No. 82-738

In The

Supreme Court of the United States

October Term, 1982

DR. ETHEL MIGRA,

Petitioner,

vs.

WARREN CITY SCHOOL DISTRICT BOARD OF EDUCATION, et al.,

Respondents.

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

BRIEF FOR RESPONDENTS

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QUESTIONS PRESENTED

1. Is a plaintiff in a federal court action brought pursuant to 42 U. S. C. § 1983 precluded from litigating issues that she might have raised, but in fact did not raise, in a previous state court action between the same parties and based on the same transaction, occurrence, or series of transactions and occurrences?

2. Do petitioner's claims for deprivation of her "liberty interest in her reputation" sound sufficiently in defamation and tort to be barred by Ohio's one-year statute of limitations on actions for defamation and intentional torts?

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BRIEF FOR RESPONDENTS

STATEMENT OF THE CASE

In the interest of brevity, respondents will not submit a separate statement of the case. Respondents do wish to clarify three particular points. First, the nonrenewal of petitioner was accomplished in order to abolish the position of Elementary Education Supervisor, a position which has never since been filled. Second, the Board's action in renewing petitioner's contract was accomplished solely as a courtesy to petitioner, on the understanding that she would be submitting her resignation, which she did not do. And finally, petitioner's favorable judgment in the state court was affirmed by the state court of appeals, after which review was denied by the Ohio Supreme Court. As a result, petitioner has been paid back pay for the 1979-80 school year (her nonrenewal in April of 1980

was not challenged), minus unemployment compensation received.

However, respondents must vigorously object to the statement of the case set forth in the brief of the *amicus curiae* American Civil Liberties Union. First, such statement is purely gratuitous in view of Rule 36.5 of this Court, which limits an *amicus* to a statement of interest, summary of argument, argument, and conclusion. Second, and more importantly, the opening paragraphs of this statement recite as "facts" certain matters which are not facts at all, but merely allegations of fact made by petitioner in her federal complaint. Therefore, respondents respectfully submit that the statement of the case of said *amicus* is, in the above respects, inappropriate, and not properly before this Court.

SUMMARY OF ARGUMENT

1. In applying res judicata principles, the federal courts must give to state-court judgments the same preclusive effect which the state courts themselves would give to such judgments. This rule is founded on the "full faith and credit" statute (28 U. S. C. § 1738) as interpreted by this Court in *Allen v. McCurry*, 449 U. S. 90 (1980) and *Kremer v. Chemical Construction Corporation*, — U. S. —, 102 S. Ct. 1883 (1982).

Under this rule, petitioner's claims in this case were properly found to be barred as res judicata, since Ohio law precludes second actions between the same parties or their privies arising out of the same transaction, occurrence or series of transactions and occurrences. The arguments of petitioner and the various *amici* to the contrary are based on the erroneous assumption that under Ohio

law, petitioner had more than one "cause of action" upon which she was entitled to bring suit. While it is true that in earlier times Ohio law might have defined a "cause of action" in the narrow way argued by petitioner, it does not do so today. More recent developments in Ohio law, culminating in the decision in *Johnson's Island, Inc. v. Board of Trustees,* 69 Ohio St. 2d 241, 431 N. E. 2d 672 (1982), indicate clearly that a "cause of action" is now much more broadly defined for claim preclusion purposes. It is also significant to note that in this 1982 decision, the Ohio Supreme Court barred a subsequent action based on federal constitutional claims where, as here, such claims could have been raised in the first proceeding, but were not.

The fact that the state trial court separated and continued petitioner's conspiracy claim, and subsequently approved the voluntary dismissal of such claim, is of no avail to petitioner. The trial court was merely exercising its discretionary authority, under Ohio Civil Rule 42 (B), to order a separate trial of a certain issue before it. At one time, respondents were still susceptible to further state court proceedings *on this issue.* However, petitioner cannot seize on this fact as an opportunity to raise *entirely new* claims, in a new forum, which she failed to raise in the first proceeding. Such a result is contrary to both Rule 42 and basic claim preclusion concepts, and should be rejected.

2. In this case, petitioner attempts to avoid the preclusive effect of her first, state-court action against these respondents by arguing that in actions under 42 U. S. C. § 1983, the federal courts should apply the concept of *issue* preclusion (*i. e.,* collateral estoppel) but not the concept of *claim* preclusion (*i. e.,* res judicata or estoppel by judg-

ment). Because there is nothing in the law, the legislative history, or the underlying policy concerns which would support the creation of this new "double standard" of preclusion, petitioner's arguments here must fail.

It is clear from a reading of both *Allen v. McCurry*, 449 U. S. 90 (1980) and *Kremer v. Chemical Construction Corporation*, — U. S. —, 102 S. Ct. 1883 (1982) that this Court views both issue *and* claim preclusion concepts as being fully applicable in Section 1983 actions. Thus, virtually all of the federal circuits to have addressed the question have held that claim preclusion concepts apply fully in Section 1983 actions to bar federal claims which could have been raised in a prior state proceeding, but were not. One additional ground for this position is that allowing a separate federal-court review of federal issues is contrary to well-established principles of federal-state comity.

Finally, the argument in favor of a dual standard of preclusion must be rejected on policy grounds. The burgeoning Section 1983 caseload which now threatens to overwhelm the federal courts would only be increased by a rule which allowed a separate federal review of federal constitutional questions which could have been dealt with in an earlier state court proceeding, but were not. Furthermore, it would be more in the interest of sound judicial administration to have federal constitutional questions determined in the state courts whenever possible: first, because the state courts should bear equally the burden of interpreting and enforcing federal law which is, after all, the "law of the land" under the Supremacy Clause; and second, because in many instances (including the present case) the federal court must look to state courts

in any event for certain relevant interpretations of state law in order to dispose of the issues before it.

3. Petitioner's claims for defamation and impairment of her "liberty interest" are barred by Ohio's one-year statute of limitations upon claims for defamation and other intentional torts. (Ohio Rev. Code § 2305.11). This result is dictated by the well-established rule that in determining what statutes of limitation apply in § 1983 actions, the federal courts are to apply the state statute of limitations which would be applicable in the most closely analogous state action. *Johnson v. Railway Express Agency,* 421 U. S. 454 (1975) (case under 42 U. S. C. § 1981); *Kilgore v. City of Mansfield,* 679 F. 2d 632 (6th Cir. 1982) (Ohio Rev. Code § 2305.11 applies in § 1983 action sounding in intentional tort).

In light of the foregoing, this Court should affirm the decisions of the trial court and the Court of Appeals for the Sixth Circuit.

ARGUMENT

I. The Full Faith and Credit Statute (28 U. S. C. § 1738) requires the federal courts sitting in Ohio to bar subsequent actions between the same parties arising out of the same transaction, occurrence, or series of transactions and occurrences.

A. The federal courts must give the same preclusive effect to state court judgments as would be given under the law of the state in which the action arose.

It is now well-settled that the "full faith and credit" statute (28 U. S. C. § 1738) provides the proper analyti-

cal framework to be used by the federal courts in assessing the preclusive effect to be given to state-court judgments. As noted by this Court in *Allen v. McCurry,* 449 U. S. 90 (1980),

> [T]hough the federal courts may look to the common law or to the policies supporting res judicata and collateral estoppel in assessing the preclusive effect of decisions of other federal courts, Congress has specifically required all federal courts to give preclusive effect to state-court judgments whenever the courts of the State from which the judgments emerged would do so:
>
> > "The . . . judicial proceedings of any court of any State . . . shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State. . . ." 28 U. S. C. § 1738 (1976).

449 U. S. at 96 (citations omitted). This proposition was recently reaffirmed by this Court in *Kremer v. Chemical Construction Corporation,* — U. S. —, 102 S. Ct. 1883 (1982), wherein it is stated quite simply:

> Section 1738 requires federal courts to give the same preclusive effect to state court judgments that those judgments would be given in the courts of the state from which the judgment emerged.

— U. S. at —, 102 S. Ct. at 1889 (extensive footnote omitted).

Thus, in both *Allen* and *Kremer, supra*—the leading cases to apply res judicata principles in the federal-state context—this Court has declared that it is the "full faith and credit" statute which governs any analysis of the preclusive effect to be accorded state-court judgments. In

accordance with this directive, the parties to the present appeal must now attempt to discern, as best as they can from the most recent pronouncements of the Ohio Supreme Court, the current status of Ohio law on the question of res judicata.

B. Under the most recent pronouncements of the Ohio Supreme Court on res judicata, a party is barred from a second action against the same defendants seeking relief on federal constitutional grounds where such grounds could have been argued in a prior action arising out of the same transaction, occurrence, or series of transactions and occurrences, but were not.

The elaborate analyses of Ohio law offered by petitioner and the various *amici* fail to correctly portray the current status of Ohio law on the application of res judicata principles. More specifically, petitioner and the various *amici* fail to recognize and acknowledge the impact of *Johnson's Island, Inc. v. Board of Township Trustees,* 69 Ohio St. 2d 241, 431 N. E. 2d 672 (1982)—the most recent major pronouncement of the Ohio Supreme Court on res judicata, and a decision which dramatically broadens the scope of the doctrine as it now exists in Ohio.

To be sure, the courts of Ohio in earlier times applied issue preclusion and claim preclusion concepts in a very narrow manner. For example, under the ruling of *Vasu v. Kohlers, Inc.,* 145 Ohio St. 321, 61 N. E. 2d 707 (1945), a plaintiff who suffered both personal injuries and property damage in an automobile accident was entitled to maintain separate actions against a defendant for each type of injury. The theory for allowing separate actions was that "[i]njuries to both person and property suffered

by the same person as a result of the same wrongful act are infringements of different rights and give rise to distinct causes of action. . . ." 145 Ohio St. at 321, 61 N. E. 2d at 709 (syllabus at ¶ 4).

Beginning in 1958, however, the Ohio Supreme Court embarked on a course which would lead to a significant broadening of issue preclusion and claim preclusion concepts in Ohio. In the case of *Rush v. Maple Heights,* 167 Ohio St. 2d 221, 147 N. E. 2d 599 (1958), the court discarded the anachronistic and cumbersome "dual cause of action" rule of *Vasu v. Kohlers, supra.* In doing so, the court focused on the singular nature of the wrongful act, and concluded that "as the defendant's wrongful act is single, the cause of action must be single. . . ." 167 Ohio St. at 230, 147 N. E. 2d at 604. The new rule, which was declared to be more in accord with "modern practice," 167 Ohio St. 2d at 235, 147 N. E. 2d at 607, was adopted in the hope that it might reduce "the vexatious litigation, with its attendant confusion, which has resulted in recent years from the filing of separate petitions by the same plaintiff. . . ." 167 Ohio St. 2d at 234, 147 N. E. 2d at 607.

Following *Rush v. Maple Heights, supra,* the Ohio courts continued to struggle with the concept of what constitutes a "cause of action" for res judicata purposes. In the present context, the definition of a "cause of action" is crucial, since (as already noted by petitioner) the basic rule of Ohio law is that a person is entitled to one lawsuit for each "cause of action" that he has. *Norwood v. McDonald,* 142 Ohio St. 299, 52 N. E. 2d 67 (1943); *Whitehead v. General Telephone Co.,* 20 Ohio St. 2d 108, 254 N. E. 2d 10 (1969). Conversely, a plaintiff in Ohio will

be barred from raising any claims in a second action which he *could have* raised in a first action against the same party, *see e. g., Charles A. Burton Inc. v. Durkee,* 162 Ohio St. 433, 123 N. E. 2d 432 (1954); *Clark v. Baranowski,* 111 Ohio St. 436, 145 N. E. 76 (1924); *Covington and Cincinnati Bridge Co. v. Sargent,* 27 Ohio St. 233 (1875), *but only* if the second proceeding is based on the same "cause of action," *see, e. g., Norwood, supra.*

In 1968, the Ohio Supreme Court made two conspicuous attempts to deal with the question of what constitutes a "cause of action" for res judicata purposes. In *Henderson v. Ryan,* 13 Ohio St. 2d 31, 233 N. E. 2d 506 (1968), the court was faced with a claim by a defendant attorney (Ryan), that a malpractice claim against him was barred by a previous action against him for fraud, in which he and several other defendants had been exonerated. As both actions arose out of the same general set of events, the court found it necessary to address the question of what constitutes a single "cause of action" under Ohio law:

> What then constitutes a cause of action? Although the meaning given the term may vary according to the purpose for which it is sought (*United States v. Memphis Cotton Oil Co.,* 288 U. S. 62, 67, 68, 53 S. Ct. 278, 280, 77 L. Ed. 619, 623), legal writers have categorized three general views:
>
> 1. A cause of action is identical with a remedial, or secondary, right. This definition, reminiscent of the common-law forms of action, equates a cause of action with each legal theory a plaintiff may have to redress an injury even though arising from a single wrongful act. This view has found disfavor with most courts and authorities because it perpetuates the pleading of legal theories instead of "a statement of

facts constituting a cause of action in ordinary and concise language." See Section 2309.04, Revised Code.

2. "[T]he facts from which the plaintiff's primary right and the defendant's corresponding primary duty have arisen, together with the facts which constitute the defendant's delicit or act of wrong" give rise to a cause of action. This concept omits the remedial right and duty of the first definition, thereby emphasizing substantive rights as distinct from procedural rights. It is concerned with the wrongful act and not with the theory of recovery.

3. A cause of action is a group or aggregate of operative facts, limited "to a single occurrence or affair, without particular reference to the resulting legal right or rights." This so-called "factual unit" theory places the emphasis upon the breadth of the transaction or occurrence rather than the particular right of the plaintiff which has been infringed. The broadest in scope, this definition compels the pleader to include in his petition all elements of the transaction or occurrence at the risk of splitting his cause of action.

13 Ohio St. 2d at 33-34; 233 N. E. 2d at 508-09. In comparing these three basic definitions to Ohio law, the court found that

> [t]his court has previously adhered to the "primary right-primary duty" concept, looking to the defendant's wrongful act.
>
> * * *
>
> *However, multifold aspects of the same wrongful act, i. e., negligence consisting of several concurrent acts, do not permit multiple suits.*
>
> * * *
>
> We are obliged then, to determine whether the case now before us involves the same wrongful act as that from which the defendant was exonerated by the former judgment between these parties.

13 Ohio St. 2d at 35; 233 N. E. 2d at 509-10 (emphasis added) (citations omitted).

Significantly, the court in *Henderson did not* find that the plaintiff had separate causes of action for fraud and malpractice. It did permit the second action against Ryan, but only because the existing joinder statute (which had since been repealed) prevented the plaintiff from joining the two claims against Ryan. There is no question, however, that law of Ohio as it was being declared at the time of the *Henderson* decision (January of 1968), was moving toward a broader application of res judicata principles:

> Thus, the Code no longer contains any impediment to the joinder of causes of action of the kind asserted by the plaintiff in this case. *The statutory changes reflect a constantly developing policy in the pursuit of simplified pleadings and procedure. To save time and to relieve court congestion, parties are encouraged, if not commanded, to litigate all their claims in one action,* except to the extent that joinder of multifarious and complex issues would produce confusion and prejudice. *Defendants and the courts are thus saved from vexation caused by multiple litigation.*

13 Ohio St. 2d at 38; 233 N. E. 2d at 511 (emphasis added).

Later in 1968, the Ohio Supreme Court accelerated the subtle shift toward a broader definition of a "cause of action" which it had begun in *Henderson, supra.* In *Sharp v. Shelby Mutual Insurance Company,* 15 Ohio St. 3d 134, 239 N. E. 2d 49 (1968), the court again reviewed the three basic definitions of the phrase "cause of action." 15 Ohio St. 2d at 139-40; 239 N. E. 2d at 53-54. It ultimately held that the plaintiff had two separate causes of action, and was thus not barred by res judicata. In doing

so, however, *the court specifically applied the third, or "factual unit," definition of a cause of action,* 15 Ohio St. 2d at 140-41; 239 N. E. 2d at 54, which it defined in relevant part as follows:

> One concept of the term [cause of action] . . . is to the effect that as long as the same wrongful act or transaction is the subject of litigation there is but one cause of action without regard to the application of rules of substantive law to additional or variational facts which are involved and which must be considered. The test under this concept is not whether added facts constitute a material difference in plaintiff's right or defendant's wrong under the substantive law, *but whether such additional facts are so closely woven into the transaction which comprehends the defendant's wrong as to justify the court in regarding multiple interests affected and wrong done as a single unit for the purpose of litigation.*

15 Ohio St. 2d at 140; 239 N. E. 2d at 54 (emphasis added).

Consonant with this shift in Ohio law on preclusion matters was the Ohio Supreme Court's adoption, in 1970, of the Ohio Rules of Civil Procedure—and in particular, Rule 13 thereof.* Ohio Rule 13, like its federal counterpart, establishes a compulsory counterclaim rule embodying the broadest possible definition of a "cause of action":

> A pleading *shall* state as a counterclaim *any* claim which at the time of serving the pleading the pleader has against any opposing party, *if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim* and does not require

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*The Ohio Supreme Court was authorized to promulgate rules for the governance of Ohio's courts by the "Modern Courts Amendment" to the Ohio Constitution, Article IV, § 5, effective May 7, 1968.

> for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction.

Ohio R. Civ. P. 13(A) (emphasis added). The policy concerns served by the compulsory counterclaim rule are clearly stated in the Staff Notes to Ohio Rule 13(A) which provide in relevant part as follows:

> A compulsory counterclaim is one which "is logically related to the opposing party's claim where separate trials on each of their respective claims would involve a substantial duplication of effort and time by the parties and the courts." See, *Great Lakes Rubber Corp. v. Herbert Cooper Co.*, 286 F. 2d 631 at 634 (3d Cir. 1961).
>
> * * *
>
> The purpose of the compulsory counterclaim is to avoid a multiplicity of suits by requiring in one action the litigation of all claims *arising from an occurrence.*
>
> (Emphasis added.)

Thus, it is clear that in the adoption of the compulsory counterclaim rule, the Ohio Supreme Court was again utilizing a "series of transactions or occurrences" definition of a cause of action. *See Henderson, supra,* 13 Ohio St. 2d at 38; 233 N. E. 2d at 511. The absolute preclusive effect of this rule for compulsory counterclaims not raised has since been recognized by Ohio's courts. *See, e. g., Broadway Management, Inc. v. Godale,* 55 Ohio App. 2d 49, 378 N. E. 2d 1072 (1977).

The 1970's did not witness any significant developments in Ohio's position on res judicata. However, in 1980, 1981, and 1982, the Ohio Supreme Court rendered a number of decisions calling for a broader application of the doctrine. By far the most significant of these deci-

sions was *Johnson's Island, Inc. v. Board of Township Trustees,* 69 Ohio St. 2d 241, 431 N. E. 2d 672 (1982).

Johnson's Island involved a zoning dispute between a homeowners' association and a neighboring landowner, Johnson's Island, Incorporated. At one time, Johnson's Island, Incorporated, had owned virtually all of Johnson's Island, a 275-acre island in Lake Erie. However, following its purchase of the island in 1956, the corporation proceeded to subdivide the outer perimeter of the island for the sale of residential lots. In 1975, the township in which the island was located adopted a comprehensive zoning plan. Under this plan, the entire island was zoned for residential housing.

The specific dispute in *Johnson's Island* related to the operation by the corporation of a limestone quarry on the island. The operation of this quarry required blasting and other heavy industrial activities. Based on the 1975 zoning plan, the local homeowners' association sought and obtained (in 1977) a permanent injunction from the Common Pleas Court of Ottawa County prohibiting Johnson's Island, Incorporated from conducting any quarrying operations on the island. In this action, the corporation had attempted to establish that the operation of the quarry was a "prior nonconforming use." The corporation *did not* challenge the constitutionality of the township zoning regulation as applied to its quarry site. The court of appeals affirmed the injunction, and further review was denied by the Ohio Supreme Court.

In 1978, the corporation filed a second action in the common pleas court seeking a declaration, *inter alia,* that the zoning regulation was unconstitutional as applied to

the quarry. The trial court granted summary judgment against the corporation on res judicata grounds, even though the defendant in the second action was not the homeowners' association, but the board of township trustees. The court of appeals affirmed, and the Ohio Supreme Court certified the case for review.

In 1982, the Ohio Supreme Court affirmed the court of appeals, and in doing so applied res judicata principles more broadly than it ever had before. The application of res judicata was broadened in two particular respects. First, the Ohio Supreme Court relaxed the mutuality requirement to permit the first judgment to act as a bar, even though there was not a strict identity of parties. It found that there was a "mutuality of interest" between the township trustees and the homeowners' association, even though there was no legal privity between them, and even though one was a public entity. 69 Ohio St. 2d at 245; 431 N. E. 2d at 675.

Second, and much more importantly for present purposes, the Ohio Supreme Court precluded a second action raising certain federal constitutional claims, where such constitutional claims could have been raised by a party to the first action, but were not:

> Decisions of this court, and of other jurisdictions, have established that the doctrine of *res judicata* is applicable to defenses which, although not raised, could have been raised in the prior action. Accordingly, if a defendant, as the appellant here, previously neglected to assert the [constitutional] defense, he is precluded from raising it subsequently by virtue of the existence of the judgment rendered in the former action.

69 Ohio St. 2d at 245-46; 431 N. E. 2d at 675. The court stated that the above principle "accommodates the finality of judgments," 69 Ohio St. at 246; 431 N. E. 2d at 675, and set forth the following underlying rationale:

> "The reasoning in such cases is that a party should have his day in court, and that that day should conclude the matter. A party is bound then to present his entire cause and he is foreclosed from later attempting to reopen the cause as to issues which were or could have been presented. . . ."

69 Ohio St. 2d at 246; 431 N. E. 2d at 675-76, *quoting Anderson v. Richards,* 173 Ohio St. 50, 53, 179 N. E. 2d 918, 921 (1962).

For purposes of the present case, where this Court is being called on to discern the current status of Ohio law, it is crucial to recognize that in *Johnson's Island, supra,* the Ohio Supreme Court *cast aside the argument of the corporation that the second proceeding was not based on the same "cause of action."* This argument was briefed and argued to the court.* However, the court proceeded to reject this argument and apply claim preclusion concepts to bar the second action. 69 Ohio St. 2d at 246; 431 N. E. 2d at 675. In doing so, it necessarily found that the whole issue of the zoning ordinance, its constitutionality, and whether the corporation had established a prior nonconforming use were "so closely woven into the transaction which comprehends the defendant's [alleged] wrong" that the court was justified in treating them as a "single unit for the purposes of litigation." *Sharp, supra,* 15 Ohio St.

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*Counsel for respondents have confirmed this fact by reference to the actual record in *Johnson's Island, supra,* which is presently on file in the Ohio Supreme Court Library.

2d at 140; 239 N. E. 2d at 54. Thus, it is clear that, in *Johnson's Island,* the Ohio Supreme Court openly adopted a "series of transactions or occurrences" definition of a cause of action, and that older theories, whereby multiple "causes of action" could spring up from a single event, or series of related events, have been relegated to the dustbin of Ohio legal history.

Indeed, any doubts one might have that Ohio, in *Johnson's Island,* was broadening its definition of a "cause of action" for claim preclusion purposes can be resolved by an examination of the dissent in that case. It is there noted, quite correctly, that the issues of prior nonconforming use (raised in the first action) and the constitutionality of the regulation (raised in the second action) would not be subject to all the same items of proof. 69 Ohio St. 2d at 251; 431 N. E. 2d at 678-79 (W. Brown, J., dissenting). Obviously, a majority of the court did not view this as a critical issue. The majority opted instead for a rule which would require preclusion where, as here, there is a fair relationship between the two issues or claims, even though the facts necessary to prove the two claims would not be identical.

Other cases decided shortly before *Johnson's Island* confirm the increasing tendency of the Ohio Supreme Court to apply preclusion concepts in a broad manner. In *Universal Underwriters v. Shuff,* 67 Ohio St. 2d 172, 423 N. E. 2d 417 (1981), the Ohio Supreme Court applied the doctrine of res judicata to bar an *arbitration* proceeding between two contracting parties (an insurance company and an insured) who had previously litigated a particular matter. Although the court recognized that the doctrine traditionally applied only to subsequent legal *actions, see*

67 Ohio St. 2d at 174; 423 N. E. 2d at 418, it nevertheless chose to extend the doctrine to arbitration proceedings on policy grounds. For similar policy reasons, the Ohio Supreme Court had already barred a taxpayer action challenging the constitutionality of a state statute, where constitutional claims could have been raised in an earlier proceeding, but were not. *Stromberg v. Board of Educ.*, 64 Ohio St. 2d 98, 413 N. E. 2d 1184 (1980). And, in a pair of criminal cases, the court has more recently rejected, on res judicata grounds, attempts in postconviction proceedings to raise federal constitutional issues which could have been raised at some earlier stage. *See State v. Roberts*, 1 Ohio St. 3d 36, 437 N. E. 2d 598 (1982) and *State v. Cole*, 2 Ohio St. 3d 112, 443 N. E. 2d 169 (1982).

In view of the foregoing survey of Ohio law, it cannot now be plausibly maintained that the Ohio Supreme Court, if it were faced with the question today, would permit the petitioner herein to maintain a second action against these defendants for the vindication of certain federal constitutional rights. Petitioner has had her "day in court, and that . . . day should [have] conclude[d] the matter." *Johnson's Island, supra*, 69 Ohio St. 2d at 246; 431 N. E. 2d at 675. Unquestionably, the courts of Ohio would have entertained her constitutional claims had she presented them. *See Dowd Box Co. v. Courtney*, 368 U. S. 502, 507-08 (1962) (state and federal courts have concurrent jurisdiction to hear and decide federal constitutional issues); *accord, Jackson v. Kurtz*, 65 Ohio App. 2d 152, 156, 416 N. E. 2d 1064, 1067 (1979). However, petitioner did not raise such claims in the first action, and is therefore barred from raising them here:

> The doctrine of *res judicata* . . . embraces the policy that a party must make good his cause of action or establish his defenses ". . . by all the proper means within his control, and if he fails in that respect, purposely or negligently, he will not afterward be permitted to deny the correctness of the determination, nor to relitigate the same matters between the same parties."

Johnson's Island, supra, 69 Ohio St. 2d at 244; 431 N. E. 2d at 674, *quoting Covington and Cincinnati Bridge Co. v. Sargent,* 27 Ohio St. 233 (1875) (first syllabus).

Petitioner attempts to avoid the bar of res judicata by arguing that her constitutional claims are not based on the same "cause of action" as the claims that were litigated in the state-court action (Pet. Br. at 16). In addition to being incorrect simply as a matter of law (see preceding discussion), this argument is also unrealistic. Petitioner was hired by the Warren City Board of Education to fill the position of Elementary Education Supervisor. The Board of Education subsequently determined that this position was no longer necessary, and therefore nonrenewed petitioner's contract.* She decided to seek judicial relief for this action of the Board, and did so by filing an action in the Common Pleas Court of Trumbull County, Ohio. In this proceeding, she could have challenged the Board's action on any grounds she wished, including the ground that the Board's action in nonrenewing her contract violated her constitutional rights. However,

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*As noted in the Statement of the Case, *supra,* this nonrenewal became necessary only because petitioner's resignation was not forthcoming, as the Board had been led to believe it would be. When the Board discovered that the resignation would not be forthcoming, it was forced to act on petitioner's contract at a special meeting, with which there were obviously some procedural difficulties.

she elected to challenge the nonrenewal on state procedural grounds only, and on this challenge she prevailed. Apparently unsated by this round of litigation, she now seeks to enmesh these same defendants (and one United States district court) in further litigation—not to vindicate rights which the state court would not protect—but to vindicate rights which the state court was *never asked* to protect.

In this connection, some comment must be made in response to the argument of the *amicus curiae* American Civil Liberties Union that petitioner is entitled to proceed here because her "analogous . . . tort claims" were dismissed without prejudice in the state court (ACLU Br. at 36). This argument is not only without merit; it is also distracting and disingenuous. Under Rule 42 (B) of the Ohio Rules of Civil Procedure, an Ohio trial court is granted the discretion to order a separate trial of any claim or issue if the court, in its discretion, finds that separate trials would be "in furtherance of convenience . . . [or] conducive to expedition and economy." In this case, the trial court exercised this discretionary authority when it "reserved and continued" (J. A. at 39) and later dismissed without prejudice (J. A. at 54) petitioner's "conspiracy" claim. This claim charged only that the individual defendants "did by unlawful meetings . . . conspire to deprive the plaintiff of her *contract* rights with the Warren City School District." (J. A. at 28) (emphasis added). Certainly, were it not for the statute of limitations,* respondents would still be susceptible to suit

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*Petitioner is now barred from proceeding on her tortious interference claim by Ohio's four-year statute of limitations on unspecified torts, Ohio Rev. Code § 2305.09. Her abandonment of this claim is not surprising in view of the fact that Ohio law does not recognize a cause of action for tortious inference

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in state court *on this claim.* However, it is clearly not within the contemplation of Rule 42 (B) that in the separated trial of a particular claim, the plaintiff is entitled to bring in entirely new claims against the same defendant on the theory that they are "analogous" to the separated claim. Under the interpretation of the *amicus,* petitioner would presumably be entitled to bring a second action under Title VII or Title IX for sex discrimination, or under the Age Discrimination in Employment Act of 1967* or their Ohio counterparts,** if she believed that these statutes applied to her case. Thus, petitioner would be able in the second action to avoid her own failure to "make good [her] cause of action . . . by all the proper means within her control," *Johnson's Island, supra,* 69 Ohio St. 2d at 244; 431 N. E. 2d at 674, simply by having an "analogous" claim dismissed without prejudice. Respondents respectfully submit that this result is neither equitable nor in keeping with the policy of Ohio law on claim preclusion as expressed in the preceding argument, and should therefore be rejected by this Court.

In light of the entire preceding discussion, it is apparent that Ohio law, as this Court now finds it, would bar petitioner's second action against the same defendants

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with contract in the employer-employee context. *See Fawcett v. G. C. Murphy & Co.,* 46 Ohio St. 2d 245, 248 N. E. 2d 291 (1976); *Anderson v. Minter,* 32 Ohio St. 2d 207, 291 N. E. 2d 457 (1972).

*The statutes referred to are: Title VII of the Civil Rights Act of 1964 (42 U. S. C. § 2000e et seq.), Title IX of the Education Amendments of 1972 (20 U. S. C. § 1681 et seq.), and The Age Discrimination in Employment Act of 1967 (29 U.S.C. § 623 et seq.).

**See e. g., the Ohio Civil Rights Act (Ohio Revised Code Section 4112.01 et seq.).

asserting new claims under the federal constitution. Therefore, since the full faith and credit statute (28 U. S. C. § 1738) requires that this Court give to petitioner's first judgment the same preclusive effect that it would have under Ohio law, the decisions of the district court and the Sixth Circuit Court of Appeals according such preclusive effect to such judgment were entirely correct, and should be affirmed.

II. There is nothing in the legislative history or the prior decisions of this Court which would support the view, advanced by petitioner, that traditional principles of issue preclusion apply in § 1983 actions, but traditional principles of claim preclusion do not.

In their briefs to this Court, petitioner and the various *amici* argue that although traditional principles of issue preclusion (*i. e.*, collateral estoppel) apply fully to the litigants in Section 1983 actions, traditional principles of claim preclusion (*i. e.*, res judicata or estoppel by judgment) should not apply. Because there is nothing in the legislative history of Section 1983 or the pronouncements of this Court to support such a "double standard" of preclusion, respondents must urge the Court to reject these arguments and affirm the decision of the Sixth Circuit Court of Appeals.

The basic argument advanced on behalf of petitioner is that because "Congress has never altered its intent to make federal courts the primary protection of constitutional rights," it intended, through Section 1983, "to provide individuals in petitioner's situation with the opportunity to utilize a federal forum for the protection of their federally secured constitutional rights." (Pet. Br. at 23, 25). Thus, petitioner takes the position that she should

be able to look to the federal courts for redress of her federal claims, even though she failed to seek redress for these claims in a prior state court action. This position is, of course, contrary to traditional res judicata principles:

> Under res judicata, a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were *or could have been* raised in that action.

Allen v. McCurry, 449 U. S. 90, 94 (1980), *citing Cromwell v. County of Sac,* 94 U. S. 351, 352 (1877). Admitting this fact, the *amicus* American Civil Liberties Union asks this Court to disregard traditional doctrines and to "fashion a doctrine of qualified preclusion" which accords "full collateral estoppel effect to facts and issues previously decided . . ., but which does not preclude the assertion of a federal constitutional claim in federal court merely because it might have been asserted in an earlier state proceeding." (ACLU Br. at 41-42).

This argument in favor of a new preclusionary "double standard" is unsupportable for a number of reasons.

First, this Court has clearly and unequivocably stated —twice within the last three years—that traditional concepts of issue preclusion *and* claim preclusion apply in Section 1983 actions. In *Allen v. McCurry,* 449 U. S. 90 (1980), this Court left no doubt as to the full applicability of traditional res judicata principles in cases such as the present one:

> [I]n 1871 *res judicata and* collateral estoppel could certainly have applied in federal suits following state-court litigation between the same parties or their privies, and nothing in the language of § 1983 remotely expresses any congressional intent to contravene the

> common law rules of preclusion or to repeal the express statutory requirements of the predecessor of 28 U. S. C. § 1738, ... Section 1983 creates a new federal cause of action. It says nothing about the preclusive effect of state-court judgments.
>
> Moreover, the legislative history of § 1983 does not in any clear way suggest that Congress intended to repeal or restrict the traditional doctrines of preclusion. . . . [I]n the context of the legislative history as a whole, this congressional concern lends only the most equivocal support to any argument that, in cases where the state courts have recognized the constitutional claims asserted and provided fair procedures for determining them, Congress intended to override § 1738 or the common-law rules of collateral estoppel *and res judicata*. Since repeals by implication are disfavored, *Radzanower v. Touche Ross & Co.*, 426 U. S. 148, 154, 92 S. Ct. 1989, 1993, 48 L. Ed. 2d 540, much clearer support than this would be required to hold that § 1738 and the traditional rules of preclusion are not applicable to § 1983 suits.

449 U. S. at 97-99 (emphasis added) (footnotes omitted). The above proposition was decisively reaffirmed by this Court less than a year ago in *Kremer v. Chemical Construction Corporation*, — U. S. —, 102 S. Ct. 1883 (1982). In doing so, this Court added the following comments on the importance of a uniform application of traditional preclusion concepts in Section 1983 actions:

> [T]he federal courts consistently have applied *res judicata and* collateral estoppel to causes of action and issue decided by state courts. *Allen v. McCurry*, 449 U. S. 90, 96, 101 S. Ct. 411, 416, 66 L. Ed. 2d 308 (1980); *Montana v. United States*, 440 U. S. 147, 99 S. Ct. 970, 59 L. Ed. 2d 210 (1979); *Angel v. Bullington*, 330 U. S. 183, 67 S. Ct. 657, 92 L. Ed. 832 (1946). Indeed, from *Cromwell v. County of Sac*, 94 U. S. 351, 24 L. Ed. 195 (1877), to *Federated Department Stores, Inc. v. Moitie*, 452 U. S. 394, 101 S. Ct. 2424, 69 L. Ed. 2d 103 (1981), this Court has consistently emphasized

> the importance of *the related doctrines of res judicata and collateral estoppel* in fulfilling the purpose for which civil courts had been established, the conclusive resolution of disputes within their jurisdiction. *Under res judicata, a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action. Allen v. McCurry,* 449 U. S., at 94, 101 S. Ct., at 414; *Cromwell v. County of Sac,* 94 U. S., at 352. Under collateral estoppel, once a court decides an issue of fact or law necessary to its judgment, that decision precludes relitigation of the same issue on a different cause of action between the same parties. *Montana v. United States,* 440 U. S. 147, 153, 99 S. Ct. 970, 973, 59 L. Ed. 2d 210. *Parklane Hosiery v. Shore,* 439 U. S. 322, 326 n. 5, 99 S. Ct. 645, 649 n. 5 (1979). Thus, invocation of res judicata and collateral estoppel "relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication." *Allen v. McCurry,* 449 U. S., at 94, 101 S. Ct., at 414. When a state court has adjudicated a claim or issue, these doctrines also serve to "promote the comity between state and federal courts that has been recognized as a bulwark of the federal system." *Id.,* at 96, 101 S. Ct., at 416.

— U. S. at —; 102 S. Ct. at 1889-90 n. 6 (emphasis added). Respondents will not belabor these points further, which have been so recently and convincingly made in *Allen* and *Kremer*. It suffices to say here that, in view of above-quoted passages from these decisions, no plausible argument can be made today that Congress, in enacting Section 1983, expected the federal courts to apply only the collateral estoppel aspect of traditional res judicata doctrine and to ignore an equally important function of that doctrine—namely, to preclude the further litigation of claims which were, or could have been, raised in a previous action between the parties.

Second, the position advocated by petitioner has been soundly rejected by virtually all of the federal circuits which have been faced with the question. These circuits have held that claim preclusion concepts are fully applicable in Section 1983 actions to bar federal claims which could have been raised in an earlier state proceeding, but were not. *See Lovely v. Laliberte,* 498 F. 2d 1261 (1st Cir. 1974), *cert. denied* 419 U. S. 1038 (1974); *Southern Jam, Inc. v. Robinson,* 675 F. 2d 94 (5th Cir. 1982); *Castorr v. Brundage,* 674 F. 2d 531 (6th Cir. 1982), *cert. denied,* — U. S. —, 103 S. Ct. 240 (1982); *Lee v. City of Peoria,* 685 F. 2d 196 (7th Cir. 1982); *Robbins v. District Court,* 592 F. 2d 1015 (8th Cir. 1979); *Scoggins v. Schrunk,* 522 F. 2d 436 (9th Cir. 1975), *cert. denied,* 423 U. S. 1066 (1976); *Spence v. Latting,* 512 F. 2d 93 (10th Cir. 1975), *cert. denied,* 423 U. S. 896 (1975). Two circuits have adopted a contrary view. *See Lombard v. Board of Educ.,* 502 F. 2d 631 (2d Cir. 1974), *cert. denied,* 420 U. S. 976 (1975); *New Jersey Educ. Assn. v. Burke,* 579 F. 2d 764 (3d Cir. 1978), *cert. denied,* 439 U. S. 894 (1978). However, it is important to note that in the most recent of these cases (*Burke, supra*), the Third Circuit allowed a second, federal-court action to proceed only in a situation "where a federal suit is commenced before a final decision by the state court. . . ." 579 F. 2d at 774. Thus, it is not even clear that the Third Circuit would allow a second action in the present case, where no effort to invoke the jurisdiction of the federal court was made until *after* the state court proceedings had gone to judgment.

A third reason for rejecting petitioner's proposed "double standard" for preclusion is that it would violate well-established principles of federal-state comity. As noted by Professor Currie of the University of Chicago

in his excellent article, *Res Judicata: The Neglected Defense,* 45 U. Chi. L. Rev. 317, 338 n. 153 (1978):

> [T]o encourage state defendants to reserve federal issues for separate federal actions would offend the policy of federalism underlying *Younger v. Harris* [401 U. S. 37 (1971)].

This policy of federalism is described by Professor Currie in the following terms:

> *Younger* reflects the policy that federal courts should "not duly interfere with the legitimate activities of the States" and that the friction incident to federal interference ought not to be tolerated so long as state courts provide an adequate opportunity to resolve federal claims. *A litigant who has failed to make full use of his state court opportunity has not made a showing that the opportunity was inadequate.*

45 U. Chi. L. Rev. at 320-21 (quoting *Younger, supra,* 401 U. S. at 44) (emphasis added). In a similar fashion, this Court has also recognized the destructive effect on state-federal relationships of allowing a separate "constitutional review" of matters already litigated in a state court. In *Huffman v. Pursue, Ltd.,* 420 U. S. 592 (1975), this Court refused to allow a state-court defendant to maintain an injunction proceeding in federal court following a state-court judgment against him, since to do so would cast "a direct aspersion on the capabilities and good faith of [the] state . . . courts." 420 U. S. at 709 (decided on abstention grounds).

Fourth and finally, petitioner has not presented any convincing policy reasons why an exception to traditional preclusion concepts—and to 28 U. S. C. § 1738—is required under the circumstances of this case. The essence of petitioner's argument here is that since she is asserting federal claims, she cannot be denied her day in a federal court. (Br. Pet. at 23-26). This argument was categor-

ically rejected, however, in *Allen v. McCurry,* 449 U.S. 90 (1980):

> The actual basis of the Court of Appeals' holding appears to be a generally framed principle that every person asserting a federal right is entitled to one unencumbered opportunity to litigate that right in a federal district court, regardless of the legal posture in which the federal claim arises. But the authority for this principle is difficult to discern. It cannot lie in the Constitution, which makes no such guarantee, but leaves the scope of the jurisdiction of the federal district courts to the wisdom of Congress. And no such authority is to be found in § 1983 itself. For reasons already discussed at length, nothing in the language or legislative history of § 1983 proves any congressional intent to deny binding effect to a state court judgment or decision when the state court, acting within its proper jurisdiction, has given the parties a full and fair opportunity to litigate federal claims, and thereby has shown itself willing and able to protect federal rights.

449 U.S. at 103-04 (footnotes omitted). Equally unconvincing is petitioner's claim that to preclude a second action in federal court is to "make a federal forum unavailable to the petitioner." (Br. Pet. at 25). Clearly, a federal forum *was* available to the petitioner in this case, as she herself concedes (see Br. Pet. at 25). Petitioner elected a different forum, however, and cannot now be heard to complain that the federal courthouse doors are closed to her. In this respect, petitioner is like the appellant in *Spence v. Latting,* 512 F.2d 93 (10th Cir. 1975), whose arguments were rejected by the Tenth Circuit with the following comments:

> Spence argues that the total effect of res judicata, together with the Pullman abstention doctrine, is to deny him a federal forum for vindication of federal

> rights. He says that he is barred from bringing his federal and state claims in a federal forum by the abstention doctrine and that, after final judgment in state court, he is barred from the federal forum by res judicata. It may be that if this suit had been initially filed in the federal court, that court would, in its wise discretion, have remitted Spence to the appropriate administrative body for a post-termination hearing. A full and fair hearing there might very well have obviated or conditioned the adjudication of the federal question. . . . *We do not reach this question, because Spence chose the state forum, which as we have seen, has jurisdiction to redress all his claims, federal and state. The federal court house doors were initially open to him; but he deliberately chose the state forum.*

512 F. 2d at 99 (emphasis added) (footnotes omitted).

Indeed, if there are any policy considerations which are worthy of this Court's attention in this case, they are considerations which militate against the position advocated by petitioner. In 1981 alone, over 30,000 civil rights actions were filed in the federal district courts of the United States. *See Patsy v. Board of Regents,* — U. S. —, 102 S. Ct. 2557, 2577 (1982) (Powell, J., dissenting). If petitioner's view is adopted, the problems created by this burgeoning Section 1983 caseload would only be exacerbated. Every individual who believed that his constitutional rights had been violated would be entitled to a separate federal review of his claims, even though he had previously engaged the same defendants in litigation in a state court. Clearly, the creation of a right to such a separate review, as a matter of federal law, will do nothing to alleviate the overwhelming burdens which now weigh on the federal courts, or to improve the quality of justice which those courts are able to provide.

The position advocated by petitioner is also bad policy for a more fundamental reason—namely, that it contravenes the very important policies of finality, repose, and fairness to defendants which have been embodied in the doctrine of res judicata since the very origins of the English common law. The doctrine is, like the doctrine of *stare decisis,* a cornerstone of the Anglo-American jurisprudential system. *See Shoemaker v. City of Cincinnati,* 68 Ohio St. 603, 612, 68 N. E. 1, 2 (1903). *See also Jeter v. Hewitt,* 63 U. S. (22 How.) 352, 363-64 (1859). In the case at bar, it is clear that this fundamental policy of the law will be frustrated by the interpretation sought by petitioner. Petitioner has had her day in court, and that day should have resolved all questions between the parties relating to the nonrenewal of petitioner's employment contract with the Warren City Schools. Any other conclusion would impair the ability of our courts to perform the very social function for which they were created—that is, to resolve disputes. *See Currie, supra,* 45 U. Chi. L. Rev. at 325.

In conclusion, it is important to recognize also that the view of the petitioner on claim preclusion is bad public policy because it encourages the state courts to abdicate their responsibility to hear and determine questions of federal constitutional law. Under the Supremacy Clause (U. S. Const., art. VI, cl. 2), federal law is indeed the "law of the land," and the burden of applying and enforcing this law has always been recognized as an obligation of the state, as well as the federal, courts:

> Upon the State courts, equally with the courts of the Union, rests the obligation to guard, enforce, and protect every right granted or secured by the consti-

> tution of the United States and the laws made in pursuance thereof, whenever those rights are involved in any suit or proceeding before them. . . .

Robb v. Connolly, 111 U. S. 624, 637 (1884). This obligation of the state courts to shoulder part of the responsibility for enforcing federal rights is not merely a function of the Supremacy Clause. It is also highly desirable as a matter of sound judicial administration. The federal courts, even in applying federal law, must often look to the state courts to supply necessary interpretations of state law. For example, in this very case, the federal district court would be required to look to Ohio law to determine whether petitioner had a "property interest" in continued employment which was protected by the Due Process Clause (Fed. Compl. at ¶ 24; J. A. at 9). *See Perry v. Sindermann,* 408 U. S. 593 (1972). Thus, having the state courts adjudicate a plaintiff's federal claims, as well as his state claims, is often a more sensible and efficient utilization of judicial resources than the separate federal review envisioned by petitioner.

In light of the above, it is apparent that petitioner has not advanced any legal or policy considerations which would justify an exception to the full faith and credit statute (28 U. S. C. § 1738) or the creation of a new "double standard" of preclusion—that is, a standard which recognizes collateral estoppel, but ignores the equally important concept of claim preclusion. Respondents therefore respectfully submit that the judgment entered by the trial court herein was eminently sound and reasonable, was wisely affirmed by the Sixth Circuit, and should again be affirmed here.

III. Petitioner's claims for injury to her reputation and resultant impairment of liberty interests are barred by Ohio's one-year statute of limitations on defamation actions and actions for intentional torts.

In this case, the district court granted summary judgment against petitioner because, *inter alia*, her "liberty interest" claims were barred by Ohio's one-year statute of limitations on defamation actions (Pet. Cert. at C 30-31). Although petitioner's "Questions Presented" do not actually present this issue for review, petitioner nevertheless argues this matter in the text of her brief (Pet. Br. at 18-23). Therefore, respondents feel compelled to demonstrate here the correctness of the trial court's ruling on this question.

One basis for petitioner's federal action involves what is in essence a common law tort claim for imposition of a "stigma" upon petitioner "thereby depriving her of the liberty interest in her reputation" and causing her to suffer "mental distress, humiliation, embarrassment and defamation of her character and reputation." (Fed. Compl. at ¶¶ 24, 25; J. A. at 9, 10). These claims are based on certain alleged acts of respondents leading up to the vote of the Board of Education to nonrenew petitioner's contract on April 24, 1979 (Fed. Compl. at ¶ 16; J. A. at 7). Because these various claims are most closely analogous to the common law claims of defamation and intentional tort, they are barred by the one-year statute of limitations applicable to such torts in Ohio, Revised Code Section 2305.11.

It is now well-settled that because 42 U. S. C. § 1983 does not in itself contain a statute of limitations, a "fed-

eral district court must apply the statute of limitations of the state where it sits which would be applicable in the most closely analogous state action to determine the time within which the cause of action must be commenced." *Mason v. Owen-Illinois, Inc.*, 517 F. 2d 520, 521 (6th Cir. 1975); *accord, Kilgore v. City of Mansfield*, 679 F. 2d 632 (6th Cir. 1982) (Ohio's one-year statute of limitations applies in § 1983 action sounding in intentional tort). *See also Johnson v. Railway Express Agency*, 421 U. S. 454 (1975) (applying state statute of limitations to a civil rights action arising under the provisions of 42 U. S. C. § 1981).

The procedure for assessing the similarity of the various state law torts to the federal claim presented requires an analysis of three factors: "(1) the defendant's conduct, (2) the plaintiff's injury, and (3) the relief requested." *Myers v. Pennypack Woods Home Ownership Assn.*, 559 F. 2d 894, 901 (3rd Cir. 1977). Applying these three factors to the present case, the petitioner has alleged (1) that the respondents' conduct amounted to the defaming of her name and reputation by maliciously spreading untruths concerning her job performance as an Elementary Supervisor, which (2) culminated in the respondents' vote of nonrenewal and "mental distress, humiliation, embarrassment and defamation of character" for which petitioner (3) seeks compensatory damages of $250,000.00 and punitive damages of $250,000.00 against respondents.

From this review of petitioner's claims, it is evident that her action is most analogous to the interests protected by the tort of slander and libel which, under Ohio law, is

subject to a one-year statute of limitations. Section 2305.11 of the Ohio Revised Code reads in pertinent part as follows:

> *An action for libel, slander,* assault, battery, malicious persecution, false imprisonment, or malpractice, including an action for malpractice against a physician, podiatrist, or a hospital, or upon a statute for a penalty or forfeiture, *shall be brought within one year after the cause thereof accrued. . . .* (Emphasis added.)

This one-year statute of limitations on defamation actions bars the claims of petitioner described above. This action was not filed until July 10, 1980. The alleged defamatory acts of the respondents, however, took place some time *prior* to April 24, 1979—the date upon which petitioner's limited contract was nonrenewed. Therefore, petitioner has not alleged any defamatory actions of respondent within the one-year period of limitation for actions of that type.

For purposes of the present case, it is important to recognize that under Ohio law, a cause of action accrues when the wrongful act complained of is committed, and not when the date of damage is discovered or reasonably should have been discovered. *Wyler v. Tripi,* 25 Ohio St. 2d 164, 267 N. E. 2d 419 (1971). In *Pearl v. Koch,* 5 Ohio Dec. 5 (1894), the common pleas court held that the statute of limitations for libel or slander commences to run from the time the alleged slanderous words were spoken, and not from the time plaintiff had knowledge that they were spoken. Thus, a slander and libel action would be barred where the facts showed that the alleged defamation took place in 1962 and the counterclaim asserting a cause

of action was filed in 1966, well beyond the one-year limitations found in Section 2305.11. *Starr v. Rupp,* 421 F. 2d 999 (6th Cir. 1970).

It is also important to note here that under Ohio law, an action which is in substance an action for libel or slander is barred by the one-year statute of limitations irrespective of how the tort is characterized by the plaintiff. *A. L. Englander Motor Co. v. DeGaetano,* 120 Ohio St. 443, 166 N. E. 372 (1929). Further, as here, a plaintiff's allegations of injury to reputation and embarrassment and mental distress are within the scope of a tort action for libel and slander. *Kahn v. Cincinnati Times-Star,* 10 Ohio Dec. 599 (1890), *aff'd,* 52 Ohio St. 662, 44 N. E. 1132 (1895).

The district court's award of summary judgment to respondents on petitioner's defamation claims was correct as a matter of both Ohio and federal law. The courts of Ohio have assumed that when the General Assembly enacts a statute of limitations, it is aware that the statute will operate without reference to merit and will cut off all claims after a certain time span. *See Wyler v. Tripi, supra.* Therefore, where the plaintiff seeks to bring a cause of action when the limitation period has expired, the court must grant defendants' motion for summary judgment. *Mills v. Whitehouse Trucking,* 40 Ohio St. 2d 55, 320 N. E. 2d 668 (1974); *Wentz v. Richardson,* 165 Ohio St. 558, 138 N. E. 2d 675 (1956). *See also Starr v. Rupp,* 421 F. 2d 999 (6th Cir. 1970). And, more specifically, where the claims in a civil rights action brought in a federal court are construed to be for libel or slander, the action is barred if filed after the one-year applicable state statute of limitations. *De Marrais v. Community*

College of Allegheny County, 407 F. Supp. 79, 80 (W.D. Penn. 1975); *aff'd* 571 F. 2d 571 (3rd Cir. 1978); *MacMurray v. Board of Trustees,* 428 F. Supp. 1171, 1178 (M.D. Pa. 1977).

For the above reasons, respondents urge this Court to affirm the decisions of the trial court and the Sixth Circuit holding that the "liberty interest" claims of petitioner sounding in tort for defamation of character are barred by the statute of limitations.

—o—

CONCLUSION

In light of the foregoing, it is clear that:

1. The full faith and credit statute (28 U.S.C. § 1738) required the District Court for the Northern District of Ohio to bar petitioner's action, since the courts of Ohio would have barred the action as arising out of the same transaction, occurrence, or series of transactions and occurrences as her first state-court action.

2. There is nothing in the legislative history or prior decisions of this Court, or in any underlying policy considerations, which would support the view that although *issue preclusion* principles apply in Section 1983 actions, *claim preclusion* principles do not.

3. Petitioner's claims for injury to her reputation, and the resultant impairment of her "liberty interests," are barred by Ohio's one-year statute of

limitations on defamation actions and actions for intentional torts.

Wherefore, respondents Warren City School District Board of Education and individual respondents Catherine O. Swan, Henry J. Angelo, Willard T. Rubin, Raymond Tesner, Mary Milheim, and Barbara Miller urge this Court to affirm the decisions of trial court and of the Court of Appeals for the Sixth Circuit in each and every particular.

Respectfully submitted,

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