

The Burger Court Opinion Writing Database

Irving Independent School District v. Tatro

468 U.S. 883 (1984)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



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

From: **The Chief Justice**

Circulated: MAY 23 1984

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-558

IRVING INDEPENDENT SCHOOL DISTRICT,
PETITIONER *v.* HENRI TATRO, ET UX.,
INDIVIDUALLY AND AS NEXT FRIEND OF
AMBER TATRO, A MINOR

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

[May —, 1984]

CHIEF JUSTICE BURGER delivered the opinion of the
Court.

We granted certiorari to determine whether the Education of the Handicapped Act or the Rehabilitation Act of 1973 requires a school district to provide a handicapped child with clean intermittent catheterization during school hours.

I

Amber Tatro is an eight-year-old girl born with a defect known as spina bifida. As a result, she suffers from orthopedic and speech impairments and a neurogenic bladder, which prevents her from emptying her bladder voluntarily. Consequently, she must be catheterized every three or four hours to avoid injury to her kidneys. In accordance with accepted medical practice, clean intermittent catheterization (CIC), a procedure involving the insertion of a catheter into the urethra to drain the bladder, has been prescribed. The procedure is a simple one that may be performed in a few minutes by a layperson with less than an hour's training. Amber's parents, babysitter, and teenage brother are all qualified to administer CIC, and Amber soon will be able to perform this procedure herself.

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

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

84 MAY 25 12:14

CHAMBERS OF
THE CHIEF JUSTICE

Re: Irving Independent School District v. Tatro, No. 83-558

Dear John:

Your partial dissent prompts me to respond informally rather than in the Court's opinion.

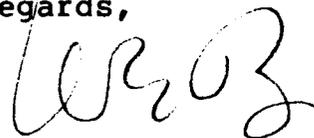
The Court of Appeals found petitioner liable under the Education of the Handicapped Act and the Rehabilitation Act. We granted certiorari to review both holdings. Question 3 in the petition for certiorari asked, inter alia, whether the Court of Appeals' finding of liability under the Rehabilitation Act conflicted with our holding in Southeastern Community College v. Davis, 442 U.S. 397 (1979). Contrary to your suggestion, there is no reason to think that this plain language contained an implicit qualification that the issue of liability under the Rehabilitation Act should not be reached if nothing but the \$27,000 attorney's fee award turned on the answer. The questions presented were drafted by petitioner, who surely intended no such qualification.

The petition makes this clear when it asserts that the District Court and the Court of Appeals violated Davis and two other cases in "determining that medical treatment is a related service and that failure to provide same violated both the EAHCA and the Rehabilitation Act and [in] awarding attorneys' fees under § 504." Pet. for Cert. 13 (emphasis added). Squarely presented with the question of petitioner's liability under the Rehabilitation Act as interpreted by Davis, we answer that question with reference to our holding in Smith v. Robinson, U.S. ____ (1984).

The Rehabilitation Act issue is also presented by question : in the certiorari petition in this case, which asks whether petitioner was liable to provide CIC under the Education of the Handicapped Act or the Rehabilitation Act. You believe that the question is not fairly read to imply the phrase "or both," but I think this is a grudging reading of the question presented. Petitioner's position all along has been that it is obliged to provide CIC under neither statute. For the reasons just stated, I am still persuaded that petitioner sought the Court to review its liability under the Rehabilitation Act (and consequent liability for attorney's fees) even if the Court found it liable to provide CIC under the Education of the Handicapped Act.

If this does not persuade you, I'll write it into the opinion.

Regards,

A handwritten signature in cursive script, appearing to read "WR03".

Justice Stevens
Copies to the Conference

pp. 11, 12, 13 and

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

'84 JUN -5 A9:42

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

From: The Chief Justice

Circulated: _____

Recirculated: JUN 04 1984

STYLISTIC CHANGES THROUGHOUT.

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-558

IRVING INDEPENDENT SCHOOL DISTRICT,
PETITIONER *v.* HENRI TATRO, ET UX.,
INDIVIDUALLY AND AS NEXT FRIEND OF
AMBER TATRO, A MINOR

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

[June —, 1984]

CHIEF JUSTICE BURGER delivered the opinion of the
Court.

We granted certiorari to determine whether the Education
of the Handicapped Act or the Rehabilitation Act of 1973 re-
quires a school district to provide a handicapped child with
clean intermittent catheterization during school hours.

I

Amber Tatro is an eight-year-old girl born with a defect
known as spina bifida. As a result, she suffers from orthope-
dic and speech impairments and a neurogenic bladder, which
prevents her from emptying her bladder voluntarily. Con-
sequently, she must be catheterized every three or four
hours to avoid injury to her kidneys. In accordance with ac-
cepted medical practice, clean intermittent catheterization
(CIC), a procedure involving the insertion of a catheter into
the urethra to drain the bladder, has been prescribed. The
procedure is a simple one that may be performed in a few
minutes by a layperson with less than an hour's training.
Amber's parents, babysitter, and teenage brother are all
qualified to administer CIC, and Amber soon will be able to
perform this procedure herself.

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

CHAMBERS OF
THE CHIEF JUSTICE

June 15, 1984

Re: 83-558 - Irving Independent School District v. Tatro

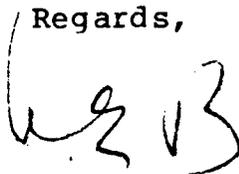
Dear Harry:

Thanks for your note of June 13.

Note 14 has served its purpose for some who have joined and I am glad to delete it. I don't like long notes but it had a purpose.

I will hold off on Smith v. Robinson and maybe this case will not be ready until Smith is ready; I will focus on that case.

Regards,



Justice Blackmun

Copies to the Conference

STYLISTIC CHANGES THROUGHOUT

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

'84 JUN 18 P1:08

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

From: The Chief Justice

Circulated: _____

Recirculated: JUN 18 1984

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-558

IRVING INDEPENDENT SCHOOL DISTRICT,
PETITIONER *v.* HENRI TATRO, ET UX.,
INDIVIDUALLY AND AS NEXT FRIEND OF
AMBER TATRO, A MINOR

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

[June —, 1984]

CHIEF JUSTICE BURGER delivered the opinion of the
Court.

We granted certiorari to determine whether the Education
of the Handicapped Act or the Rehabilitation Act of 1973 re-
quires a school district to provide a handicapped child with
clean intermittent catheterization during school hours.

I

Amber Tatro is an 8-year-old girl born with a defect known
as spina bifida. As a result, she suffers from orthopedic and
speech impairments and a neurogenic bladder, which pre-
vents her from emptying her bladder voluntarily. Conse-
quently, she must be catheterized every three or four hours
to avoid injury to her kidneys. In accordance with accepted
medical practice, clean intermittent catheterization (CIC), a
procedure involving the insertion of a catheter into the ure-
thra to drain the bladder, has been prescribed. The proce-
dure is a simple one that may be performed in a few minutes
by a layperson with less than an hour's training. Amber's
parents, babysitter, and teenage brother are all qualified to
administer CIC, and Amber soon will be able to perform this
procedure herself.

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HAB

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

CHAMBERS OF
THE CHIEF JUSTICE

June 26, 1984

MEMORANDUM TO THE CONFERENCE:

Cases held for Tatro v. Irving Indep. School Dist.,
No. 83-558

Two cases were held for Tatro: McDaniel v. Georgia Assn. of Retarded Citizens, No. 83-1431; and Board of Education of Savannah v. Georgia Assn. of Retarded Citizens, No. 83-1451. The class plaintiffs in the action underlying these petitions, respondents here, are mentally-retarded school-age children requiring more than 180 days of school and their parents. The defendants, petitioners in Nos. 83-1431 and 83-1451, are state and local school officials respectively.

The DC found that petitioners had a flat policy of refusing to provide mentally retarded children with schooling beyond the normal 180-day school year. It also found that some of these children regressed significantly during the three-month break. It entered a declaratory judgment that this policy violated both the Education of the Handicapped Act and §504 of the Rehabilitation Act. It also issued an injunction requiring petitioners at least to consider whether the needs of particular children might require schooling in excess of 180 days. The CALL affirmed.

Nothing decided in Tatro casts doubt on the holding that the Education of the Handicapped Act requires school districts to consider providing extra days of schooling as part of a handicapped child's "appropriate" education. A GVR for Tatro therefore is not warranted. I also do not think the issue is certworthy in its own right. The holding accords with cases decided in other circuits, and I see no pressing reason to take another Education of the Handicapped Act case so soon after Tatro.

Petitioners also argue, however, that relief under the Rehabilitation Act was inappropriate because the Education of the Handicapped Act is the exclusive remedy for suits of this nature. The Court will so hold in Smith v. Robinson, No. 82-2120. Of course, even if the CALL reversed the Rehabilitation Act holding on remand, the scope of the injunction would not be changed, because the Education of the Handicapped Act is alone sufficient to support the injunction. But reversal of the DC's

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Washington, D. C. 20543

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JUSTICE MARSHALL

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

84 MAY 25 P1:23

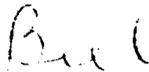
May 25, 1984

Re: Irving Independent School District v. Tatro,
No. 83-558

Dear Chief:

Please join me in Parts I & II of your opinion. I will await the writings in Smith v. Robinson before deciding what action to take with regard to Part III.

Sincerely,



WJB, Jr.

The Chief Justice

Copies to the Conference

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

Irving Independent School District v. Tatro

No. 83-558

From: Justice Brennan

Circulated: 6/27

JUSTICE BRENNAN, concurring in part and dissenting in part. Reinsulated: _____

I join all but Part III of the Court's opinion. For the reasons stated in my dissenting opinion in Smith v. Robinson, ante, at ___, I would affirm the award of attorney's fees to the respondents.

WJTB
Please see me in your conference
and agree
MM

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SUPREME COURT U.S.
JUSTICE MARSHALL

'84 JUN 28 A9:37

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES:

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SUPREME COURT, U.S.
JUSTICE MARSHALL

'84 JUN 29 P2:50

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

From: Justice Brennan

Circulated: _____

Recirculated: JUN 29 1984

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-558

IRVING INDEPENDENT SCHOOL DISTRICT,
PETITIONER *v.* HENRI TATRO, ET UX.,
INDIVIDUALLY AND AS NEXT FRIEND OF
AMBER TATRO, A MINOR

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

[July —, 1984]

JUSTICE BRENNAN, with whom JUSTICE MARSHALL and
JUSTICE STEVENS join, concurring in part and dissenting in
part.

I join all but Part III of the Court's opinion. For the rea-
sons stated in my dissenting opinion in *Smith v. Robinson*,
ante, at —, I would affirm the award of attorney's fees to
the respondents.

Supreme Court of the United States

RECEIVED
Washington, D. C. 20543
SUPREME COURT, U.S.
JUSTICE MARSHALL

CHAMBERS OF
JUSTICE BYRON R. WHITE

24 JUN -5 11:13

June 5, 1984

Re: 83-558 - Irving Independent School
District v. Tatro

Dear Chief,

I join Parts I and II and will join
Part III if I join Harry in Smith v.
Robinson, which I expect to do.

Sincerely yours,



The Chief Justice
Copies to the Conference
cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

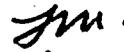
June 28, 1984

Re: No. 83-558-Irving Independent School
District v. Tatro

Dear Bill:

Please join me in your concurring in part
opinion.

Sincerely,


T.M.

Justice Brennan

cc: The Conference

Supreme Court of the United States
Washington, D.C. 20540
RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 13, 1984

84 JUN 13 AM 1:38

Re: No. 83-558, Irving Independent School Dist. v. Tatro

Dear Chief:

I can give you a Charlie Whittaker "graveyard dissent" and join your opinion. I would be a lot more comfortable, however, if footnote 14 were just omitted. I say this because I think it is unnecessary and serves to detract from your opinion.

You cite Smith v. Robinson on pages 11 and 13, so this case will have to be held for that one. You have not voted in Smith v. Robinson, however.

Sincerely,

H.A.B.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 24, 1984

83-558 Irving Independent School District v. Tatro

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

lfp/ss

cc: The Conference

MAY 24 1984

RECEIVED
MAY 24 1984

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 24, 1984

Re: No. 83-558 Irving Independent School District v. Tatro

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

cc: The Conference

84 MAY 24 6:31 P

70281
20543

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 19, 1984

Re: 83-558 - Irving Independent School
District v. Tatro

Dear Chief:

Prior to conference I did not focus on the attorneys' fees question. After reviewing the certiorari petition, I have concluded that the fee issue is as not really here. The questions presented in the cert. petition are:

"1. Whether 'medical treatment' such as clean intermitten chaterization is a 'related service' required under the Education for All Handicapped Children Act and, therefore, required to be provided to the minor respondent.

"2. Is a public school required to provide and perform the medical treatment prescribed by the physician of a handicapped child by the Education for All Handicapped Children Act or the Rehabilitation Act of 1973?

"3. Whether the Fifth Circuit Court of Appeals misconstrued the opinions of this Court in Southeastern Community College v. Davis, Pennhurst State School & Hospital v. Halderman, and State Board of Education v. Rowley."

I do not read any of these questions as putting at issue anything but the injunction requiring the school district to provide CIC. I do not think that they fairly present the question whether the school district is liable for attorneys' fees under the Rehabilitation Act. Since we have answered the first question presented (and the EAHCA aspect of the second question,

to the extent it differs from the first) affirmatively, that would seem to be sufficient to support entry of the injunction without reliance on the Rehabilitation Act.

Since I read the questions presented in the petition to place only the injunction requiring provision of CIC to Amber at issue, my vote is to affirm under the EAHCA only, and not to reach any question under the Rehabilitation Act.

Respectfully,

A handwritten signature in dark ink, appearing to be 'John', written in a cursive style.

The Chief Justice

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

Circulated: MAY 24 1984

Recirculated: _____

83-558 - Irving Independent School District v. Henri Tatro, et ux., individually and as next friend of Amber Tatro, a minor

JUSTICE STEVENS, concurring in part and dissenting in part.

The petition for certiorari did not challenge the award of attorney's fees. It contested only the award of relief on the merits to respondents.¹ Inasmuch as the judgment on the merits

¹The "Statement of the Questions Presented" in the petition for certiorari reads as follows:

"1. Whether 'medical treatment' such as clean intermittent catheterization is a 'related service' required under the Education for All Handicapped Children Act and, therefore, required to be provided to the minor respondent.

"2. Is a public school required to provide and perform the medical treatment prescribed by the physician of a handicapped child by the Education of All Handicapped Children Act or the Rehabilitation Act of 1973?

"3. Whether the Fifth Circuit Court of Appeals misconstrued the opinions of this Court in Southeastern Community College, Pennhurst State School & Hospital v. Halderman, and State Board of Education v. Rowley."
Pet. for Cert. i.

The Court's opinion indicates that the Court of Appeals answered none of these questions incorrectly.

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JUSTICE MARSHALL

84 MAY 25 AM 34

To: The Chief Justice
Justice Brennan
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Justice Powell
Justice Rehnquist
Justice O'Connor

From: Justice Stevens

Circulated: _____

Recirculated: _____ MAY 25 19

Printed
1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-558

IRVING INDEPENDENT SCHOOL DISTRICT,
PETITIONER *v.* HENRI TATRO, ET UX.,
INDIVIDUALLY AND AS NEXT FRIEND OF
AMBER TATRO, A MINOR

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

[May —, 1984]

JUSTICE STEVENS, concurring in part and dissenting in part.

The petition for certiorari did not challenge the award of attorney's fees. It contested only the award of relief on the merits to respondents. Inasmuch as the judgment on the merits is supported by the Court's interpretation of the Education of the Handicapped Act, there is no need to express any opinion concerning the Rehabilitation Act of 1973.*

*The "Statement of the Questions Presented" in the petition for certiorari reads as follows:

"1. Whether 'medical treatment' such as clean intermittent catheterization is a 'related service' required under the Education for All Handicapped Children Act and, therefore, required to be provided to the minor respondent.

"2. Is a public school required to provide and perform the medical treatment prescribed by the physician of a handicapped child by the Education of All Handicapped Children Act or the Rehabilitation Act of 1973?

"3. Whether the Fifth Circuit Court of Appeals misconstrued the opinions of this Court in *Southeastern Community College, Pennhurst State School & Hospital v. Halderman*, and *State Board of Education v. Rowley*." Pet. for Cert. i.

Because the Court does not hold that the Court of Appeals answered any of these questions incorrectly, it is not justified in reversing in part the judgment of that court.

Supreme Court of the United States

Washington, D. C. 20540

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

84 MAY 25 P2:18

May 25, 1984

Re: 83-558 - Irving Independent School
District v. Tatro

Dear Chief:

Thank you for your letter responding to my concern that you have written the opinion more broadly than necessary. Let me first digress by recalling the conversation that you, Lewis, and I had at lunch yesterday concerning the Grove City case. You will recall that I wrote separately in that case taking the position that the case could be decided in favor of the Government without delivering an advisory opinion on the controversial issue in the case. The Court nevertheless went forward and rendered an opinion which has invited a congressional reaction that will increase the business of judges. I really think Grove City is a good example of a "self-inflicted wound."

I do not suggest that the same potential for an excessive legislative reaction inheres in this case. I do believe, however, that by going farther than necessary to make sure that this handicapped child's family must pay its own attorney's fees very likely will produce a legislative reaction that will include an attorney's fee provision in the EAHCA as well as the Rehabilitation Act. Your letter puts forward a legitimate justification for the position you take, but it still does not persuade me that it is necessary to reach out to impose the fee obligation on the handicapped family. In other words, I am still persuaded that we should adhere to the practice, whenever it is legitimate to do so, to write our opinions as narrowly as possible.

I appreciate your taking the time to write to me.

Respectfully,



The Chief Justice

Copies to the Conference

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

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

84 JUN -7 A9:30

From: Justice Stevens

Circulated: _____

Recirculated: JUN 6 1984

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-558

IRVING INDEPENDENT SCHOOL DISTRICT,
PETITIONER *v.* HENRI TATRO, ET UX.,
INDIVIDUALLY AND AS NEXT FRIEND OF
AMBER TATRO, A MINOR

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

[June —, 1984]

JUSTICE STEVENS, concurring in part and dissenting in part.

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"3. Whether the Fifth Circuit Court of Appeals misconstrued the opinions of this Court in *Southeastern Community College, Pennhurst State School & Hospital v. Halderman*, and *State Board of Education v. Rowley*." Pet. for Cert. i.

Because the Court does not hold that the Court of Appeals answered any of these questions incorrectly, it is not justified in reversing in part the judgment of that court. Only the most perceptive reader of the questions presented would realize that they were intended to convey the complex

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

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

84 JUN -4 AM 1:29

June 4, 1984

Re: No. 83-558 Irving Independent School
District v. Tatro

Dear Chief,

Please join me.

Sincerely,



The Chief Justice

Copies to the Conference