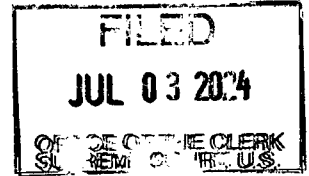


No. 24-240

ORIGINAL



IN THE
Supreme Court of the United States

W.J., by his parents and legal guardians,
R.J. and A.J.,
Petitioner,

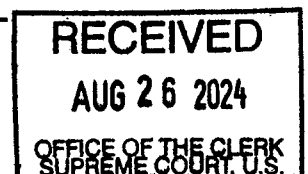
v.

SECRETARY OF
HEALTH AND HUMAN SERVICES,
Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Federal Circuit

PETITION FOR A WRIT OF CERTIORARI

R.J.
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QUESTION PRESENTED

28 U.S.C. § 2501, which is explicitly jurisdictional in that it applies to “[e]very claim of which the United States Court of Federal Claims has jurisdiction,” provides that “[a] petition on the claim of a person under legal disability or beyond the seas at the time the claim accrues may be filed within three years after the disability ceases.”

The question presented is...

Whether the three-year tolling provision of 28 U.S.C. § 2501 applies to legally disabled petitioners who bring claims before the United States Court of Federal Claims under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10, *et seq.*

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PETITION FOR A WRIT OF CERTIORARI

W.J., by his parents and legal guardians, R.J. and A.J.—Petitioner before this Honorable Court and Petitioner and Petitioner/Appellant in the courts below—respectfully seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Federal Circuit.

According to its Vaccine Rule 14(a)(2), the U.S. Court of Federal Claims permitted Petitioner’s parent, R.J., who is not a lawyer, to represent his family pro se. The U.S. Court of Federal Claims subsequently granted R.J. leave, on motion, to continue to represent his family before the Court on appeal. Pet.App. 8a-11a. The Government did not oppose Petitioner’s motion. R.J. respectfully presents this petition to this Honorable Court for its review.

Petitioner W.J., and his parents R.J. and A.J., were granted leave by the U.S. Court of Federal Claims to conceal their names from the public record. Pet.App. 109a-110a. The caption of this action shows only the initials of Petitioner and his parents in the courts below. Petitioner’s parents respectfully proceed with the same caption in this petition.

OPINION BELOW

The opinion and order of the U.S. Court of Appeals for the Federal Circuit is cited as *W.J., by his parents and legal guardians, R.J. and A.J. v. Secretary of Health and Human Services*, 93 F.4th 1228 (Fed. Cir. 2024), included herein as Appendix A.

JURISDICTION

The U.S. Court of Appeals for the Federal Circuit entered the judgment sought to be reviewed on February 21, 2024. Pet.App. 29a.

The U.S. Court of Appeals for the Federal Circuit denied W.J.'s Petition for Panel Rehearing and Rehearing En Banc on May 8, 2024. Pet.App. 31a-32a.

This Honorable Court has jurisdiction under 28 U.S.C. § 1254(1).

LEGAL AUTHORITIES

The Vaccine Act

42 U.S.C. § 300aa-12 – Court Jurisdiction

The United States Court of Federal Claims and the United States Court of Federal Claims special masters shall, in accordance with this section, have jurisdiction over proceedings to determine if a petitioner under section 300aa-11 of this title is entitled to compensation under the Program and the amount of such compensation.

U.S. Court of Federal Claims Procedure

28 U.S.C. § 2501 – Time for Filing Suit

Every claim of which the United States Court of Federal Claims has jurisdiction shall be barred unless the petition thereon is filed within six years after such claim first accrues.

Every claim under section 1497 of this title shall be barred unless the petition thereon is filed within two years after the termination of the river and harbor improvements operations on which the claim is based.

A petition on the claim of a person under legal disability or beyond the seas at the time the claim accrues may be filed within three years after the disability ceases.

A suit for the fees of an officer of the United States shall not be filed until his account for such fees has been finally acted upon, unless the Government Accountability Office fails to

act within six months after receiving the account.

The Vaccine Act
42 U.S.C. § 300aa-16(a)(2) –
Limitations of Actions

In the case of a vaccine set forth in the Vaccine Injury Table which is administered after October 1, 1988, if a vaccine-related injury occurred as a result of the administration of such vaccine, no petition may be filed for compensation under the Program for such injury after the expiration of 36 months after the date of the occurrence of the first symptom or manifestation of onset or of the significant aggravation of such injury.

STATEMENT OF THE CASE

Facts Material to the Question Presented

This matter began with Petitioner's claim under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. § 300aa-10, *et seq.* (hereinafter "the Vaccine Act"). W.J. was born on February 8, 2004.¹ Although he is now over the age of 18, his parents, R.J. and A.J., remain his legal guardians, a role they have held throughout his life.

W.J. was administered a Measles, Mumps, and Rubella ("MMR") vaccine on February 24, 2005. Pet.App. 2a. About a year later, on March 7, 2006, W.J. was diagnosed with a speech delay. Pet.App. 3a. Another year later, on January 5, 2007, W.J. was diagnosed with autism. Pet.App. 3a. In the years that followed,

¹ W.J.'s date of birth is incorrectly stated in the opinion & order to be reviewed. It is off by four days. Pet.App. 2a. W.J.'s correct birthday is February 8, 2004, Pet.App. 72a.

W.J. experienced several bouts of immune-related blood disorders, including at least one resulting in hospitalization. Pet.App. 3a. After genetic testing in February 2019, W.J.'s parents were informed that W.J. had been born with a chromosomal aberration known as an Xq28 duplication. Pet.App. 3a.

On May 7, 2021, W.J.'s parents filed a Petition on behalf of W.J. requesting compensation under the Vaccine Act for chronic encephalopathy and immunodeficiency issues caused either by the MMR vaccine or by its significant aggravation of pre-existing injuries relating to W.J.'s chromosomal abnormality in the U.S. Court of Federal Claims. Pet.App. 3a. The parents argued that, due to W.J.'s Xq28 chromosomal duplication, the MMR vaccine was inappropriately administered to him in contravention of the vaccine's warnings. Pet.App. 3a.

W.J.'s parents filed the Petition in the Court of Federal Claims pro se. Pet.App. 8a-11a. As is required by the Vaccine Rules, the petition was assigned to a special master. *See* Vaccine Rule 3(a); *see also* 42 U.S.C. § 300aa-12(d)(1). The statute of limitations was a threshold issue. It was the only issue adjudicated by the special master and the courts below. Pet.App. 1a. W.J.'s claim was deemed untimely and, after some litigation, dismissed by the U.S. Court of Federal Claims. The dismissal was subsequently affirmed by the U.S. Court of Appeals for the Federal Circuit. Pet.App. 1a.

There were several issues argued on appeal before the U.S. Court of Appeals for the Federal Circuit. The only issue relevant to the instant Petition before this Court, however, is the question presented, which is essentially whether 28 U.S.C. § 2501 (hereinafter “§ 2501”) — which states that it applies to “[e]very claim

of which the United States Court of Federal Claims has jurisdiction”— applies to Vaccine Act petitions brought before the United States Court of Federal Claims. Petitioners argued that § 2501 does indeed apply to Vaccine Act claims. The Court of Appeals for the Federal Circuit disagreed.

The gist of the rationale of the Federal Circuit’s Decision is that since Congress, in the Vaccine Act, provides a 36-month statute of limitations, 42 U.S.C. § 300aa-16(a)(2) — thereby essentially repealing § 2501’s six-year statute of limitations — then Congress must have also intended to repeal § 2501’s tolling provision for those under legal disabilities.

Petitioners argued that the Federal Circuit Panel’s Decision amounted to finding an implied repeal of § 2501’s tolling in the Vaccine Act in contravention of almost two hundred years of U.S. Supreme Court precedent.

Because repeals by implication are not favored, this Court will regard each of two statutes effective unless Congress’ intention to repeal is clear and manifest, or the laws are irreconcilable.

Maine Community Health Options v. U.S. et al., 140 S.Ct. 1308, 1313 (2020) (Internal citations and quotation marks omitted.). See also *J.E.M. AG Supply, Inc. v. Pioneer Hi-Bred International*, 534 U.S. 124, 141-142 (2001); *Matsushita Electric Industrial Co., Ltd., et al. v. Epstein et al.*, 516 U.S. 367, 381 (1996); *Kremer v. Chemical Construction Corp.*, 456 U.S. 461, 468 (1982); *Morton v. Mancari*, 417 U.S. 535, 550 (1974); *Georgia v. Pennsylvania Railroad Co.*, 324 U.S. 439, 456-457 (1945); *U.S. v. Borden*, 308 U.S. 188, 198-199

(1939); *Posadas v. National City Bank*, 296 U.S. 497, 503 (1936); *U.S. v. Greathouse*, 166 U.S. 601, 605 (1897); *U.S. v. Healey*, 160 U.S. 136, 146 (1895); *Frost v. Wenie*, 157 U.S. 46, 58 (1895); *Red Rock v. Henry*, 106 U.S. 596, 601-602 (1883); *Wood v. U.S.*, 41 U.S. 342, 362-363 (1842). Petitioners argued that there is no clear and manifest repeal of § 2501’s tolling provision in the Vaccine Act, and that the statutes are not irreconcilable because the two statutes can be easily reconciled by a correct finding that although Congress decided to reduce § 2501’s statute of limitations for the Vaccine Act, it decided to leave § 2501’s tolling provision for those with legal disabilities intact. In fact, the Federal Circuit Panel acknowledged that the Vaccine Act says nothing about tolling one way or the other. Pet.App. 15a.

The Federal Circuit Panel noted that

“[i]f paragraph [3] the tolling provision of § 2501, is applicable here, Appellant’s claim is timely because it is undisputed that W.J. still suffers from a legal disability and has at all pertinent times.”

Pet.App. 12a. Nevertheless, the Federal Circuit Panel concluded that “[s]ince § 2501’s six-year statute of limitations does not apply to Vaccine Act claims, the tolling provision of § 2501 is equally inapplicable.” Pet.App. 15a.

Petitioner now seeks review of the Federal Circuit Panel’s Decision by this Honorable Court.

Basis for Jurisdiction in the Courts Below

The court of first instance in this matter was the United States Court of Federal Claims which had

original subject matter jurisdiction under 42 U.S.C. § 300aa-12.

The Court of Appeals for the Federal Circuit had jurisdiction over Petitioner's appeal under 28 U.S.C. § 1295(a)(3) and 42 U.S.C. § 300aa-12(f).

Reasons for Granting the Writ

This matter involves a question of exceptional importance because the Federal Circuit Panel's ruling now bars Vaccine Act petitioners with legal disabilities from utilizing their jurisdictional statutory tolling rights under 28 U.S.C. § 2501 before the U.S. Court of Federal Claims without just basis. The Federal Circuit Panel used legal rationale that flies in the face of U.S. Supreme Court precedent spanning three centuries in order to reach its conclusion.

The Federal Circuit Panel Decision in this matter, if left to stand, will unfairly affect some of the least powerful, and most vulnerable, among us — those with legal disabilities. The Panel Decision is not only clearly erroneous, but also fundamentally unjust.

The Federal Circuit Panel's Decision, if left to stand, will set a dangerous precedent in that any federal appeals court in the future can read implied repeals into statutes using flawed logic and use the Decision below as its legal basis.

W.J.'s parents are aware of Supreme Court Rule 28.8. If this Honorable Court opts to grant a writ of certiorari in this matter, as W.J.'s parents strongly believe it should, appropriate counsel can be chosen, either by appointment of this Court or retained by the parents to comply with this Court's rule.

W.J.'s parents assert that this matter warrants review by this Court because it involves the substantive rights of millions of children, older minors, and those

with other legal disabilities, including those such as W.J. whose disabilities are alleged to have been caused or aggravated by the vaccine named in his Vaccine Act petition.

Conclusion

For any or all of the reasons cited herein, Petitioner's parents respectfully ask this Honorable Court to grant the writ of certiorari requested and use its judicial power to review the substantial question of law presented herein.

Dated: Staten Island, New York
August, 2024

/ s / R.J.

R.J.

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