

19-1326

No. 20-\_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

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E. Thomas Scarborough III, Petitioner

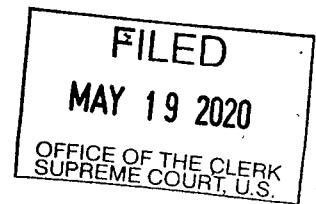
v.

C.C.P. Northampton, et al, Respondents

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On Petition For Writ Of Certiorari  
To The United States Court Of Appeals  
For The Third Circuit

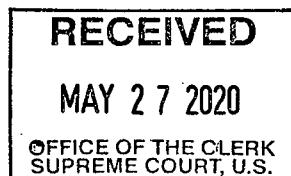
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**PETITION FOR WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

- I. Whether District Court has jurisdiction over state deprivation of federal rights, under the color of state law?
  - a.) Whether Respondents are amenable to suit?
  - b.) Whether Respondents are immune from suit?
- II. Whether District Court has jurisdiction over Constitutionally impermissible orders?
  - a.) Whether the Fourteenth Amendment guarantees fathers' Equal Protection of the law?
  - b.) Whether the Fifth & Fourteenth Amendments, guarantees fathers' Due Process of law?
  - c.) Whether the relationship between a father and his child, is Constitutionally protected?
- III. Whether District Court has jurisdiction over federal crimes?
  - a.) Whether *Rooker-Feldman* bars claims of fraud?
  - b.) Whether *Rooker-Feldman* bars disregarded claims?
- IV. Whether fathers' have the right to present to the judiciary, allegations concerning violations of their fundamental Constitutional rights?
  - a.) Whether the right of access to the Court, is assured by the Americans with Disabilities Act?
  - b.) Whether the right of access to the Court, is assured by the Due Process clause?
- V. Whether the factual allegations stated in the complaint are sufficient to withstand a Rule 12(b) motion?

## **PARTIES INVOLVED**

The parties involved are identified in the style of the case. The Petitioner is a father attempting to exercise his constitutionally protected parental rights, in conflict with a malapropos venue without jurisdiction (C.C.P. Northampton, Respondent).

Correspondingly, the Supreme Court of Pennsylvania has a legal obligation to preserve and protect guaranteed federal rights, for any person within its jurisdiction.

## **CORPORATE DISCLOSURE STATEMENT**

Mr. Scarborough is a private entity, whereas there is no parent or publicly held company.

## **RELATED PROCEEDINGS**

- United States District Court (E.D. Pa.): Jurisdiction asserted under 28 U.S.C. §1331 & 28 U.S.C. §1343. Scarborough v. CCP Northampton, et al., No. 5-18-cv-02436. Filed June 08, 2018, judgement entered June 14, 2019. Respondent's motion to dismiss GRANTED.
- Pennsylvania Supreme Court: Jurisdiction asserted under King's Bench Power. Scarborough v. CCP Northampton, 2018 MM 126. Filed July 30, 2018, judgement entered September 27, 2018. Petitioner's application for extraordinary relief DENIED.
- United States Court of Appeals (3d Circuit): Jurisdiction asserted under 28 U.S.C. §1291. Scarborough v. CCP Northampton, et al., No. 19-

2455. Filed June 21, 2019, judgement entered February 20, 2020. District Court judgment AFFIRMED.

Respondent's Motion to be excused from filing a brief filed on August 30, 2019 and Petitioner's response, Motion to strike, filed on September 6, 2019, (Respondent is culpable for neglectful failure to answer pursuant to Rule 60(d)(3)).

Judgement entered on November 1, 2019.

Respondent's Motion GRANTED; Petitioner's Motion DENIED.

Motion in support of requested mandamus relief for discovery and summary judgement filed September 27, 2019, judgement entered February 20, 2020. Motion DENIED.

En Banc filed on March 4, 2020; judgement entered May 14, 2020, DENIED.

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## **INTRODUCTION**

E. Thomas Scarborough III respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit and the State Court of last resort in this matter.

This case involves ADA, jurisdictional fraud, parental rights, Equal Protection rights and Due Process rights. Respondent has continuously violated Petitioner/Father's federal rights under the U.S. Constitution, the Americans with Disabilities Act, the Rehabilitation Act, the Civil Rights Act, the Fraud Upon the Court Doctrine and under the Continuing Violation Doctrine.

This Court's supervisory powers must be exercised over the federal questions presented and over the lower court decisions, which are presently before this Court and conflict with prior decisions and binding precedent of this Court.

Moreover, the issues presented by this case are of exceptional importance to fathers and to individuals with protected disabilities.

## **OPINIONS BELOW**

The decisions of the court of appeals, are reported at No. 19-2455 (3d Cir. 2020), are reprinted in the Appendix at 1-2a. The district court's opinion, reported at No. 5-18-cv-02436, is reprinted at 3a. The decision of the Supreme Court of Pennsylvania, reported at 126-MM-2018, is reprinted at 4a.

## **JURISDICTION**

The court of appeals entered its judgment on

February 20, 2020 (2a) and denied a petition for rehearing en banc on May 14, 2020, (1a). The jurisdiction of the Supreme Court is invoked pursuant to 28 U.S.C. §1254(1).

The Supreme Court also has jurisdiction pursuant to 28 U.S.C. §1257(a), to review the final judgement of the Pennsylvania Supreme Court, entered on September 27, 2018, which is repugnant to Petitioner/Father's private rights secured by the Constitution (4a).

## STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions are reprinted in the Appendix infra, 9a-15a.

## STATEMENT OF THE CASE

This Court has held that discrimination on the basis of sex, constitutes a violation of the Equal Protection Clause of the U.S. Constitution. 1

At the initial contested conference, the female custody conference officer stated, "women get custody 90% of the time." Significantly, primary custody was not even before the Court.

Petitioner/Father's amended petition for shared custody and Bucks County prothonotary receipt remain discoverable and the parties are unable to share custody in Northampton County. 2

The official Court record documents a custody agreement, when in fact there was no agreement. The Order under attack was procured by fraud.

Without discovery nor a trial, Mother was

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1. *Moritz v. Commissioner Internal-Revenue*, 469 F.2d.466.

2. (8a) 126-MM-2018 exhibits 1,2,8.

awarded primary custody by the foreign venue. C.C.P. Northampton persists, absent jurisdiction over Petitioner/Father nor his property nor over the subject matter of the suit. Importantly, C.C.P. Northampton lacked jurisdiction to enter the judgment rendered and lacks the capacity to act as a court in this tortured custody matter.

By enacting orders in the wrong jurisdiction, Respondent has removed this child from the proper venue, whereas the Parties are unable to share custody of their child in Northampton County.

Petitioner/Father did not consent to the foreign venue. The initial unauthorized, fraudulent custody Order is constitutionally impermissible and continues to deny Petitioner's federal rights.

Therefore, the jurisdictional fraud presents a question which clearly arises under the laws of the United States and therefore presents a federal question upon which determination of the federal court is controlling.

Petitioner/Father is entitled to equal protection of the fundamental right of parents to make decisions concerning the care, custody and control of their children; however, the initial unauthorized custody Order was fraudulently entered by a custody conference officer, more than two months after the initial contested custody conference.

Shared custody was retrospectively offered by C.C.P. Northampton, however because Petitioner/Father was unwilling to relocate to the foreign venue; additional time, right of first refusal, vacation and custody evaluation were criminally deferred/withheld until the child enrolled in school, five years later.

The agreed custody evaluators role was materially modified in the official court record and Mother's MMPI-2 raw data was criminally obstructed by C.C.P. Northampton Court Order. State Court officials found to have interfered with discovery, have participated in the federal crimes, and are alleged to be accessories after the fact. <sup>3</sup>

As a result of the fraud upon the Court, Respondent deprived Petitioner/Father of his Constitutionally protected parental right, by taking custody of his daughter away from him without a trial or Due Process.

Respondent continues this deprivation of parental rights without Due Process by waiting over eleven years to have a trial and then not allowing a complete trial because there was no adequate custody evaluation. Moreover, the trial judge failed to obtain nor consider the missing record as stipulated, while first offering opinions and conclusions after the reconsideration hearing.

Thereafter, the Respondent courts failed to even read pleadings or consider his appeals, violating "General Effective Communication Requirements" under Title II of the ADA. The rotated trial judge refused to read Petitioner's pro se pleas, denying his request for accommodation for his protected disability. Absent a rudimentary understanding, Petitioner was pejoratively characterized as a "serial pro se litigant" while his claims were mocked as "a waste of time." Respondents irrationally continue, to not read Petitioner's pleadings. <sup>4</sup>

Petitioner's claims continue to be dismissed,

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3. 18 U.S.C. §241; 42 U.S.C. §1985(3).

4. 28 CFR §35.160; (8a) 126-MM-2018 exhibits-28p.7,33,35,40, Continuing Violation Doctrine.

absent a rudimentary understanding. The Appellate Court must strictly scrutinize questions of constitutionality *de novo*, however this panel failed to even read Petitioner's pleas concluding, "*the outlines of this putative claim are not at all clear.*" Petitioner respectfully requests for this Court to consider/read the pleadings because he has the right of access to the courts and is entitled to Due Process through this Federal Court.

Respondent has a legal obligation to preserve and protect guaranteed federal rights, for any person within its jurisdiction and has failed in the duty, to exercise and maintain effective supervision and control over the State Court's compliance to federal laws. State Court officials have a duty to enforce federal law. <sup>5</sup>

Restoring jurisdiction to Bucks County will remedy the jurisdictional fraud and eradicate the unconstitutional practice, for this child's fast-track custody matter. §1983 litigation is provoked by the State's ongoing refusal to assert proper control and authority over C.C.P. Northampton. Respondents continue to inflict injury by:

- Allowing a custody conference officer without authority, to enter a custody order.
- Allowing a county court without jurisdiction to enter custody orders.
- Entering a custody order without a trial.
- Manufacturing meritless excuses for the ongoing refusal, to appoint the agreed custody evaluator.
- Ignoring the obstruction of discovery, such as the Order occluding Mother's MMPI-2 raw data.
- Waiting eleven years to have a trial.

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5. *ExParte Virginia*, 100 U.S.339.

- Not allowing discovery prior to the trial.
- Not allowing a custody evaluation.
- Prohibiting evaluators from reviewing psychological data on Mother.
- Prohibiting evaluators from contacting Father.
- Purposefully rotating unfamiliar judges.
- Not reviewing pleadings.
- Not providing reasonable accommodations for a protected disability as required by ADA.
- Not investigating multiple complaints, alleging fraud and connivance.

18 U.S.C. §242 makes it a crime for a person acting under color of any law to willfully deprive a person of a right or privilege protected by the Constitution or laws of the United States. Despite multiple pleas, no authority has ever investigated the alleged fraud because no authority has read the pleadings, nor considered Petitioner's pro se appeals. Petitioner has advanced enough facts to raise a reasonable expectation that discovery will reveal fraud upon the Court (inter Alia).

While primary custody was not even before the court, Respondent has repeatedly refused to consider/read/investigate the fraud and other crimes alleged in 126-MM-2018, which begs the same relief as 684-MAL-2017, 271-MT-2011, 135-MM-2009. The State's continuous indifference with preserving nor protecting constitutional rights is expressed by their failure to consider/read/investigate Petitioner's pro se pleadings. The State's ongoing failure necessitates a federal duty to promote discovery by investigating the alleged fraud and other federal crimes and granting Petitioner access to the Court (see 6a).

In the present case, the Eleventh Amendment

could not extend immunity to the State. To take away all remedy for the enforcement of a right, is to take away the right itself.

## REASONS FOR GRANTING THE WRIT

### **I. Certiorari is warranted because District Court has jurisdiction over state deprivation of federal rights, under the color of state law.**

The panel's determination, that the Federal Court does not have jurisdiction over a state charged with depriving a person of a federal right, under the color of State law, conflicts with this Court's prior decision. This Court held that the Eleventh Amendment does not bar an action for damages against a State charged with depriving a person a federal right under the color of state law, therefore the panel determination conflicts with binding precedent of this Supreme Court. <sup>6</sup>

42 U.S.C. §1983 provides a cause of action for the "deprivation of any rights, privileges, or immunities secured by the Constitution and laws" of the United States. To state a claim under §1983, a plaintiff must allege two essential elements:

- "(1) that a right secured by the Constitution or laws of the United States was violated,
- (2) that the alleged violation was committed by a person acting under the color of State law." <sup>7</sup>

The panel errantly asserts that the decisions reached in dissimilar retrospective claims, bar

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6. *Scheuer v. Rhodes*, 416 U.S.232, 28 U.S.C. §1361.

7. *West v. Atkins*, 487 U.S.42,48.

Petitioner's present constitutional claims. The decisions reached in the cited frivolous cases, are incongruous with fraud and other crimes associated with the deprivation of rights that are Constitutionally guaranteed.

"The alleged discrimination is an ongoing and continuous violation manifested in a number of incidents, and at least one of the alleged discriminatory acts occurred within the two year statute of limitations." <sup>8</sup>

The initial unauthorized, fraudulent custody Order continues to deny Petitioner/Father's federal rights. The same deprivation/injury continues today.

Petitioner's valid claims under §1983 are not procedurally barred. Immunity from liability is an exception to the general rule, particularly as it relates to state officials and federal law under the Doctrine of *Ex Parte Young*, that individuals must conform their conduct to the law. Thus, the Court should be reluctant to extend, as suggested by the Respondent, the concept of immunity to a state that fails to preserve and protect Constitutional rights. <sup>9</sup>

§1983 would be drained of meaning were the courts to hold that the acts of a State Court are not reviewable. Under the criteria developed by precedents of this Supreme Court:

"If this extreme position could be deemed to be

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8. Continuing Violation Doctrine,  
*Martin v. Voinovich*, 840 F.Supp.1175;  
*Hull v. Cuyahoga-Valley S.D.Bd.Educ.*, 926 F.2d.505,511.
9. *ExParte Young*, 209 U.S.123;  
*Pulliam v. Allen*, 466 U.S.522.

well taken, it is manifest that the fiat of a state Governor, and not the Constitution of the United States, would be the supreme law of the land; that the restrictions of the Federal Constitution upon the exercise of state power would be but impotent phrases, the futility of which the State may at any time disclose by the simple process of transferring powers of legislation to the Governor to be exercised by him, beyond control, upon his assertion of necessity." This court concluded that: "Under our system of government, such a conclusion is obviously untenable. Indeed, courts have recognized the supremacy of federal law and the primary public interest in protecting citizens whose Constitutional rights have been overridden by the exercise of state authority. There is no such avenue of escape from the paramount authority of the Federal Constitution. When there is a substantial showing that the exertion of state power has overridden private rights secured by that Constitution, the subject is necessarily one for judicial inquiry in an appropriate proceeding directed against the individuals charged with the transgression." 10

Petitioner/Father in the case at bar has alleged sufficient facts that his private rights secured by the Constitution have been overridden by the exertion of state power. Respondent is required to exercise effective supervision and control over the State Court's compliance to federal laws. Respondent is alleged to have failed in the duty to ensure that the

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10. *Scheuer*, supra. at 248-249 quoting *Sterling v. Constantin*, 287 U.S.378.

laws are faithfully executed. These factual charges are sufficient to withstand a Rule 12(b) motion.

**a.) §1983 claims are valid, Respondents are amenable to suit.**

§1983 is purposed to prevent governmental misconduct against defenseless citizens, aided and abetted by the local authorities through the failure to exercise the machineries of justice.

This Court has consistently refused to extend Eleventh Amendment sovereign immunity to counties, cities, or towns. Counties have neither Eleventh Amendment immunity nor residual common law immunity. Counties are "persons" under 42 U.S.C. §1983 and thus may be liable for causing a constitutional deprivation. 11

The panel erred when determining that Respondents are not amenable to suit because they failed to consider/read the congruous cases offered, but instead cite dissimilar absolute immunity cases, which unlike this case do not involve fundamental constitutional protections, that are germane to the merits of the underlying action.

This Court has held that vicarious liability may be imposed on a county for the actions of its officers that violate federal civil rights, when the 12 responsibility of any third party that had the "right, ability or duty to control" the activities of a violator.

This Court held that municipalities can be liable,

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11. *Monell*, 436 U.S. at 690; *Long v. L.A.*, 442 F.3d.1178,1185; *Northern Insurance-Co. N.Y. v. Chatham County*, 547 U.S.189,193; *Lincoln County v. Luning*, 133 U.S.529, *Owen v. City-Independence*, 445 U.S.622.

12. *Moor v. Alameda County*, 411 U.S.693.

even for a single decision that is improperly made. <sup>13</sup>

As in these cases, this Court has supplemental jurisdiction over Petitioner/Father's other federal law claims. This Court has long held that §1983 is an available remedy for violations of federal law. <sup>14</sup>

The panel erred when opining that these claims are barred. Certiorari is warranted because valid claims for relief are proper. Because the Fourteenth Amendment allows Congress to take appropriate action to enforce rights, the Court has determined that such action must be "congruent and proportional" to the deprivation of the right that the Congress is seeking to remedy. The Court applied the *Boerne* test in *Nevada Dept. H.R. v. Hibbs*. <sup>15</sup>

*Wilder v. Virginia Hospital-Assn* established a "test," to determine whether a federal statute creates a "right" enforceable under §1983. In *Martin v. Voinovich*, the Court cited *Golden State Transit-Corp. v. City of Los Angeles*, while applying the *Wilder* test. <sup>16</sup>

This Court has held that the Eleventh Amendment does not immunize counties from having to pay federal money judgments.

"the financial interdependence between state and county government is not great enough to make the County an arm of the state for <sup>17</sup> purposes of applying the Eleventh Amendment".

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13. *Pembaur v. Cincinnati*, 475 U.S.469.

14. *Maine v. Thiboutot*, 448 U.S.1.

15. *City-Boerne*, 521 U.S.507; *Nevada H.R.*, 538 U.S.721.

16. *Martin v. Voinovich, supra*; *Wilder v. VA*, 496 U.S.498; *Golden State v. L.A.*, 475 U.S.608.

17. *Heiar v. Crawford County*, 558 F.Supp.1175, citing *Mackey v. Stanton*, 586 F.2d.1126.

The majority opinion reads *Newport* as holding that in an outrageous case, punitive damages may be assessed against a municipality.<sup>18</sup>

*Monell*'s holding applies to §1983 claims against municipalities, for prospective relief and damages.<sup>19</sup>

Municipal liability attaches where the county itself causes the constitutional violation through:

"execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy."<sup>20</sup>

A plaintiff may establish municipal liability upon a showing that there is a permanent and well-settled practice by the municipality which gave rise to the alleged constitutional violation.<sup>21</sup>

A policy or custom under *Monell*: "is a deliberate choice to follow a course of action . . . made from among various alternatives by the official or <sup>22</sup> officials responsible for establishing final policy with respect to the subject matter in question."

"(1) a longstanding practice or custom which constitutes the "standard operating procedure" of the local government entity; (2) the decision of a decision-making official who was, as a matter of state law, a final policymaking authority whose

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18. *City-Newport v. Fact-Concerts, Inc.*, 453 U.S.247.

19. *L.A. v. Humphries*, 562 U.S.29; *Monell*, at 680-81.

20. *Monell*, at 694; *Ulrich v. San Francisco*, 308 F.3d at 984.

21. *Blair v. City-Pomona*, 223 F3d.1074.

22. *Long v. L.A.*, supra at 1185, *Fairley v. Luman*, 281 F.3d.913,918 citing *Oviatt v. Pearce*, 954 F.2d.1470,1477 quoting *Pembaur v. Cincinnati*, supra,483.

edicts or acts may fairly be said to represent official policy in the area of decision; (3) when an official with final policymaking authority either delegated that authority to; or ratified the decision of a subordinate.” 23

A policy can be one of action or inaction. Under *Canton*, a plaintiff can allege that through its omissions the municipality is responsible for a constitutional violation committed by one of its employees, even though the municipality's policies were facially constitutional, the municipality did not direct the employee to take the unconstitutional action, and the municipality did not have the state of mind required to prove the underlying violation. 24

“Turning a blind eye to constitutional violation, can demonstrate deliberate indifference.” 25

To impose liability against a county for its failure to act, a plaintiff must show: “(1) that a county employee violated the plaintiff's constitutional rights; (2) that the county has customs or policies that amount to deliberate indifference; and (3) that these customs or policies were the moving force behind the employee's violation of constitutional rights.” 26

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23. *Menotti v. Seattle*, 409 F.3d.1113,1147; *Ulrich v. San Francisco*, *supra* at 984-85, *Monell*, *supra*.

24. *City-Canton v. Harris*, 489 U.S.378,388, 109 S.Ct.1197,103.L.Ed.2d.412 at 387-89,109.

25. *Henry v. Shasta County*, 137 F.3d.1372,1372; *City-Canton*, *supra* at 390; *Long v. L.A.*, *supra* at 1186-87; *Berry v. Baca*, 379 F.3d.764,767; *Lee v. L.A.*, 250 F.3d.668,682; *Oviatt v. Pearce*, *supra*,1470,1477-78.

26. *Gibson v. Washoe County*, 290 F.3d.1175,1193-94.

With *Monell* claims the court has emphasized, "Whether a local government has displayed a policy of deliberate indifference to the constitutional rights of its citizens is generally a jury question." 27

In this case, Petitioner has presented sufficient probative evidence to create a triable issue regarding whether the Respondent's policy deficiencies constituted deliberate indifference to Petitioner's constitutional rights and were the moving force behind the violation of his federal rights.

Accordingly, summary judgment on the question of municipal liability is inappropriate and this case should be reversed and remanded.

**b.) §1983 claims are valid, Respondents are not immune from suit.**

In determining the immunity to apply, this Court has stated that the same official may have qualified immunity for some acts, absolute for others, and even no immunity if the act does not warrant it. The doctrine of qualified immunity shields public officials from civil liability, only when,

"their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known."28

Moreover, immunity is not extended, when criminal allegations are not investigated or acted upon, wherefore Respondents may be held liable.

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27. *Gibson*, *supra* at 1194-95, *Monell*, *supra*.

28. *Harlow v. Fitzgerald*, 457 U.S.800,810,818.

“if supervisors tacitly condone illegal conduct by refraining from disciplining wrongdoers, their supervision is not adequate because it lacks meaning or effect.” 29

The first step in the qualified immunity analysis is to determine whether the facts, when viewed in the light most favorable to the plaintiff, show a constitutional or other federal violation. Certiorari is warranted because the Eleventh Amendment does not extend immunity to States that violate 42 U.S.C. §12202 and §504 of the Rehabilitation Act.

All recipients of federal financial assistance, including State Court systems, must comply with Title-VI of the Civil Rights Act and its implementing regulations. Petitioner has been excluded from participation in, denied the benefits of and has been subjected to discrimination under the State Court system. Discrimination under Title-VI includes both intentional and disparate impact discrimination. 30

Petitioner has alleged facts sufficient to state a claim. Disparate impact discrimination constitutes a valid cause of action under §504. ADA and §504 claims can be based on the discriminatory effect on people with disabilities of seemingly neutral practices and do not require a finding of intentional discrimination. A showing of only deliberate indifference is required under §504. 31

Claims for relief are also valid because the fraud occurred prior to C.C.P. Northampton acquiring

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29. *Moore v. Miller*, No. 10-cv-00651-JLK;  
*J.M. ex rel. Morris v. Hilldale Sch. Dist.*, 397 F. App'x 445

30. *Atascadero State-Hospital v. Scanlon*, 473 U.S.284.

31. *Alexander v. Choate*, 469 U.S.287; *Susavage v. Bucks County Schs. Intermediate-Unit #22*, No. 00-6217 E.D.P.A.2002; *Mark H v. Lemahieu*, 372 F.Supp.2d.591.

jurisdiction over Petitioner/Father or his property. The panel determination fails to consider that this collateral attack is not to review the determination of the County Court, rather C.C.P. Northampton lacked jurisdiction to make any determination. <sup>32</sup>

A Court without jurisdiction, trespasses the law and therefore has no immunity. No laches can run against a void judgement. <sup>33</sup>

This Court held if a court is “without authority,” “its judgments and orders are regarded as nullities. They are not voidable, but simply void; and form no bar to a recovery sought, even prior to a reversal in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or <sup>34</sup> sentences, are considered in law, as trespassers.”

Since the initial unauthorized fraudulent order, C.C.P. Northampton court officials have been enacting orders, entirely absent jurisdiction.

“a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction.” <sup>35</sup>

Since the evidence indicates jurisdictional fraud, ADA and constitutional violations, the Court proceeds to the second tier of the qualified immunity analysis, which is an objective standard that does

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<sup>32.</sup> *Rankin v. Howard*, 633 F.2d.844; *Bergere* 527 A.2d.171; *Kalmeyer v. Penn Hills Twp.*, 197 A.3d.1275.

<sup>33.</sup> *P.N.B. v. D.M. Coal-Co.* 187 A.452.

<sup>34.</sup> *Elliot v. Piersol*, 26 U.S.328,340.

<sup>35.</sup> *Mireles v. Waco*, 502 U.S.9.

not consider the subjective beliefs of the officers. 36

C.C.P. Northampton court officials are not entitled to qualified immunity, because a reasonable official in their position, with their knowledge of the law, could not recklessly disregard federal statutes. Reasonable court officials could not mistakenly but reasonably, perceive nor conclude that:

- their conduct did not violate Petitioner's ADA rights. A reasonable judge would read pleas.
- their conduct did not violate Petitioner's Fourteenth Amendment rights.
- an unauthorized fraudulent order could establish jurisdiction over Petitioner/Father and his property, or over the subject matter of the suit.

There is a Fourteenth Amendment substantive due process right to familial relationships. 37

Pennsylvania is not entitled to qualified immunity, because a reasonable State with knowledge of the law, could not recklessly disregard federal protections that are guaranteed to citizens within their jurisdiction. A reasonable State with knowledge of the facts, could not mistakenly but reasonably perceive nor conclude that:

- judges' conduct did not violate Petitioner's protected ADA rights. 38
- an unauthorized fraudulent order could establish jurisdiction over Petitioner/Father and his property, or over the subject matter of the suit.

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36. *Inouye v. Kemna*, 504 F.3d at 712.

37. *Lee v. L.A.*, supra, 668,685.

38. *Tennessee v. Lane*, 541 U.S.509; 28 CFR§35.160;  
*Niece v. Fitzner*, 922 F.Supp.1208.

- C.C.P. Northampton's conduct did not violate Petitioner/Father's protected Fourteenth Amendment rights.

An order procured by fraud, can be attacked at any time in any court, either directly or collaterally. All courts have the inherent equitable power to vacate a judgment that has been obtained through fraud upon the court, see 28 U.S.C. §2106.

“The inherent power of the federal court to investigate whether a judgment was obtained by fraud, is beyond question.” <sup>39</sup>

This Court has held that Congress can abrogate State sovereign immunity when using its authority under §5 of the Fourteenth Amendment, which explicitly allows Congress to enforce its guarantees on the States and thus overrides States' Eleventh Amendment immunity.

Congress may “provide for private suits against States or state officials which are <sup>40</sup> constitutionally impermissible in other contexts.”

## **II. Certiorari is warranted because District Court has jurisdiction over Constitutionally impermissible orders.**

Certiorari is warranted because claims raise significant Constitutional issues involving liberty and property interests that are entitled to procedural and substantive due process protections.

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<sup>39</sup>. *Universal Oil- Prods.-Co. v. Root Ref.-Co.*, 328 U.S.575,580, citing *Hazel-Atlas Co. v. Hartford Empire-Co.*, 322 U.S.238.

<sup>40</sup>. *Fitzpatrick v. Bitzer*, 427 U.S.445,456, Abrogation Doctrine.

The State interfered with said interests and the procedures attendant upon the deprivation were constitutionally impermissible.

"The inhibition contained in the Fourteenth Amendment means that no agency of the State, or of the officers or agents by whom her powers are exerted, shall deny to any person within her jurisdiction the equal protection of the laws. Whoever by virtue of his public position under a State government deprives another of life, liberty, or property, without due process of law, or denies or takes away the equal protection of the laws, violates that inhibition; and as he acts in the name of and for the State, and is clothed with her power, his act is her act. Otherwise, the inhibition has no meaning, and the State has clothed one of her agents with power to annul or evade it." 41

The Fifth and Fourteenth Amendments guarantee the Petitioner/Father's right of Due Process, which affords individuals a right to a fair process (known as procedural due process) and a right to enjoy certain fundamental liberties without governmental interference (known as substantive due process). Additionally, the Fourteenth Amendment affirms that no one shall be deprived the equal protection of the laws.

Respondent has a legal obligation to preserve and protect federal rights for individuals within the Respondent's jurisdiction. The facts alleged are sufficient to state a claim. Complaints that state plausible claims for relief survive dismissal motions.

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41. *ExParte Virginia, supra.*

**a.) The Fourteenth Amendment guarantees fathers' Equal Protection of the law.**

The custody conference officer errantly stated that Mother had a superior right to custody. Federal and State law expressly prohibit the award of custody by gender. Petitioner/Father is entitled to equal protection of the laws.

The Equal Protection Clause of the Fourteenth Amendment prohibits a state from denying to any person within its jurisdiction the equal protection of the laws. A State must "treat similarly situated individuals in a similar manner." 42

"To survive a motion to dismiss for failure to state a claim, a plaintiff must allege facts sufficient to overcome the presumption of rationality that applies to government classifications." 43

As the Court has held, plaintiffs' asserting an Equal Protection claim need not allege that they were a member of a suspect class or that defendants intentionally discriminated against them. It is enough for plaintiffs to allege that they were,

"intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment." 44

**b.) The Fifth & Fourteenth Amendments guarantees fathers' Due Process of law.**

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42. *Buchanan v. City-Bolivar*, 99 F.3d.1352.

43. *Bower v. Village-Mt. Sterling*, 44 Fed.Appx.670.

44. *Olech v. Village-Willowbrook*, 138 F.Supp.2d.1036.

Petitioner's claims are not properly dismissed, because he is entitled to Due Process through this Court. In due process cases, once the plaintiff establishes a deprivation of life, liberty or property, "the question remains what process is due." 45

A procedural due process analysis addresses two questions. The first asks whether there exists a liberty or property interest which has been interfered with by the state. The second examines whether the procedures attendant upon that deprivation were constitutionally sufficient. 46

"In procedural due process claims, the deprivation by state action of a constitutionally protected interest in 'life, liberty, or property' is not in itself unconstitutional; what is unconstitutional is the deprivation of such an interest without due process of law." 47

"A court must weigh several factors to determine what process is due: 1.) the private interest that will be affected by defendants' official action; 2.) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; 3.) the Government's interest." 48

Given the significant interest with parental rights, the amount of process due should be substantial.

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45. *Morrissey v. Brewer*, 408 U.S.471.

46. *Bazzetta v. McGinnis*, 430 F.3d.795,801.

47. *Zinermon v. Burch*, 494 U.S.113,125.

48. *Mathews v. Eldridge*, 424 U.S.319,335.

**c.) The relationship between a father and his child, is constitutionally protected.**

This Court has zealously protected the fundamental right of parents to make decisions concerning the care, custody, and control of their children. Unfailingly, this Court exhorts that the relationship between parent and child is constitutionally protected. 49

This Court has a long history of upholding the supremacy of Federal law and the primary public interest in protecting citizens whose rights have 50 been overridden by the exercise of State authority.

The Fourteenth Amendment's Due Process Clause, which has a substantive component that "provides heightened protection against government interference with certain fundamental rights and liberty interests," including parents' fundamental right to make decisions concerning the care, custody, and control of their children. 51

This Court ruled that a municipality may not intrude upon the "sanctity of the family." This Court accepts jurisdiction, where a municipality infringes upon the "constitutional right to family integrity." 52

"There is a presumption, that fit parents act in their child's best interests." 53

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49. *Stanley v. Illinois*, 405 U.S.645,651; *Wisconsin v. Yoder*, 406 U.S.205,232; *Quilloin v. Walcott*, 434 U.S.246,255; *Parham v. J.R.* 442 U.S.584,602; *Santosky v. Kramer*, 455 U.S.745,753.

50. *Loving v. Virginia*, 388 U.S.1.

51. *Washington v. Glucksberg*, 521.U.S.702,720;  
*Stanley v. Illinois*, *supra*.

52. *Moore v. City-East Cleveland*, 431 U.S.494.

53. *Parham v. J. R.*, *supra*.

“There is normally no reason for the State to inject itself into the private realm of the family to further question fit parents' ability to make the best decisions regarding their children.” <sup>54</sup>

This Court has remedied unconstitutional custody orders. As in *Troxel*, the State Court placed on Petitioner/Father the burden of disproving that the ordered visitation schedule would be in the child's best interest and thus failed to provide any protection for his fundamental right. Similarly, Respondent was deliberately indifferent to Petitioner/Father's lack of consent but injuring far more egregiously. This is a federal question because guaranteed federal rights, are not privileges. <sup>55</sup>

### **III. Certiorari is warranted because District Court has jurisdiction over federal crimes.**

It is an outrageous perversion when agents of the State violate the rights of a citizen, rather than protect our citizenry's,

“cherished constitutional guarantees, and the importance of assuring [their] efficacy is only accentuated when the wrongdoer is the institution that has been established to protect the very rights it has transgressed.” <sup>56</sup>

This case deals with a wrongful policy of concealing fraud, traceable to the collective inaction

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<sup>54.</sup> *Reno v. Flores*, 507 U.S.292,304.

<sup>55.</sup> *Troxel v. Granville*, 527 U.S.1069;  
*Murdock v. Pennsylvania*, 319 U.S.105.

<sup>56.</sup> *Owen v. City of Independence*, *supra*.

of the entire State. Officials charged with preventing and investigating fraud, have a covert policy of concealing such crimes committed by one of their own, perpetrating fraud on any court that might investigate. Officials 'met and conferred', 'collaborated' and 'acted in concert' to cover up the federal crimes. These allegations, taken as true, adequately state a conspiracy claim under §1983. 57

This Court has held that federal courts can enjoin state officials from violating federal law. Violators must be prosecuted. 58

Pursuant to 28 U.S.C. §2072 and the Rules Enabling Act, F.R.C.P. Rule 60(d)(3) must regulate procedure. Rule 60(d)(3) binds this Court to accept jurisdiction. The fraud must be attacked, in any Court at any time. 59

Pursuant to Rule 60(d)(3), Respondent is culpable for the neglectful failure to answer. By not disputing any claim, Respondent has conceded that all claims are actionable.

This Court found that fraud could constitute state action under §1983. §241 is construed to protect Fourteenth Amendment rights, from 60 conspiracies to infringe upon constitutional rights.

§241 includes within its coverage Fourteenth Amendment rights whether arising under the Equal Protection Clause as in *United States v. Guest* or under the Due Process Clause, as in *United States v. Price*. The State's involvement need be neither

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57. *Moore v. Marketplace-Rest.*, 754 F.2d.1336,1352; (7a).

58. *ExParte Young*, *supra*.

59. Fraud Upon the Court Doctrine;

*Hazel-Atlas v. Hartford-Empire Co*, *supra*.

60. *Dennis v. Sparks*, 449 U.S.24; *Screws v. U.S.*, 325 U.S.91.

exclusive nor direct to create rights under the Equal Protection Clause. <sup>61</sup>

This Court has upheld convictions under §241 or §242 despite notable factual distinctions between prior cases and the later case, so long as the prior decisions gave reasonable warning that the conduct at issue violated constitutional rights. <sup>62</sup>

Claims for relief are valid, because the initial custody Order under attack, is “void on its face.”

Mother’s award of primary custody could not be valid, because primary custody was not even before the Court. Petitioner filed for divorce and shared custody in Bucks County, prior to jurisdiction being established elsewhere (within six months). Father did not agree to the foreign venue. At any time, the State Court could and should have struck off the invalid, unauthorized, fraudulent judgement. The state’s failure necessitates a federal duty to strike off the invalid order void ab initio, (28 U.S.C. §2106).

“It is well settled, and it needs no citation of authorities to sustain the proposition, that a judgment can be set aside or struck off . . . on the ground of irregularity or invalidity appearing on the face of the record”; and it “is not confined to any particular kind of judgments, nor limited as to the time it may be taken advantage of.” <sup>63</sup>

This Court held that pro se civil rights complaints are to be given special consideration, yet among other things, the panel’s determination failed

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<sup>61.</sup> *U.S. v. Guest*, 383 U.S. 745, 755-756; *Price*, 383 U.S. 787.

<sup>62.</sup> *U.S. v. Lanier*, 520 U.S. 259.

<sup>63.</sup> *Romberger v. Romberger*, 139 A.159.

to consider, nor comment with respect to, significant criminal charges herein. <sup>64</sup>

After considering the facts advanced, this Court must accept jurisdiction over the crimes upon the court, the crimes upon Petitioner/Father and the crimes upon his child. <sup>65</sup>

District Court has jurisdiction over this civil conspiracy, pursuant to all stated claims. That is, 18 U.S.C. §241; §242; §1001(a); §1038(b)...  
28 U.S.C. §1331; §1343; §1361; §1367...  
42 U.S.C. §1983; §1985(3); §1986; §12132; §12202.  
When the impartial functions of the court have been directly corrupted, this Court must intervene. <sup>66</sup>

The panel erred, when concluding that this Court does not have jurisdiction over federal crimes and over the civil conspiracy detailed in 126-MM-2018. The Federal Court has a duty to uphold the Constitution and the laws of the United States and to protect citizens from federal crimes.

**a.) *Rooker-Feldman* does not bar claims of fraud.**

The panel erred when determining that a fraudulent Order cannot be overturned (void ab initio). *“But when as in this case the injury is executed through a court order, there is no conceivable way to redress the wrong without overturning the order of a state court. Rooker-Feldman does not permit such an outcome.”*

The Order under attack, was procured by fraud. The Third Circuit has reversed State and District

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<sup>64.</sup> *Haines v. Kerner*, 404 U.S.519.

<sup>65.</sup> *U.S. v. Ciavarella*, No.11-3277.

<sup>66.</sup> *Bullock v. U.S.*, 763 F.2d.1115,1121.

Courts with the *Rooker-Feldman* fraud exception. 67

Claims for relief are valid under the Fraud Upon the Court Doctrine. The panel errantly suggests, “*discussing when an order is final in this context.*”

However, fraudulent orders are never final. 68

*Rooker-Feldman* is inapplicable with judgements obtained fraudulently because,

“fraud on a court is, by definition, not an error by [the state] court.” Fraud is defined as “conduct which prevents a party from presenting his claim in court.” 69

“The cases where such relief has been granted are those in which, by fraud or deception practiced on the unsuccessful party, he has been prevented from exhibiting fully his case, by reason of which there has never been a real contest before the court of the subject matter of the suit”. 70

**b.) *Rooker-Feldman* does not bar disregarded claims.**

The Third Circuit reasoned that *Rooker-Feldman* did not preclude the court from exercising jurisdiction over *Ernst's* substantive due process claims, because deciding the substantive due process claims did not involve federal court review of a state court decision. 71

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67. *Philadelphia E.D.Partners v. PA Dept-Revenue*, No.17-1954.

68. *Kenner v. C.I.R.*, 387 F.3d.689.

69. *Kougasian v. TMSL-Inc.*, 359 F.3d.1136,1140;  
*Noel v. Hall*, 341 F.3d.1148,1155.

70. *U.S. v. Throckmorton*, 98 U.S.61.

71. *Ernst v. Child-Youth Services-Chester County* 108 F.3d.486.

Like *Ernst*, Petitioner's substantive due process claims were never decided by the state court. The Court cited *Ernst* when determining that:

"an issue cannot be inextricably intertwined with a state court judgment if the plaintiff did not have a reasonable opportunity to raise the issue in state court proceedings." 72

The Third Circuit held that when a state court does not consider the merits of the underlying claim, *Rooker-Feldman* does not bar federal litigation. 73

In the instant matter, the State Court demonstrated inability or unwillingness to protect Petitioner's federal rights. This Court granted certiorari because a State Court "had explicitly refused to hear federal constitutional claims." It was held, that *Rooker-Feldman* is inapplicable:

"where the complaining party did not have a full and fair opportunity to litigate a claim in state court or where the state court demonstrated inability or unwillingness to protect federal rights." 74

Significantly, the malicious abuse of process has prevented Petitioner/Father from advancing the current constitutional claims in the State Court. Petitioner has alleged sufficient facts and stated plausible claims for relief, whereas certiorari should be granted.

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72. *Brokaw v. Mercer County, State-IL*, 305 F.3d.660 at 558.

73. *Whiteford v. Reed*, 155 F.3d 671,674.

74. *Robinson v. Ariyoshi*, 753 F.2d.1468,1472.

**IV. Certiorari is warranted because fathers' have the right to present to the judiciary, allegations concerning violations of their fundamental Constitutional rights.**

**a.) The Americans with Disabilities Act assures this father's right of access to the Court.**

By way of background, the trial judge refused to read Petitioner's pro se pleas, denying his request for accommodation for his protected disability (ADD). Respondents irrationally continue to not consider/read Petitioner's pleadings.

The panel erred when stating that Petitioner *"did not plead an ADA claim in his counseled complaint in the District Court, and he cannot raise a new claim for the first time on appeal."* The panel failed to consider/read Petitioner's pleadings.

Said ADA claim was raised in the State Court (684-MAL-2017), (126-MM-2018 at 90, 91, 92, 152) and in the District Court at 57, 53, 56, 60, 61, 62.

Evidence submitted without objection should be conclusively presumed to be unobjectionable. The panel raises errant Ex Parte objections, while failing to read Petitioner's pleas.

Respondent's "brief in opposition neither raised the objection that petitioner had failed to press its claims on the courts below nor informed this Court...Moreover, even if the asserted failure of petitioner to present the claims it makes here in the same fashion below actually occurred, that failure does not affect this Court's jurisdiction."

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75. *City-Canton v. Harris*, *supra*.

Since the critical question is directly addressed here, the §1983 actionability of a municipality's deliberate indifference to federal rights and the State's duty to protect and preserve federal rights, Petitioner has preserved for review the principal issues before this Court. 76

Petitioner respectfully requests for this Court to consider the pleadings, because he has the right of access to the Courts and is entitled to Due Process through this Federal Court. This Court may not terminate its jurisdiction until it has eliminated the constitutional violation "root and branch". The Court must exercise supervisory power over the matter until it can say with assurance that the unconstitutional practices have been eradicated. 77

**b.) The Due Process clause assures fathers', the right of access to the Court.**

This Court held that a cause of action is a type of property protected by the Fourteenth Amendment's Due Process Clause. 78

This Court defined the right of access in a civil rights action under §1983 in the following terms:

"The right of access to the courts, upon which *Avery* [*Johnson v. Avery*] was premised, is founded in the Due Process Clause and assures that no person will be denied the opportunity to present to the judiciary allegations concerning violations of fundamental constitutional rights." 79

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76. *Hormel v. Helvering*, 312 U.S.552 at 557.

*Martinez v. Mathews*, 544 F.2d 1233,1237.

*Sheffield Commercial Corp. v. Clemente*, 792 F.2d at 286.

77. *Battle v. Anderson*, 564 F.2d.388.

78. *Mullane v. Central-Hanover Bank-Trust*, 339 U.S.306.

79. *Wolff v. McDonnell*, 418 U.S.539.

A mere formal right of access to the courts does not pass constitutional muster. Courts require that the access be "adequate, effective, and meaningful."

The federal constitutional right of access to 80 public tribunals has been found under the privileges and immunities clause of the Fourteenth Amendment, the First Amendment Right to petition for redress of grievances, and the due process clause of the Fourteenth Amendment. 81

Moreover, when a state creates a judicial process, it may not grant the benefits of that process to some litigants and deny it to others without implicating the closely related issues of equal protection and due process of law. 82

"When an appeal is afforded, however, it cannot be granted to some litigants and capriciously or arbitrarily denied to others without violating the Equal Protection Clause". 83

Denial of access to courts allegations, have been held enforceable by this Court. The facts alleged are sufficient to state a claim.

**V. Certiorari is warranted because the factual allegations stated in the complaint are sufficient to withstand a Rule 12(b) motion.**

Respondent moves this Court to dismiss Petitioners' claims based on F.R.C.P. 12(b)(1) and F.R.C.P. 12(b)(6). First, Respondent seeks dismissal

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80. *Bounds v. Smith*, 430 U.S.817.

81. *Ryland v. Shapiro*, 708 F.2d.967.

82. *M.L.B. v. S.L.J.*, 519 U.S.102; *Griffin v. Illinois*, 351 U.S.12.

83. *Lindsey v. Normet*, 405 U.S.56,77,92;  
*Boddie v. Connecticut*, 401 U.S.371.

on the grounds of Eleventh Amendment immunity, Respondents are not "persons" as defined by §1983, the *Rooker-Feldman* Doctrine, abstention pursuant to *Younger v. Harris*, equitable relief is improper, and the domestic relations exception to federal jurisdiction.

**a.) Arguments for dismissal are without merit.**

The question whether C.C.P. Northampton is a §1983 person and the question whether this municipality enjoys Eleventh Amendment immunity, are answered in precisely the same way. Counties are "persons" under §1983 and thus may be liable for causing a constitutional deprivation and *Rooker-Feldman* does not bar Petitioner's valid federal claims as evidenced by the facts advanced in I & III.

The Domestic Relations exception to federal jurisdiction and abstention pursuant to *Younger v. Harris* are inapplicable because this case is not about domestic relations, but involved ADA, jurisdictional fraud, parental rights, Due Process rights and Equal Protection rights that are guaranteed by the Constitution.

Petitioner has pursued claims with diligence, yet the State Court has substantially demonstrated inability or unwillingness to protect federal rights.

Hence, this Court held that exhaustion of state administrative remedies is not a prerequisite to an action under §1983. 84

Petitioner's only remedy is through this Federal Court because with abstention, the State Court would be the entity to rule whether they are violating Petitioner's inalienable guaranteed rights.

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84. *Patsy v. Board-Regents Florida*, 457 U.S.496.

This obvious conflict of interest necessitates Federal Court jurisdiction.

It is constitutionally impermissible for a State Court to discriminate. This Supreme Court accepts jurisdiction over domestic relation cases where the constitutionality of the State's action is attacked. <sup>85</sup>

Equitable relief is proper under §1983, to recover for harm suffered from deprivations of federal rights.

"Defendant's argument that this action is not justiciable in federal court because it concerns a "domestic matter" solely within the purview of state law and courts is utterly without merit.

Plaintiffs sue under a federal statute, §1983, to recover for harm suffered as a result of violation of their federal rights. Characterization of the underlying regulated matter as "domestic" does not alter the federal nature of this claim." <sup>86</sup>

Congruently, the Sixth Circuit reversed the State and District Court, holding that *Rooker-Feldman* did not apply. Plaintiff/Father was not seeking relief from the domestic relations court's decisions but instead was seeking injunctive relief against the Ohio Attorney General and the C.C.P. <sup>87</sup>

#### **b.) Motion to dismiss standard.**

The Court must determine, viewing the evidence in the light most favorable to the non-moving party, whether there are any genuine issues of material

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85. *Troxel v. Granville*, *supra*; *Loving v. Virginia*, *supra*; *Davis v. Gately*, 269 F.Supp.996.

86. *Mackey v. Stanton*, *supra*.

87. *Evans v. C.C.P. Franklin*, No.09-3998.

fact and whether the district court correctly applied the relevant substantive law.

An issue of fact is "material" if, under the applicable substantive law, it is "essential to the proper disposition of the claim" and is "genuine" if "there is sufficient evidence on each side so that a rational trier of fact could resolve the issue either way." <sup>88</sup>

Respondent fails to properly address Petitioner's assertion of fact as required. Summary judgement is inappropriate because the moving party has not met their initial burden, of demonstrating the absence of any genuine issue of material fact. <sup>89</sup>

Moreover, summary judgment has been defeated because Petitioner has, "set forth specific facts showing that there is a genuine issue for trial." <sup>90</sup>

Petitioner has stated with particularity, the circumstances constituting fraud and has made well-grounded factual allegations sufficient to establish injury in fact, causation and redressability. <sup>91</sup>

By failing to rebut these allegations contained in the complaint, Respondent has admitted to the existence of federal jurisdiction. Respondent has admitted to violating Petitioner/Father and admitted to endorsing fraud upon the Court. <sup>92</sup>

"In order to properly dismiss for lack of subject matter jurisdiction under F.R.C.P. 12(b)(1), the complaint must be successfully challenged on its face or on the factual truthfulness of its averments." <sup>93</sup>

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<sup>88.</sup> *Anderson v. Liberty-Lobby, Inc.*, 477 U.S.242,248.

<sup>89.</sup> F.R.C.P.56(e).

<sup>90.</sup> *Adickes v. S.H. Kress Co.*, 398 U.S.144,153.

<sup>91.</sup> F.R.C.P.9(b); (8a) 126-MM-2018 exhibits 1,2,8.

<sup>92.</sup> F.R.C.P.8(b)6.

<sup>93.</sup> *Titus v. Sullivan*, 776 F.Supp.477,  
citing *Osborn v. U.S.*, 918 F.2d.724,729.

For a facial attack arguing the absence of subject matter jurisdiction, the court examines plaintiffs' factual allegations to determine if Congress has specifically provided subject matter jurisdiction. <sup>94</sup>

When determining subject matter jurisdiction, the court must assume that plaintiff's allegations are true and draw all inferences in a light most favorable to him. <sup>95</sup>

Even if Congress has provided subject matter jurisdiction by statute, if plaintiffs' claims are moot, the court also lacks subject matter jurisdiction to decide the case. A case is moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome. <sup>96</sup>

Dismissal is only appropriate if it is apparent there is an absence of subject matter jurisdiction or the case is moot. The issues in this case are "live" as Petitioner continues to suffer deprivation of his rights. <sup>97</sup>

Second, defendant argues that this Court should, pursuant to F.R.C.P. 12(b)(6), dismiss plaintiffs' claims because he cannot state a claim upon which relief can be granted considering the legal defenses. The purpose of a motion to dismiss under F.R.C.P. 12(b)(6) is to test the sufficiency of the complaint.

When determining the sufficiency of a complaint in the context of a motion to dismiss, a court will apply the principle that:

"once a claim has been stated adequately, it may be supported by showing any set of facts

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<sup>94.</sup> *U.S. v. Ritchie*, 15 F.3d.592,598.

<sup>95.</sup> *Scheuer v. Rhodes*, *supra*.

<sup>96.</sup> *Chafin v. Chafin*, 568 U.S.165.

<sup>97.</sup> *Ritchie*, *supra* at 598; Continuing Violation Doctrine.

consistent with the allegations in the complaint." 98

There is no heightened pleading standard with respect to the "policy or custom" requirement of demonstrating municipal liability. 99

"a claim of municipal liability under §1983 is sufficient to withstand a motion to dismiss 'even if the claim is based on nothing more than a bare allegation that the individual officers' conduct conformed to official policy, custom, or practice.'" "It is enough if the custom or policy can be 100 inferred from the allegations of the complaint."

Under Rule 12(b)(6) the court must accept all factual allegations contained in the pleading as true and resolve all factual ambiguities in favor of the party who sought the amendment. 101

The focus of the inquiry is on whether the plaintiff is entitled to offer evidence to support the claims, rather than on whether the plaintiff will ultimately prevail. Complaints that state plausible claims for relief, survive dismissal motions. 102

Since Respondent can escape discovery and other proceedings, the Court should have affirmative reasons for granting a Rule 12 (b)(6) motion.

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98. *Bell-Atl. Corp. v. Twombly*, 550 U.S.544.

99. *Leatherman v. Tarrant County Narcotics I&C-Unit*, 507 U.S.163,167-68; *Lee v. L.A.*, supra, 668,679-80; *Evans v. McKay*, 869 F.2d at 1341,1349.

100. *Karim-Panahi v. L.A. Police Dept.*, 839 F.2d.621,624 quoting *Shah v. L.A.*, 797 F.2d.743,747; *Evans v. McKay*, supra at 1349; *Shaw v. Cal. Dept of Alcoholic-Bev.-Control*, 788 F.2d.600,610.

101. *Roth Steel Prods. v. Sharon Steel Corp.*, 705 F.2d.134.

102. *McDaniel v. Rhodes*, 512 F.Supp.117.

Petitioner's complaint adequately set forth a claim and gave Respondent fair notice of its basis, while exceeding the liberal standard and is therefore not subject to dismissal. <sup>103</sup>

Certiorari should be granted because sufficient facts have been raised for plausible claims of relief.

**c.) Petitioner has pled facts sufficient to survive a Rule 12(b)(6) motion.**

In Pennsylvania, immunity could not be a limitation on Article III subject matter jurisdiction because the State Supreme Court explicitly abolished the doctrine of sovereign immunity in 1978. <sup>104</sup>

This Court held that the Eleventh Amendment does not circumscribe the appellate review of state court judgements that contain federal issues. <sup>105</sup>

District Court has federal question jurisdiction under 28 U.S.C. §1331 because Article III of the Constitution authorizes federal courts to hear: “all cases, in law and equity, arising under this Constitution and the laws of the United States.”

*Bivens v. Six Unknown Agents*, clearly establishes that a cause of action against state officials and entities, can be stated directly under any of the Amendments to the U.S. Constitution, <sup>106</sup> without resort to any act of Congress such as §1983.

*Kenosha v. Bruno* was an action based on the Fourteenth Amendment, with §1331 jurisdiction over the municipality. The cause of action must arise

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<sup>103.</sup> *Conley v. Gibson*, 355 U.S.41.

<sup>104.</sup> *Mayle v. Pennsylvania Dept. Hwys.* 479 Pa.384,388A.2d. 709 confirmed in *Greenfield v. Vesella*, 457 F.Supp.316.

<sup>105.</sup> *McKesson Corp. v. Div.-AB&T*, 496 U.S.18.

<sup>106.</sup> *Bivens v. Six Unknown Agents*, 403 U.S.388.

under the Constitution because the Court in *Bruno* had ruled out §1983. 107

Petitioner has stated a cause of action under the Fifth and Fourteenth Amendment Due Process Clauses, which decree that no State shall “deprive any person of life, liberty or property, without due process of law.” This Amendment’s Due Process Clause, like its Fifth Amendment counterpart, “guarantees more than a fair process.” The Clause also includes a substantive component that “provides heightened protection against government interference with certain fundamental rights and liberty interests.” 108

**Deprivation of a Constitutional Right-**  
Genuine issues of triable fact have been raised, regarding whether Respondents acted with deliberate indifference to Petitioner’s Constitutional and other protected federal rights. Findings are not disputed by either party; thus, facts have been alleged from which a jury could find that Petitioner suffered Constitutional and other federal deprivations.

**Deliberate Indifference-** Petitioner alleges that the Respondents are liable for deliberate indifference to Petitioners federal rights because of its policies of action and inaction in the following areas: (1) Respondent’s failure to follow the rules of civil procedure when awarding Mother primary custody and (2) an absence of ethics when entering and chronically disregarding an unauthorized,

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107. *Kenosha v. Bruno*, 412 U.S.507.

108. *Washington v. Glucksberg*, supra. at 720.

fraudulent Order, and (3) the ongoing failure to consider/read pleadings (inter Alia). <sup>109</sup>

**Policy as the Moving Force Behind the Violation-** Petitioner has met every burden, confirming that these identified deficiencies are "closely related to the ultimate injury," while establishing "that the injury would have been avoided" had proper policies been implemented. <sup>110</sup>

Petitioner's unambiguous evidence creates triable issues, while substantially demonstrating that the Respondent's undisputed policy deficiencies are the moving force behind the continuing deprivation of his protected federal rights. Petitioner has proven that his injuries would have been avoided had the Respondents read pleas and/or adequately followed the rules of civil procedure and/or instituted policies to remedy ongoing failures.

Certiorari should be granted because Petitioner/Father's: 1) claims are not moot as the injuries he has suffered continue; 2) Petitioner's claims are proper; 3) Petitioner's claims are based on sufficient factual allegations that meet even the most stringent culpability standard; 4) §1983 claims are valid because Respondent is not immune from suit and also, Respondent is amenable to suit; and 5) claims raise significant Constitutional issues involving liberty and property interests that are entitled to procedural and substantive due process protections.

Respondent's arguments for dismissal are without merit. Dismissal is only appropriate if there

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<sup>109.</sup> 23 Pa.C.S.A. §5323(a)(c)(d); 18 Pa.C.S. §302(b)(3).

<sup>110.</sup> *Gibson v. Washoe County*, *supra* at 1196 quoting *Oviatt*, *supra* at 1478.

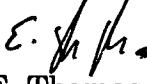
is an absence of subject matter jurisdiction or if the case is moot. Petitioner has pled facts sufficient to survive a Rule 12(b)(6) motion. As Guardian of the Constitution and protector of the people, this Court marks the boundary between government and citizen. Certiorari is warranted because the injuries inflicted by Respondents continue.

## CONCLUSION

For the foregoing reasons this Court should grant this petition for a writ of certiorari.

Respectfully submitted,

May 18, 2020

  
E. Thomas Scarborough III, *pro se*

**UNITED STATES COURT OF APPEALS**  
**FOR THE THIRD CIRCUIT**

C.A. No. **19-2455**

E. THOMAS SCARBOROUGH, III, Appellant

v.

COURT OF COMMON PLEAS OF  
NORTHAMPTON COUNTY; SUPREME COURT  
OF PENNSYLVANIA

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(D.C. No. 5-18-cv-02436)

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**SUR PETITION FOR REHEARING**

Before: SMITH, *Chief Judge*, McKEE, AMBRO,  
CHAGARES, JORDAN, HARDIMAN,  
GREENAWAY, JR, SHWARTZ, KRAUSE,  
RESTREPO, BIBAS, PORTER, MATEY, PHIPPS  
and NYGAARD, \* *Circuit Judges*

The petition for rehearing filed by appellant in  
the above-entitled case having been submitted to the  
judges who participated in the decision of this Court  
and to all the other available circuit judges of the