

# The Burger Court Opinion Writing Database

## *Chardon v. Fumero Soto*

462 U.S. 650 (1983)

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

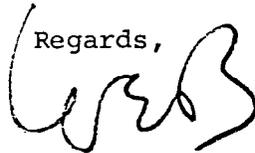
April 1, 1983

Re: 82-271 - Chardon v. Soto

MEMORANDUM TO THE CONFERENCE:

My memo to the Conference when I was absent was that I had a  
"leaning to reverse." On further consideration, I vote to affirm.  
What is important is to settle the rule.

Regards,



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

CHAMBERS OF  
THE CHIEF JUSTICE

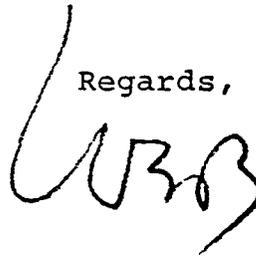
June 14, 1983

Re: No. 82-271, Chardon v. Soto

Dear John:

I join.

Regards,

A handwritten signature in dark ink, appearing to be 'J. Stevens', written over the typed word 'Regards,'.

Justice Stevens

Copies to the Conference

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

May 25, 1983

Re: No. 82-271

Chardon, et al.  
v. Juan Fumero Soto, et al.

Dear John,

I agree.

Sincerely,



Justice Stevens

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 27, 1983



Re: 82-271 - Chardon v. Soto

Dear Bill,

Confirming our telephone conversation, I am still to reverse and am glad you will write the dissent.

Sincerely yours,

A handwritten signature, likely of Justice Rehnquist, is written in cursive below the closing.

Justice Rehnquist

cc: Justice Powell

cpm

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 9, 1983

Re: 82-271 - Chardon v. Soto

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Dear Bill,

Please join me in your dissent.

Sincerely yours,



Justice Rehnquist

cc: The Conference

cpm

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 1, 1983

Re: No. 82-271-Chardon v. Soto

Dear John:

Please join me.

Sincerely,

*JM.*

T.M.

Justice Stevens

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 27, 1983

Re: No. 82-271 - Chardon v. Soto

Dear John:

I, of course, am with you in the result in this case, and I hope to be able to join your opinion. I have one minor problem. I think it clear from American Pipe and Crown Cork that the American Pipe tolling rule is derived from Rule 23 and applies to all class actions. It rests on the perception that class actions will not work if the period of limitations were not tolled. It seems to me that your opinion suggests that American Pipe might not be a federal rule and might not apply to all class actions. See page 8, first full sentence, and page 10's full paragraph.

Would you consider deleting the sentence on page 8 and, on page 10's full paragraph, replace the third sentence and the beginning of the fourth sentence with something like the following:

"In a §1983 action, however, Congress specifically has directed the courts, in the absence of controlling federal law, to apply state statutes of limitations and state tolling rules unless they are "inconsistent with the Constitution and laws of the United States," §1988. American Pipe does not answer the question whether, in a §1983 case in which the filing of a class action has tolled the statute of limitations ...."

Would you also consider replacing the words "as much" in the sixth sentence of that paragraph with "adequate"?

If you can do this, I shall be glad to join the opinion.

Incidentally, something is in error in the third line on page 2. June 17, 1977 was not a Saturday.

Sincerely,



Justice Stevens

cc: The Conference

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HAB

May 31, 1983

Re: No. 82-271 - Chardon v. Soto

Dear John:

What you propose in your letter of May 27 is quite all right with me.

Sincerely,

HAB

Justice Stevens

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 1, 1983

Re: No. 82-271 - Chardon v. Soto

Dear John:

Please join me.

Sincerely,



Justice Stevens

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 31, 1983

82-271 Chardon v. Soto

Dear John:

You have written a persuasive opinion, and I do not foreclose entirely the possibility of joining you.

I voted the "other way" at Conference, and therefore will await Bill Rehnquist's dissent

Sincerely,



Justice Stevens

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 8, 1983

82-271 Chardon v. Soto

Dear Bill:

Please join me in your dissenting opinion.

Sincerely,



Justice Rehnquist

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 27, 1983

Re: No. 82-271 Chardon v. Soto

Dear John:

In due course I will circulate a dissent.

Sincerely,



Justice Stevens

cc: The Conference

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Stevens  
Justice O'Connor

From: **Justice Rehnquist**

Circulated: JUN 7 1983

Recirculated: \_\_\_\_\_

P. 2

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-271

CARLOS CHARDON, ETC., ET AL., PETITIONERS *v.*  
JUAN FUMERO SOTO ET AL.

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

June —, 1983]

JUSTICE REHNQUIST, dissenting.

Section 1988 embodies a Congressional determination that the laws of the several states provide the most suitable procedural and remedial rules for application in actions brought under the federal civil rights laws. In the words of the statute, "in all cases [brought under the federal civil rights laws] where [federal laws] are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held . . . shall be extended to and govern the said courts in the trial and disposition of the cause. . . ."

We frequently have recognized "the generally interstitial character of federal law," *Richards v. United States*, 369 U. S. 1, 7 (1962). Because of this, federal courts frequently must look to "the common law, as modified and changed by the constitution and statutes of the State wherein the court" is situated. If, however, there is federal law "adapted to the object" of the civil rights laws, § 1988 commands that federal courts apply that law in § 1983 actions.

The question in this case is whether there is any federal rule of law applicable to the tolling of limitations periods during the pendency of a class action brought under Federal

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice O'Connor

From: Justice Stevens

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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-271

CARLOS CHARDON, ETC., ET AL., PETITIONERS *v.*  
JUAN FUMERO SOTO ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FIRST CIRCUIT.

[May —, 1983]

JUSTICE STEVENS delivered the opinion of the Court.

Petitioners, Puerto Rican educational officials, demoted respondents from nontenured supervisory positions to teaching or lower-level administrative posts in the public school system because of respondents' political affiliations. Shortly before Puerto Rico's one-year statute of limitations would have expired, a class action was filed against petitioners on respondents' behalf under 42 U. S. C. § 1983. Subsequently class certification was denied because the class was not sufficiently numerous. The parties agree that the statute of limitations was tolled during the pendency of the § 1983 class action, but they disagree as to the effect of the tolling.<sup>1</sup> Did the one-year period begin to run anew when class certification was denied, or was it merely suspended during the pen-

<sup>1</sup>This opinion uses the word "tolling" to mean that, during the relevant period, the statute of limitations ceases to run. "Tolling effect" refers to the method of calculating the amount of time available to file suit after tolling has ended. The statute of limitations might merely be suspended; if so, the plaintiff must file within the amount of time left in the limitations period. If the limitations period is renewed, then the plaintiff has the benefit of a new period as long as the original. It is also possible to establish a fixed period such as six months or one year during which the plaintiff may file suit, without regard to the length of the original limitations period or the amount of time left when tolling began.

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 27, 1983

Re: 82-271 - Chardon v. Soto

Dear Harry:

Thanks for your suggestions. I agree that the first two suggestions are not only appropriate, but really must be made in order to make the opinion in this case completely consistent with our holding in Crown Cork. I also agree that I should not state that June 17, 1977 was a Saturday, and will make an appropriate correction.

I understand the concern that gives rise to your suggestion that, on page 10, the words "as much" be changed to read "adequate." I recognize that the draft does not make clear what period would be available after denial of class certification in a State that lacks a savings statute applicable to a party whose action is dismissed for reasons unrelated to the merits. It seems to me that, consistent with Tomanio, this question must be answered by reference to state law. I propose the following: "After class certification is denied, that federal interest is vindicated as long as each unnamed plaintiff is given as much time to intervene or file a separate action as he would have under a state savings statute applicable to a party whose action has been dismissed for reasons unrelated to the merits, or, in the absence of such a statute, the time provided under the most closely analogous state tolling statute."

Respectfully,



Justice Blackmun

Copies to the Conference

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice O'Connor

From: Justice Stevens

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12nd  
~~1st~~ DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-271

CARLOS CHARDON, ETC., ET AL., PETITIONERS *v.*  
JUAN FUMERO SOTO ET AL.

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

June —, 1983]

JUSTICE STEVENS delivered the opinion of the Court.

Petitioners, Puerto Rican educational officials, demoted respondents from nontenured supervisory positions to teaching or lower-level administrative posts in the public school system because of respondents' political affiliations. Shortly before Puerto Rico's one-year statute of limitations would have expired, a class action was filed against petitioners on respondents' behalf under 42 U. S. C. § 1983. Subsequently class certification was denied because the class was not sufficiently numerous. The parties agree that the statute of limitations was tolled during the pendency of the § 1983 class action, but they disagree as to the effect of the tolling.<sup>1</sup> Did the one-year period begin to run anew when class certification was denied, or was it merely suspended during the pen-

<sup>1</sup>This opinion uses the word "tolling" to mean that, during the relevant period, the statute of limitations ceases to run. "Tolling effect" refers to the method of calculating the amount of time available to file suit after tolling has ended. The statute of limitations might merely be suspended; if so, the plaintiff must file within the amount of time left in the limitations period. If the limitations period is renewed, then the plaintiff has the benefit of a new period as long as the original. It is also possible to establish a fixed period such as six months or one year during which the plaintiff may file suit, without regard to the length of the original limitations period or the amount of time left when tolling began.

*Stylistic Changes*  
*pp. 10-11*

To: The Chief Justice  
Justice Brennan  
Justice White  
✓ Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice O'Connor

From: **Justice Stevens**

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Recirculated: JAN 5 '83

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-271

**CARLOS CHARDON, ETC., ET AL., PETITIONERS v.  
JUAN FUMERO SOTO ET AL.**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FIRST CIRCUIT**

[June —, 1983]

JUSTICE STEVENS delivered the opinion of the Court.

Petitioners, Puerto Rican educational officials, demoted respondents from nontenured supervisory positions to teaching or lower-level administrative posts in the public school system because of respondents' political affiliations. Shortly before Puerto Rico's one-year statute of limitations would have expired, a class action was filed against petitioners on respondents' behalf under 42 U. S. C. § 1983. Subsequently class certification was denied because the class was not sufficiently numerous. The parties agree that the statute of limitations was tolled during the pendency of the § 1983 class action, but they disagree as to the effect of the tolling.<sup>1</sup> Did the one-year period begin to run anew when class certification was denied, or was it merely suspended during the pen-

<sup>1</sup>This opinion uses the word "tolling" to mean that, during the relevant period, the statute of limitations ceases to run. "Tolling effect" refers to the method of calculating the amount of time available to file suit after tolling has ended. The statute of limitations might merely be suspended; if so, the plaintiff must file within the amount of time left in the limitations period. If the limitations period is renewed, then the plaintiff has the benefit of a new period as long as the original. It is also possible to establish a fixed period such as six months or one year during which the plaintiff may file suit, without regard to the length of the original limitations period or the amount of time left when tolling began.

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice O'Connor

From: Justice Stevens

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

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Recirculated: JUN 17 '83

## SUPREME COURT OF THE UNITED STATES

No. 82-271

CARLOS CHARDON, ETC., ET AL., PETITIONERS v.  
JUAN FUMERO SOTO ET AL.

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

[June 20, 1983]

JUSTICE STEVENS delivered the opinion of the Court.

Petitioners, Puerto Rican educational officials, demoted respondents from nontenured supervisory positions to teaching or lower-level administrative posts in the public school system because of respondents' political affiliations. Shortly before Puerto Rico's one-year statute of limitations would have expired, a class action was filed against petitioners on respondents' behalf under 42 U. S. C. § 1983. Subsequently class certification was denied because the class was not sufficiently numerous. The parties agree that the statute of limitations was tolled during the pendency of the § 1983 class action, but they disagree as to the effect of the tolling.<sup>1</sup> Did the one-year period begin to run anew when class certification was denied, or was it merely suspended during the pen-

<sup>1</sup>This opinion uses the word "tolling" to mean that, during the relevant period, the statute of limitations ceases to run. "Tolling effect" refers to the method of calculating the amount of time available to file suit after tolling has ended. The statute of limitations might merely be suspended; if so, the plaintiff must file within the amount of time left in the limitations period. If the limitations period is renewed, then the plaintiff has the benefit of a new period as long as the original. It is also possible to establish a fixed period such as six months or one year during which the plaintiff may file suit, without regard to the length of the original limitations period or the amount of time left when tolling began.

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

June 22, 1983

MEMORANDUM TO THE CONFERENCE

Re: Case held for No. 82-271, Chardon v. Fumero Soto

No. 82-650, Pavlak v. Church

This is an action for damages under 42 U.S.C. §§ 1983, 1985(3) and 1986, and 18 U.S.C. § 2520. Petitioner's complaint alleges that respondents, various city officials and telephone company employees, engaged in illegal wiretapping and surveillance during March 1977. In April 1977, three other persons filed suit against respondents in District Court alleging illegal wiretapping and surveillance. At least one of these suits was a class action, in which petitioner was a member of the putative class. Class certification was denied for lack of numerosity in August 1979. Petitioner did not move to intervene, but filed this individual action on August 11, 1980. The relevant statute of limitations, under Idaho law, is three years.

The District Court granted summary judgment for respondents on the ground that the statute of limitations had run, and the Court of Appeals for the Ninth Circuit affirmed. It read American Pipe to apply only to class members who seek to intervene after denial of class certification, and not to those who file individual actions.

This case was held for No. 82-118, Crown, Cork & Seal v. Parker, and subsequently for Chardon. CA9's decision is inconsistent with Crown, Cork, which holds that, under American Pipe, the statute of limitations is tolled for class members such as petitioner who subsequently file individual actions. On remand in

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

June 13, 1983

No. 82-271 Chardon v. Soto

Dear John,

Please join me.

Sincerely,



Justice Stevens

Copies to the Conference