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No. 19-166

In the Supreme Court of the United States

Matthew J. Rosenwasser, Petitioner

v.

Fordham University,
Joseph McShane, President and
John Carroll, Head of Security, Respondents

**ON PETITION FOR REHEARING AND
REMANDING
TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT**

PETITION FOR A REHEARING

Matthew J. Rosenwasser <i>Pro Se</i> PO Box 895 New York, NY 10163 -0895	Margaret T. Ball, Esq. <i>General Counsel</i> Fordham University Rose Hill 441 East Fordham Rd Cunniffe House Room 111 Bronx, NY 10458
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SUPREME COURT OF THE UNITED STATES

Question Presented for Review

When a federally-funded university consistently, deliberately and intentionally denies a Title IX investigation, the Statute of Limitations for Title IX is tolled while due process litigation is ongoing in the Courts. In addition, an Article 78 action is tolled when it is not ripe for judicial review.

List of Parties to Proceeding

1. Fordham University
2. John Carroll, Head of Security, Fordham University
3. Joseph McShane, President, Fordham University
4. Matthew J. Rosenwasser, Pro Se Appellant

Corporate Disclosure Statement

1. John Carroll, Head of Security, Fordham University: employed by Fordham University
2. Joseph McShane, President, Fordham University; employed by Fordham University
4. Matthew J. Rosenwasser, Pro Se Appellant; no ownership stake in Fordham University; not employed by Fordham University

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Cases

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Statutes

20 U.S.C. § 1681 (Title IX)	Pages 2-3, 5
NYS CPLR Article 78.....	Pages 3-5

Citations of Opinions

1. Southern District of NY; Case 17-cv-5191
2. 2nd Circuit Court of Appeals; Case 18-905

Statement of the Basis for the Jurisdiction

The Judgement of the Court of Appeals was entered on May 7, 2019. A petition for rehearing was denied on June 19, 2019. This Court's jurisdiction rests on 20 U.S.C. § 1681 (Title IX) and NYS CPLR Article 78.

REASONS FOR GRANTING THE REHEARING

If possible, I was hoping that the Supreme Court would remand case No 19-166 (Rosenwasser vs. Fordham et al) back to the 2nd Circuit for further review.

In *Smith vs. American President Lines* ((571 F.2d 102, 109 (2d Cir. 1978)), there are 3 tests that are outlined for a case to toll the Statue of Limitations. It should be noted that only 1 of the 3 tests need to be passed. The 3 tests are:

1. Defendant actively mislead plaintiff with regards to the cause of action
2. Plaintiff has been prevented from asserting his rights
3. Plaintiff has, in a timely manner, asserted his rights mistakenly in the wrong forum

In Case 19-166, ALL THREE of the tests have been passed as follows:

1. Defendant actively mislead plaintiff with regards to the cause of action: Fordham deliberately withheld the fact that the false charges filed against me fell under the Federal Law known as Title IX. As such, when they categorically refused to do an investigation after over 10 requests were made, the case filed in New York State Supreme Court was not filed under Title IX.

2. Plaintiff has been prevented from asserting his rights: Given that Fordham refused to do an investigation (even after over 10 requests by the plaintiff), I was prevented from exercising my rights under Title IX, such as questioning the person that filed the false charges, reviewing evidence such as video recordings or even seeing the false charges in writing.

3. Plaintiff has, in a timely manner, asserted his rights mistakenly in the wrong forum: The first case filed against Fordham in fighting the false charges was filed in NYS Supreme Court just one year after the false charges were filed against me.

The Defendant then unethically and illegally intentionally refused to produce the Head of Security for a deposition for years in an attempt to push the case past the Statue of Limitations. In spite of this, I have vigorously pursued my rights throughout the case in the NYS Supreme Court. After that case ended, within weeks, the federal case was filed in the Southern District of NY.

Based on passing all 3 tolling tests, I request that the Court has good reason to send this case back to the 2nd Circuit for reconsideration.

Furthermore, Fordham has claimed in the past that this case falls under a New York CPLR Article 78 Proceeding and passed the Statute of Limitations. However, this case has also been tolled under Article 78.

It should be noted that since no investigation was ever done by Fordham (even after multiple requests by the plaintiff), this case must be considered to have been tolled under an Article 78 proceeding since it does not pass the ripeness test. It was not ripe for judicial review since no investigation of the false charges was ever performed, there was no final decision made by Fordham as an institution, no notice of hearing, no appeal instructions, no notice of investigation and no fact finding. As the letter in Appendix A banning the plaintiff from Fordham stated: "there is no need to discuss, defend or consider any allegation."

As such, the case was also tolled under Article 78, pending an investigation of the charges as requested. The attached letter in the Appendix from Head of Security John Carroll clearly indicates that the case was not ripe, as there was no investigation done and no final determination made. In brief, there was no due process of any kind.

The author of the letter also lied when he stated that I had no right to be on campus. Due to the fact that I had legally purchased a Library Pass to access the campus Library while I was paying off an expensive tuition bill, I had every legal right to be on campus and to be entitled to due process protections.

There are several previous cases where the Courts ruled that institutions made determinations under Article 78 that were not ripe for any kind of judicial review.

In *Federation of Mental Health Centers, Inc. v. DeBuono* 712 N.Y.S.2d 667 (N.Y. App. Div. 2000) the “Supreme Court denied the motion for a preliminary injunction and dismissed the complaint, finding that the issues were not ripe for judicial review.”

Furthermore, in *Greenberg v. Assessor* 996 N.Y.S.2d 48 (N.Y. App. Div. 2014) the Court stated: “...the Supreme Court properly determined that his claims seeking CPLR article 78 relief...were not ripe for judicial review.”

In addition, *Di Pietro v. State Insurance Fund* 619 N.Y.S.2d 456 (N.Y. App. Div. 1994), the “Supreme Court dismissed the petition concluding that the matter was not ripe for judicial review.”

In *Public Serv. Comm'n v. Md. People's Counsel* 522 A.2d 369 (Md. 1987) it was stated: “Consequently, the Court held that the Association's challenge to the validity of the regulation was not ripe for review.”

As such, I respectfully request that Case # 19-166 be remanded back down to the 2nd Circuit for review under Title IX and Article 78.

CONCLUSION

The Court should grant the petition for a re-hearing and remand the case to the 2nd Circuit.

Respectfully submitted,



Matthew J. Rosenwasser
Pro Se
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May 21, 2010

APPENDIX A

Mr. Matthew J. Rosenwasser
43-54 149th Street
Flushing, NY 11355

Dear Mr. Rosenwasser:

I wrote to you on April 28, 2010 thanking you for your note regarding our guards. I'm sorry to have to write again today based on a report submitted to me by my Lincoln Center Administrator. I understand that you are not currently enrolled at Fordham and have no legitimate reason to be on any any Fordham campus therefore there is no need to discuss, defend or consider any allegation.

Please be advised that effective immediately and continuing indefinitely you are not permitted on Fordham University property for any reason. This includes, but is not limited to, all on and off campus University residential facilities. Should you choose to ignore this directive, our Security Supervisors will have instructions to take you into custody and take whatever steps are necessary to file trespassing charges against you.

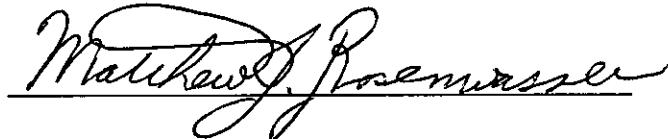
Please contact me with any questions.
Sincerely,
John Carroll
AVP Safety/Security

CERTIFICATE OF COMPLIANCE

No. 19-166

MATTHEW J. ROSENWASSER, et al.,
Appellants,
v.
FORDHAM UNIVERSITY, et al.,
Appellees.

As required by Supreme Court Rule 44, I
certify that the Jurisdictional Statement
contains
843 words, excluding the parts of the
Statement that
are exempted by Supreme Court Rule 44.
I declare under penalty of perjury that the
foregoing is true and correct.
Executed on November 26, 2019.



Matthew J. Rosenwasser
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