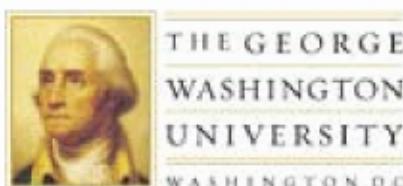


The Burger Court Opinion Writing Database

*Board of Regents of University of State of
New York v. Tomanio*

446 U.S. 478 (1980)

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 24, 1980

Re: 79-424 - Board of Regents of University of
New York v. Tomanio

Dear Bill:

I join.

Regards,

Mr. Justice Rehnquist

Copies to the Conference

W.B.
Planned

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
MAY 5 1980

Recirculated _____

Recirculated _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-424

Board of Regents of the University of the State of New York et al.,
Petitioners,
v.
Mary Tomanio.

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

[May —, 1980]

MR. JUSTICE BRENNAN, dissenting.

I can not agree with the Court that respondent's federal action is time barred. In my view, when applied to these facts the New York statute of limitations and tolling rules are "inconsistent with the Constitution and laws of the United States," and thus should not be "extended to . . . govern" respondent's suit. 42 U. S. C. § 1988.

While the precise content of New York's statute of limitations and tolling rules is not crucial to my analysis, I think it appropriate to note that the Court's conclusion that respondent's action would be time barred under state law is far from persuasive. The Court relies heavily upon the absence of any provision that expressly tolls the statute of limitations "during the period in which a litigant pursues a related, but independent cause of action," *ante*, at 7-8.¹ I would not attach controlling significance to the absence of particular statutory language. Nor would I conclude on the basis of that absence that New York had consciously determined "that the policies of repose underlying the statute of limitations should not be displaced by whatever advantages

¹ The court also makes reference to respondent's failure to "maintain that any provision of New York law operated to toll the statute of limitations." *Ante*, at 8, n. 8.

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 31, 1980

Re: 79-424 - Board of Regents v. Tomanio

Dear Bill:

I am glad to join your opinion for the
Court.

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

April 7, 1980

Re: No. 79-424 - Board of Regents v.
Tomanio

Dear Bill,

Please join me.

Sincerely yours,



Mr. Justice Rehnquist
Copies to the Conference
cmc

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 29, 1980

Re: No. 79-424 - Board of Regents of New York
v. Tomanio

MEMORANDUM TO THE CONFERENCE

I believe that this action is barred by the statute of limitations, and I would therefore reverse the decision below. I would not find res judicata in this case, and I believe that respondent had a constitutional right to a hearing of some sort on her waiver application.

T.M.

T.M.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 14, 1980

Re: No. 79-424 - Board of Regents v. Tomanio

Dear Bill:

Please join me in your dissent.

Sincerely,

JM
T.M.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 31, 1980

Re: No. 79-424 - Board of Regents v. Tomanio

Dear Bill:

I am in basic agreement with your proposed opinion but have the following two concerns:

1. One of the major rationales of Johnson v. Railway Express Agency, Inc. was that the plaintiff could bring a protective suit and probably obtain a stay pending resolution of other claims. I think this approach is equally applicable here, and I would be more comfortable if your opinion would say so specifically.
2. On page 13 near the bottom appears the phrase "together with its refusal to accord any estoppel by judgment effect to the earlier state proceeding." Could that phrase be omitted? My conference notes indicate that there were five of us who were of the opinion that res judicata was not applicable here. The phrase, I think, is inconsistent with that conclusion on the part of the five.

Sincerely,

H. B.

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 1, 1980

Re: No. 79-424 - Board of Regents v. Tomanio

Dear Bill:

Please join me in your circulation of 31 March.

Sincerely,

N.A.

Mr. Justice Rehnquist
cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 31, 1980

79-424 Board of Regents v. Tomanio

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquist

lfp/ss

cc: The Conference

BP 6+10

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: 28 MAR 1980

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-424

Board of Regents of the University of the State of New York, et al., Petitioners,
v.
Mary Tomanio.

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

[April —, 1980]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

We granted certiorari in this case to review a judgment of the Court of Appeals for the Second Circuit holding that petitioners, the Board of Regents of the University of the State of New York and the Commissioner of Education, were required by the Fourteenth Amendment to the United States Constitution, to afford a hearing to respondent, Mary Tamanio, before denying her request for a waiver of professional licensing examination requirements. In so doing, the Court of Appeals rejected petitioners' claims that both the statute of limitations and the doctrine of estoppel by judgment barred respondent's maintenance of an action under 42 U. S. C. § 1983 in the federal courts. We find it necessary to consider only the defense based on the statute of limitations, since the resolution of that issue is virtually foreordained in favor of petitioners by our prior cases when the indisputably lengthy series of events which ultimately brought this case here is described.

I

Respondent has practiced chiropractic medicine in the State of New York since 1958. Prior to 1963, the State did not require chiropractic practitioners to be licensed. But in that

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: _____

31 MAR 1981

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-424

Board of Regents of the University of the State of New York, et al., Petitioners,

Mary Tomanio.

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

[April —, 1980]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

We granted certiorari in this case to review a judgment of the Court of Appeals for the Second Circuit holding that petitioners, the Board of Regents of the University of the State of New York and the Commissioner of Education, were required by the Fourteenth Amendment to the United States Constitution, to afford a hearing to respondent, Mary Tomanio, before denying her request for a waiver of professional licensing examination requirements. In so doing, the Court of Appeals rejected petitioners' claims that both the statute of limitations and the doctrine of estoppel by judgment barred respondent's maintenance of an action under 42 U. S. C. § 1983 in the federal courts. We find it necessary to consider only the defense based on the statute of limitations, since the resolution of that issue is virtually foreordained in favor of petitioners by our prior cases when the indisputably lengthy series of events which ultimately brought this case here is described.

¶

Respondent has practiced chiropractic medicine in the State of New York since 1958. Prior to 1963, the State did not require chiropractic practitioners to be licensed. But in that

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 21, 1980

MEMORANDUM TO THE CONFERENCE

Re: Cases Held for No. 79-424 Board of Regents v.
Tomanio

McGuire v. Leigh, 79-1462 (CA 2). Respondents are former New York police officers who were indicted for an alleged conspiracy to accept bribes from gamblers in 1968, and were subsequently dismissed from the police force in 1970. After their dismissal, respondents commenced an Art. 78 proceeding in the New York state courts alleging that their dismissals were based on evidence obtained by means of illegal wiretaps. Respondents sought reinstatement to the force on the basis of both state and federal law. The Art. 78 proceeding and the criminal case against respondents proceeded through the New York state courts, and ultimately respondents' criminal convictions were vacated on the basis of a ruling that the wiretap evidence had been illegally obtained and admitted. Apparently for procedural reasons, however, the New York court did not grant respondents reinstatement in their civil action. Almost three years after the 1975 ruling of the New York courts denying respondents relief in their Art. 78 proceeding, respondents commenced a § 1983 action in federal district court in New York alleging that their dismissals violated the Constitution.

The district court dismissed the complaint finding that respondents had failed to comply with the applicable three-year New York statute of limitations. The CA reversed finding that in the circumstances of this case the policies of federalism would be served by tolling the statute of limitations since the criminal and state civil proceedings, although independent, were related. The CA relied in part on their prior decision in Tomanio. There is no question that respondents could have filed a § 1983 action in federal court after they were dismissed without

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 1, 1980

Re: 79-424 - Board of Regents of the University
of the State of New York v. Tomanio

Dear Bill:

As I indicated at conference, I am not persuaded that respondent's claim was barred by limitations. I also have some doubt about the wisdom of having this Court decide the New York tolling question as a matter of first impression. Therefore I am not prepared to join your circulation, and probably will prepare a short concurrence indicating that I would reverse on the ground that the respondent's constitutional rights were not violated by New York.

Respectfully,



Mr. Justice Rehnquist

Copies to the Conference

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

79-424 - Board of Regents v. Tomanio

From: Mr. Justice Stevens

Circulated: APR 17 '80

Recirculated: _____

MR. JUSTICE STEVENS, concurring in the result.

The federal claim asserted by respondent was that New York had deprived her of the right to practice her profession without the due process of law required by the Fourteenth Amendment to the United States Constitution.^{1/} The New York proceedings that ultimately determined that she had no such right as a matter of State law were not concluded until November 1975. Since her federal action was filed only seven months later, I believe it was timely, though for somewhat different reasons than those stated by the Court of Appeals.

Having relied on developments in the State court litigation to defend the merits of respondent's due process challenge,^{2/} I would

1/ "[N]or shall any State deprive any person of life, liberty, or property, without due process of law" U.S. Const., Amdt. 14, § 1.

2/ Petitioners rely on the papers in the New York action as having provided respondent with an adequate statement of the reasons for the denial of a waiver. See Brief for Petitioners 4.

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

Printed
 From: Mr. Justice Stevens

Circulated: _____

APR 18 '80

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-424

Board of Regents of the Uni-
 versity of the State of
 New York, et al.,
 Petitioners,
 v.
 Mary Tomanio.

On Writ of Certiorari to the
 United States Court of Ap-
 peals for the Second Circuit.

[April —, 1980]

MR. JUSTICE STEVENS, concurring in the result.

The federal claim asserted by respondent was that New York had deprived her of the right to practice her profession without the due process of law required by the Fourteenth Amendment to the United States Constitution.¹ The New York proceedings that ultimately determined that she had no such right as a matter of state law were not concluded until November 1975. Since her federal action was filed only seven months later, I believe it was timely, though for somewhat different reasons than those stated by the Court of Appeals.

Having relied on developments in the state court litigation to defend the merits of respondent's due process challenge,² I would not permit the State simultaneously to contend that all aspects of the federal controversy had crystallized before respondent sought review in the state court system. Cf. *Bonner v. Coughlin*, 517 F. 2d 1311, 1319 (CA7 1975), modified, 545 F. 2d 565 (CA7 1976) (en banc), cert. denied, 435 U. S. 932. As the Court notes, *ante*, at 12, a litigant is not

¹ "[N]or shall any State deprive any person of life, liberty, or property, without due process of law. . . ." U. S. Const., Amdt. 14, § 1.

² Petitioners rely on the papers in the New York action as having provided respondent with an adequate statement of the reasons for the denial of a waiver. See Brief for Petitioners 4.