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

From: Mr. Justice White

Circulated: 2/14/78

1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 76-695

Board of Curators of the University of Missouri et al.,
 Petitioners,
 v.
 Charlotte Horowitz. } On Writ of Certiorari to
 the United States Court
 of Appeals for the Eighth
 Circuit.

[February —, 1978]

MR. JUSTICE WHITE, concurring in part and concurring in the judgment.

I join Parts I, II-A, and III of the Court's opinion and concur in the judgment.

I agree with my Brother BLACKMUN that it is unnecessary to decide whether respondent had a constitutionally protected property interest or precisely what minimum procedures were required to divest her of that interest if it is assumed she had one. Whatever that minimum is, the procedures accorded her satisfied or exceeded that minimum.

The Court nevertheless assumes the existence of a protected interest, proceeds to classify respondent's expulsion as an "academic dismissal" and concludes that no hearing of any kind or any opportunity to respond is required in connection with such an action. Because I disagree with this conclusion, I feel constrained to say so and to concur only in the judgment.

As I see it, respondent was at the minimum entitled to be informed of the reasons for her dismissal and to an opportunity personally to state her side of the story. Of course, she had all this, and more. I also suspect that expelled graduate or college students normally have the opportunity to talk with their expellers and that this sort of minimum requirement will impose no burden that is not already being shouldered and discharged by responsible institutions.

or liberty

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

From: Mr. Justice White

Circulated: _____

Recirculated: 2/15

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-695

Board of Curators of the University of Missouri et al.,
 Petitioners,
 v.
 Charlotte Horowitz.

On Writ of Certiorari to
 the United States Court
 of Appeals for the Eighth
 Circuit.

[February —, 1978]

MR. JUSTICE WHITE, concurring in part and concurring in the judgment.

I join Parts I, II-A, and III of the Court's opinion and concur in the judgment.

I agree with my Brother BLACKMUN that it is unnecessary to decide whether respondent had a constitutionally protected property or liberty interest or precisely what minimum procedures were required to divest her of that interest if it is assumed she had one. Whatever that minimum is, the procedures accorded her satisfied or exceeded that minimum.

The Court nevertheless assumes the existence of a protected interest, proceeds to classify respondent's expulsion as an "academic dismissal" and concludes that no hearing of any kind or any opportunity to respond is required in connection with such an action. Because I disagree with this conclusion, I feel constrained to say so and to concur only in the judgment.

As I see it, assuming a protected interest, respondent was at the minimum entitled to be informed of the reasons for her dismissal and to an opportunity personally to state her side of the story. Of course, she had all this, and more. I also suspect that expelled graduate or college students normally have the opportunity to talk with their expellers and that this sort of minimum requirement will impose no burden that is not already being shouldered and discharged by responsible institutions.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 20, 1978

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

Dear Bill,

While I agree with the result reached in your opinion, I believe that the opinion sweeps too broadly. By any standard, Ms. Horowitz received adequate process. Hence we need not decide here whether it is appropriate (or even possible) to distinguish between the disciplinary and the academic contexts and to accord less due process protection in the latter context.

I plan to concur in the judgment and in due course will circulate an opinion along the above lines.

Sincerely,

T.M.

Mr. Justice Rehnquist

cc: The Conference

✓
— P. 7

10 FEB 1978

Recirculation

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-695

Board of Curators of the University of Missouri et al.,
Petitioners,
v.
Charlotte Horowitz. } On Writ of Certiorari to
the United States Court
of Appeals for the Eighth
Circuit.

[February —, 1978]

MR. JUSTICE MARSHALL, concurring in part and dissenting in part.

I agree with the Court that, “[a]ssuming the existence of a liberty or property interest, respondent has been awarded at least as much due process as the Fourteenth Amendment requires.” *Ante*, at 6. I cannot join the Court’s opinion, however, because it contains dictum suggesting that respondent was entitled to even less procedural protection than she received. I also differ from the Court in its assumption that characterization of the reasons for a dismissal as “academic” or “disciplinary” is relevant to resolution of the question of what procedures are required by the Due Process Clause. Finally, I disagree with the Court’s decision not to remand to the Court of Appeals for consideration of respondent’s substantive due process claim.

I

We held in *Goss v. Lopez*, 419 U. S. 565 (1975), that

“due process requires, in connection with a suspension of 10 days or less, that the student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story.” *Id.*, at 581.

P. 5

15 FEB 1978

Recirculation

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-695

Board of Curators of the University of Missouri et al.,
Petitioners,
v.
Charlotte Horowitz. } On Writ of Certiorari to
the United States Court
of Appeals for the Eighth
Circuit.

[February —, 1978]

MR. JUSTICE MARSHALL, concurring in part and dissenting in part.

I agree with the Court that, “[a]ssuming the existence of a liberty or property interest, respondent has been awarded at least as much due process as the Fourteenth Amendment requires.” *Ante*, at 6. I cannot join the Court’s opinion, however, because it contains dictum suggesting that respondent was entitled to even less procedural protection than she received. I also differ from the Court in its assumption that characterization of the reasons for a dismissal as “academic” or “disciplinary” is relevant to resolution of the question of what procedures are required by the Due Process Clause. Finally, I disagree with the Court’s decision not to remand to the Court of Appeals for consideration of respondent’s substantive due process claim.

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“due process requires, in connection with a suspension of 10 days or less, that the student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story.” *Id.*, at 581.

Pp. 7-9

23 FEB 1978

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-695

Board of Curators of the University of Missouri et al.,
Petitioners,
v.
Charlotte Horowitz. } On Writ of Certiorari to
the United States Court
of Appeals for the Eighth
Circuit.

[February —, 1978]

MR. JUSTICE MARSHALL, concurring in part and dissenting in part.

I agree with the Court that, “[a]ssuming the existence of a liberty or property interest, respondent has been awarded at least as much due process as the Fourteenth Amendment requires.” *Ante*, at 6. I cannot join the Court’s opinion, however, because it contains dictum suggesting that respondent was entitled to even less procedural protection than she received. I also differ from the Court in its assumption that characterization of the reasons for a dismissal as “academic” or “disciplinary” is relevant to resolution of the question of what procedures are required by the Due Process Clause. Finally, I disagree with the Court’s decision not to remand to the Court of Appeals for consideration of respondent’s substantive due process claim.

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We held in *Goss v. Lopez*, 419 U. S. 565 (1975), that

“due process requires, in connection with a suspension of 10 days or less, that the student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story.” *Id.*, at 581.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 24, 1978

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

MEMORANDUM TO THE CONFERENCE

Lewis' circulation of this morning necessitates the following minor addition to my opinion in this case, which is to issue Wednesday:

Page 9, end of footnote 18 -- See pp. 4-6 supra.

This change has been sent to the printer.

J.M.
T.M.

CHAMBERS DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-695

Board of Curators of the University of Missouri et al.,
Petitioners,
v.
Charlotte Horowitz. } On Writ of Certiorari to
the United States Court
of Appeals for the Eighth
Circuit.

[February —, 1978]

MR. JUSTICE MARSHALL, concurring in part and dissenting in part.

I agree with the Court that, “[a]ssuming the existence of a liberty or property interest, respondent has been awarded at least as much due process as the Fourteenth Amendment requires.” *Ante*, at 6. I cannot join the Court’s opinion, however, because it contains dicta suggesting that respondent was entitled to even less procedural protection than she received. I also differ from the Court in its assumption that characterization of the reasons for a dismissal as “academic” or “disciplinary” is relevant to resolution of the question of what procedures are required by the Due Process Clause. Finally, I disagree with the Court’s decision not to remand to the Court of Appeals for consideration of respondent’s substantive due process claim.

I

We held in *Goss v. Lopez*, 419 U. S. 565 (1975), that

“due process requires, in connection with a suspension of 10 days or less, that the student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story.” *Id.*, at 581.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 30, 1978

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

Dear Bill:

For the moment, at least, I shall await Thurgood's concurrence.

Sincerely,



Mr. Justice Rehnquist

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

From: Mr. Justice Blackmun

Circulated: 2/9/28

Recirculated: _____

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

MR. JUSTICE BLACKMUN, concurring in part and dissenting in part.

The Court's opinion, and that of Mr. Justice Marshall, together demonstrate conclusively that, assuming the existence of a liberty or property interest, respondent received all the procedural process that was due her under the Fourteenth Amendment. That, for me, disposes of this appeal, and compels the reversal of the judgment of the Court of Appeals.

I find it unnecessary, therefore, to indulge in the arguments and counterarguments contained in the two opinions as to the extent or type of procedural protection that the Fourteenth

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: _____

Recirculated: 2/13/78

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-695

Board of Curators of the University of Missouri et al.,
Petitioners,
v.
Charlotte Horowitz. } On Writ of Certiorari to
the United States Court
of Appeals for the Eighth
Circuit.

[February —, 1978]

MR. JUSTICE BLACKMUN, with whom MR. JUSTICE BRENNAN joins, concurring in part and dissenting in part.

The Court's opinion, and that of MR. JUSTICE MARSHALL, together demonstrate conclusively that, assuming the existence of a liberty or property interest, respondent received all the procedural process that was due her under the Fourteenth Amendment. That, for me, disposes of this appeal, and compels the reversal of the judgment of the Court of Appeals.

I find it unnecessary, therefore, to indulge in the arguments and counterarguments contained in the two opinions as to the extent or type of procedural protection that the Fourteenth Amendment requires in the graduate school-dismissal situation. Similarly, I also find it unnecessary to choose between the arguments as to whether respondent's dismissal was for academic or disciplinary reasons (or, indeed, whether such a distinction is relevant). I do agree with MR. JUSTICE MARSHALL, however, that we should leave to the District Court and to the Court of Appeals in the first instance the resolution of respondent's substantive due process claim and of any other claim presented to, but not decided by, those courts.

Accordingly, I, too, would reverse the judgment of the Court of Appeals and remand the case for further proceedings.

✓
January 19, 1978

No. 76-695 Curators v. Horowitz

Dear Bill:

In taking a quick look at your opinion (which I will in all probability join), I wonder whether you have not elevated the type of "hearing" required by Goss?

As your footnote 2 states, all that Byron's opinion required was an "informal give and take" - which, as I pointed out in dissent, probably was less than the Ohio statute required or than was customarily afforded pupils.

As I suppose I also think that being "flunked out" of a graduate school is far more serious than being suspended for 24 hours, I would be inclined to accord a good deal more formality than a single exchange of viewpoints with an academic dean. I enclose some language that might be used as a substitute for several of the sentences on page 7. This is pretty rough, and if you accept the essence of it perhaps some other language changes would be necessary.

Sincerely,

Mr. Justice Rehnquist

lfp/ss

I ~~do~~ think your suggested language change makes a necessary and important point. I also think it calls for emphasis on the opinion of the repeated meetings Horowitz had with the Dean, to show that she in fact got more than a perfunctory Goss-type "hearing." Bob

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 26, 1978

No. 76-695 Board of Curators v. Horowitz

Dear Bill:

Please join me.

Sincerely,

Lewis

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

February 16, 1978

No. 76-695 Board of Curators v. Horowitz

Dear Bill:

Here is a proposed concurring opinion that I am thinking about circulating as a response, primarily, to Thurgood's opinion.

His view of the case is that respondent "was dismissed largely because of her conduct", and not because of academic shortcomings. This is wholly at variance with the facts as found by the District Court, but - absent a specific rebuttal - readers of our opinions (especially critics of the Court) may well accept Thurgood's conclusion.

I take it that up to now you have thought no response was necessary. I agree that a thoughtful reading of your opinion makes clear that the dismissal was academic. But it is not "head to head", or as fully documented, as the type of response to Thurgood that I have drafted.

If you wish to incorporate the essence of my draft into your opinion, I would be more than happy for you to do so. I would think, however, that it would require a good deal more revision than adding a footnote or two. What do you think?

Sincerely,

Mr. Justice Rehnquist

lfp/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: 21 FEB 1978

1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 76-695

Board of Curators of the University of Missouri et al.,
 Petitioners,
 v.
 Charlotte Horowitz. } On Writ of Certiorari to
 } the United States Court
 } of Appeals for the Eighth
 } Circuit.

[February —, 1978]

MR. JUSTICE POWELL, concurring.

I join the Court's opinion because I read it as upholding the District Court's view that respondent was dismissed for academic deficiencies rather than for unsatisfactory personal conduct, and that in these circumstances she was accorded due process.

In the numerous meetings and discussions respondent had with her teachers and advisers, see opinion of MR. JUSTICE MARSHALL, *post*, at 2-3, culminating in the special clinical examination administered by seven physicians, opinion of the Court, *ante*, at 3, respondent was warned of her clinical deficiencies and given every opportunity to demonstrate improvement or question the evaluations.¹ The primary focus

¹ As a safeguard against erroneous judgment, and at respondent's request (App. 36), the Medical School submitted the question of respondent's clinical competency to a panel of "seven experienced physicians." Panel members were requested "to provide a careful, detailed, and thorough assessment of [respondent's] abilities at this time." (App. 36). The Dean's letter to respondent of March 15, 1973, advised her quite specifically of the "general topic[s] in the curriculum about which we are asking [the panel] to evaluate your performance. . . ." (App. 37). Each member of the examining panel was requested to "evaluate the extent of [respondent's] mastery of relevant concepts, knowledge, skills and competency to function as a physician." (App. 37). The examinations by members of the panel were conducted separately. Two of the doctors recommended that re-

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 24, 1978

No. 76-695 Board of Curators v. Horowitz

MEMORANDUM TO THE CONFERENCE:

In view of Thurgood's circulation yesterday afternoon, I am adding the enclosed footnote to my concurring opinion.

I have delivered it to the printer this morning.

L.F.P.
L.F.P., Jr.

New footnote 5, end of runover paragraph, p.4:

MR. JUSTICE MARSHALL insists that calling this an academic judgment is an exercise in futility. Post, at 8 n.18. As the Court points out, however, the distinction between dismissals for academic deficiency and dismissal for misconduct may be decisive as to the process that is due. Ante, at 11. A decision relating to the misconduct of a student requires a factual determination whether the conduct took place or not. The accuracy of that determination can be safeguarded by the sorts of procedural protections traditionally imposed under the Due Process Clause. An academic judgment also involves this type of objectively determinable fact -- e.g., whether the student gave certain answers on an examination. But the critical decision requires a subjective, expert evaluation as to whether that performance satisfies some predetermined standard of academic competence. That standard, in turn, is set by a similarly expert judgment. These evaluations, which go far beyond questions of mere "conduct," are not susceptible to the same sorts of procedural safeguards that are appropriate to determining facts relating to misconduct. Thus, the conclusion that a particular dismissal is academic -- that it entails these expert evaluations -- is likely to have controlling significance in determining how much and what sort of process is due.

✓
 3/4

Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Rehnquist
 Mr. Justice Stevens

Stylistic Changes Throughout.

From: Mr. Justice Powell

Circulated: _____

Recirculated: 24 FEB 1978

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

—
 No. 76-695
 —

Board of Curators of the University of Missouri et al.,
 Petitioners,
 v.
 Charlotte Horowitz. } On Writ of Certiorari to
 } the United States Court
 } of Appeals for the Eighth
 } Circuit.

[February —, 1978]

MR. JUSTICE POWELL, concurring.

I join the Court's opinion because I read it as upholding the District Court's view that respondent was dismissed for academic deficiencies rather than for unsatisfactory personal conduct, and that in these circumstances she was accorded due process.

In the numerous meetings and discussions respondent had with her teachers and advisers, see opinion of MR. JUSTICE MARSHALL, *post*, at 2-3, culminating in the special clinical examination administered by seven physicians,¹ opinion of the Court, *ante*, at 3, respondent was warned of her clinical deficiencies and given every opportunity to demonstrate improvement or question the evaluations. The primary focus

¹ As a safeguard against erroneous judgment, and at respondent's request App. 36, the Medical School submitted the question of respondent's clinical competency to a panel of "seven experienced physicians." Panel members were requested "to provide a careful, detailed, and thorough assessment of [respondent's] abilities at this time." App. 36. The Dean's letter to respondent of March 15, 1973, advised her quite specifically of the "general topic[s] in the curriculum about which we are asking [the panel] to evaluate your performance. . ." App. 37. Each member of the examining panel was requested to "evaluate the extent of [respondent's] mastery of relevant concepts, knowledge, skills and competency to function as a physician." App. 37. The examinations by members of the panel were conducted separately. Two of the doctors recommended that re-

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

Circulated: JAN 19 1978

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-695

Board of Curators of the University of Missouri et al.,
 Petitioners,
 v.
 Charlotte Horowitz. } On Writ of Certiorari to
 the United States Court
 of Appeals for the Eighth
 Circuit.

[February —, 1978]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Respondent, a student at the University of Missouri-Kansas City Medical School, was dismissed by petitioner officials of the School during her final year of study for failure to meet academic standards. Respondent sued petitioners under 42 U. S. C. § 1983 in the United States District Court for the Western District of Missouri alleging, amongst other constitutional violations, that petitioners had not accorded her procedural due process prior to her dismissal. The District Court, after conducting a full trial, concluded that respondent had been afforded all of the rights guaranteed her by the Fourteenth Amendment to the United States Constitution and dismissed her complaint. The Court of Appeals for the Eighth Circuit reversed, 538 F. 2d 1317 (1976), and a petition for rehearing en banc was denied by a divided Court. We granted certiorari, 430 U. S. 964, to consider what procedures must be accorded to a student at a state educational institution whose dismissal may constitute a deprivation of "liberty" or "property" within the meaning of the Fourteenth Amendment. We reverse the judgment of the Court of Appeals.

Supreme Court of the United States
Washington, D. C. 20542

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 23, 1978

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

Dear Thurgood:

Thank you for your note of January 20th, indicating that you will circulate a separate opinion concurring on narrower grounds. In drafting the opinion, I felt we could not simply say as you say in shorthand form in your note that "by any standard, Ms. Horowitz received adequate process" without going into some detail as to the reasoning which led us to that conclusion. Thus my effort to discuss some of the facts and legal principles which I thought justified the result which we all agree should be reached.

Sincerely,



Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

✓
January 24, 1978

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

Dear Lewis:

I submitted your draft language in Rider A attached to your letter to me dated today verbatim to Potter and John, who had already joined the presently circulating draft. They have each said they have no objection to its substitution for the present text, and therefore I have sent to the printer a second draft in which your language will appear verbatim on page 7 as a substitute for the two sentences which presently begin "The Court of Appeals apparently concluded . . ." and end with the citation to Cafeteria Workers. The following sentence in the present draft, in order to accommodate your language, would then read:

"This difference calls for far less stringent procedural requirements in the case of an academic dismissal. 3/"

The footnote reference would be to existing footnote 3 on page 8 of the presently circulating draft.

Needless to say, I have done this on the assumption that with this proposed change you will join the revised draft.

W
Sincerely,

Biel

Mr. Justice Powell

Ap 7, 8 & 13

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

Circulated: _____

JAN 26 1978

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-695

Board of Curators of the University of Missouri et al.,
Petitioners,
v.
Charlotte Horowitz. } On Writ of Certiorari to
the United States Court
of Appeals for the Eighth
Circuit.

[February —, 1978]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Respondent, a student at the University of Missouri-Kansas City Medical School, was dismissed by petitioner officials of the School during her final year of study for failure to meet academic standards. Respondent sued petitioners under 42 U. S. C. § 1983 in the United States District Court for the Western District of Missouri alleging, amongst other constitutional violations, that petitioners had not accorded her procedural due process prior to her dismissal. The District Court, after conducting a full trial, concluded that respondent had been afforded all of the rights guaranteed her by the Fourteenth Amendment to the United States Constitution and dismissed her complaint. The Court of Appeals for the Eighth Circuit reversed, 538 F. 2d 1317 (1976), and a petition for rehearing en banc was denied by a divided Court. We granted certiorari, 430 U. S. 964, to consider what procedures must be accorded to a student at a state educational institution whose dismissal may constitute a deprivation of "liberty" or "property" within the meaning of the Fourteenth Amendment. We reverse the judgment of the Court of Appeals.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

*I talked to Bill
& advised I'd leave
my concurrence "as is".
b.f.p.*

February 17, 1978

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

Dear Lewis:

Thank you for your letter of February 16, attaching a proposed concurring opinion in the above case. I disagree with nothing contained in your concurrence, but as you say the full thrust of what you want to say could not be picked up by simply adding two or three footnotes to my present Court opinion.

This leaves me with the choice of substantially altering the structure of my present opinion, or having you join it as is but file the concurrence attached in your letter of February 16. For several reasons, I think I prefer the latter course. We have a five man majority, which I always regard as somewhat fragile, and one is never sure when substantial changes are made in such a Court opinion whether there might be a temptation on the part of some other member of the majority either to bolt or to suggest additions or changes of his own. In addition, by dealing less with Thurgood's detailed factual assertions than your concurrence does, I think we have in the Court opinion a good vehicle for putting some perspective on Goss v. Lopez, in which I joined your dissent, indicating that the necessity of a hearing is directed to the situation where there is a dispute about a factual occurrence.

The more the Court opinion responds to Thurgood's factual controversies, the more easy it becomes to distinguish in future cases, and the more easy it is for judges who might want to read it narrowly to limit the concept of "academic dismissal" as opposed to dismissal for conduct. I realize there is nothing in your concurrence that would expressly support such a limitation, but with one hundred odd new federal judges about to be appointed,

several dozen of them at the Court of Appeals level, I think we can be sure that they will be arguing in their conferences about the meaning of our cases just as we do. To the extent that the Court opinion gives the impression that minor factual variations are relevant to its basic point, I think it is a stronger opinion and less easy to distinguish for that reason.

None is
Because of this consideration, the only suggestion I would urge upon you in connection with the concurrence is that you omit the language from the first sentence "because I read it as upholding the District Court's view that respondent was dismissed for academic deficiencies". The Court opinion presently says that in so many words see e.g., page 11: "Under such circumstances, we decline to ignore the historic judgment of educators and thereby formalize the academic dismissal process by requiring a hearing." When a concurring opinion opens with the language "because I read it as . . ." it necessarily gives the intimation that there is some language in the Court's opinion or perhaps some part of its holding that the author of the separate concurrence does not agree with. I would rather try to meet any objections that you may have to my opinion squarely on those grounds, if they exist. But, as I say, reading your concurrence, I do not disagree with any part of it, and therefore I suspect you do not disagree with my opinion for the Court. If I am right in these assumptions, I think it would help the view of the Constitution which we both believe to be correct if you would simply break the first sentence of your draft concurrence into two sentences, with the first one reading "I join the Court's opinion.", and the second one beginning "Respondent was dismissed for academic deficiencies rather than for unsatisfactory personal conduct, etc." This would certainly preserve all your meaning, and yet avoid the implication that you feel it necessary to put your own gloss upon the Court's opinion. If I am wrong in this conclusion, and you do wish to put your own gloss on my opinion, obviously this suggestion will be less than satisfactory to you.

Should you wish to talk about this any more, I will be available at any time and place.

Sincerely,

Bir

Mr. Justice Powell

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 20, 1978

Re: 76-695 - Board of Curators v. Horowitz

Dear Bill:

Please join me.

Respectfully,



Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

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January 24, 1978

Re: 76-695 - Curators v. Horowitz

Dear Bill:

The change suggested by Lewis is fine with me.

Respectfully,

JH

Mr. Justice Rehnquist

Copies to Mr. Justice Stewart
Mr. Justice Powell