

No. 19-1326

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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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**SUPPLEMENTAL BRIEF IN SUPPORT OF  
PETITION FOR WRIT OF CERTIORARI**

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**JUN 29 2020**

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## INTRODUCTION

E. Thomas Scarborough III (Petitioner/Father) files this Supplemental Brief, under Supreme Court Rule 15(8) in light of the Court's recent decision in *Bostock v. Clayton County*, (17-1618) issued on June 15, 2020. This Supplemental Brief also calls the Court's attention to: (i) The Third Circuit's Order filed May 22, 2020, which was not available when Petitioner filed his Petition for Writ of Certiorari on May 19, 2020, (ii) Respondent's ongoing failure to afford protection of the laws, by again neglecting to properly address assertions of fact. <sup>1</sup>

The *Bostock* decision analyzed the factors to consider in the proper application of the Civil Rights Act of 1964, as it relates to sex based discrimination. This Petition for Certiorari also claims sex based discrimination and cites the Civil Rights Act as it relates to §504 of the Rehabilitation Act of 1973.

The *Bostock* Court reversed the Eleventh Circuit's findings, with regard to discrimination on the basis of sex, while determining, "What did "discriminate" mean in 1964?" Logically, it was determined to mean what it means today.

"discriminate against" refers to "distinctions or differences in treatment that injure protected individuals." <sup>2</sup>

While the Court's indifference to discrimination on the basis of sex is analogous to *Bostock*, the issues presented by this case are instead, of exceptional

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1. This Court's Rule 15.8 provides in pertinent part that "any party may file a supplemental brief at any time while a petition for a writ of certiorari is pending, calling attention to new cases, new legislation, or other intervening matter not available at the time of the party's last filing."

2. *Burlington N. & S.F.R.*, 548 U.S. at 59

importance to fathers and to individuals with protected disabilities because Petitioner/Father has been excluded from participation in, denied the benefits of and has been subjected to discrimination under the State Court system.

Petitioner/Father respectfully argues, that the *Bostock* case supports the grant of certiorari to him, if not the outright summary reversal of the Third Circuit's contrary decisions below, which have decided important questions of federal law that implicate citizens' Fourteenth Amendment and other protected federal rights.

The Third Circuit has aberrantly determined that in every instance, the actions and inactions of the Pennsylvania Supreme Court are never reviewable because sovereign immunity unconditionally empowers and authorizes a State Court to:

- discriminate.
- deny or take away the Equal protection of the laws.
- refuse to remedy an unconstitutional Order.
- allow a County Court without jurisdiction to enter custody orders.
- interfere with liberty and property interests that are entitled to procedural and substantive Due Process protections.
- ignore the rules of civil procedure, federal statutes, Constitutional violations and criminal allegations.
- irreparably harm and injure its citizenry.

Had the pleas been read, the panel would have discovered that their conclusions as to every issue, conflict with this Court's binding precedents and decisions of other Circuits'. Therefore, these questions are ripe for review by this Court.

## ARGUMENT

### I. THE *BOSTOCK v. CLAYTON COUNTY* DECISION SUPPORTS THIS PETITION FOR CERTIORARI.

In *Bostock*, the Court was challenged with defining who is protected, where in this case the Court is asked to determine whether a State Supreme Court may be permitted to make distinctions or differences in treatment that injure protected individuals.

The *Bostock* Court cited precedent confirmed in *Phillips v. Martin Marietta Corp.*, where wrongful discriminatory policies based on “motherhood” were held to be unlawful. <sup>3</sup>

Respondent’s discriminatory policies based on “motherhood” are just as unlawful. As determined in *Bostock*, how Congress viewed father’s rights in 1964 may not be entirely relevant today.

The Court below intimately understood *Bostock*’s cause of action, however in the present case, the Court has struggled with adequately articulating any cause of action excepting the Due Process Clause of the Fourteenth Amendment, which encompasses three kinds of federal claims enforceable under 42 U.S.C. §1983. Attorney Schroll adroitly asserts all three, along with many other causes of action, to include fraud at #28 and Respondent’s failure to accommodate Petitioner’s protected disability at #57 and #64 cc. <sup>4</sup>

This is significant because the *Bostock* Court cited precedent confirmed in *Pennsylvania Dept. of Corrections v. Yeskey*,

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3. 400 U.S.542

4. See 5a

“no “public entity” can discriminate against any “qualified individual with a disability.” 5

This cited precedent confirms that this Court has supplemental jurisdiction over every federal law claim because immunity is not extended to State Court systems that violate 42 U.S.C. §12202 and §504 of the Rehabilitation Act.

The decision reached in *Bostock* also markedly confirms that it is Constitutionally impermissible for Courts to discriminate. Conversely, the Courts below errantly assert that the Eleventh Amendment bars Petitioner/Father’s valid §1983 due process claims under the Fourteenth Amendment, “*All claims brought under section 1983 are subject to Eleventh Amendment immunity.*” 6

“rights enforceable under §1983, are not 7  
beyond the judiciary’s competence to enforce.”

The *Bostock* Court determined that everyone is entitled to benefit from from the written word.

“Only the written word is the law, and all persons are entitled to its benefit.” 8

When a state action is alleged to violate a federal statute, the pertinent issue is whether the particular statutory provision creates rights enforceable under §1983. 9

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5. 524 U.S. 206,208.

6. *Scheuer v. Rhodes*, 416 U.S.232, 248-249.

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

7. *Wright v. Roanoke Redevelopment Auth*, 479 U.S.418.

8. *Bostock v. Clayton County*, 17-1618.

9. *Brentwood Acdmy v. TennesseSec.Sch. Ath.Ass.* 531 U.S.288



Whether the plaintiff has alleged a proper constitutional claim under §1983 depends on the meaning of the particular constitutional provision at issue, not on an interpretation of §1983. For example, in *Graham v. Connor* this Court employed an objective reasonableness standard. 10

While *Bostock v. Clayton County* is a case of first impression, Congress did not intend to displace §1983 suits enforcing constitutional rights and clearly did not preclude the assertion of §1983 gender discrimination claims under the Equal Protection Clause of the Fourteen Amendment. 11

This Supreme Court reverses unconstitutional custody awards, holding these particular State actions to be governed by the Fourteenth Amendment's Due Process Clause. 12

Petitioner/Father has Article III standing because a favorable decision on the merits will redress his "injuries in fact."

The Courts below in *Bostock* have permitted discriminatory acts while finding federal protections inapplicable, so too have the Courts below erred in the instant matter. Who will investigate federal crimes, if not this Court?

"To refuse enforcement... would tilt the scales of justice in favor of the strong or popular and neglect the promise that all persons are entitled to the benefit of the laws terms." 13

The United States Constitution and other federal protections have been held to be inapplicable in this

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10. 490 U.S.386.

11. *Fitzgerald v. Barnstable School Committee*, 555 U.S.246.

12. *Palmore v. Sidoti*, 466 U.S.429.

13. *Bostock v. Clayton County*, *supra*.

case, because sovereign immunity unconditionally empowers and authorizes this State Supreme Court to discriminate.

## **II. THE THIRD CIRCUIT'S ORDER BECAME AVAILABLE AFTER THE PETITION FOR WRIT OF CERTIORARI WAS FILED.**

The Appellate Court's Order was not available when Petitioner filed the Writ of Certiorari. The Court below's decision with regard to sealing the record is missing from this Order.

Petitioner renews the request to protect sensitive information, by Ordering the record to be sealed. While the record below already reflects this plea, the Court remains silent on this issue.

This record should be sealed due to the sensitive nature of the Parties protected health information.

The unabridged exhibits for 126 MM 2018 were filed with Appellant's Motion in Support of Requested Mandamus Relief for Discovery and Summary Judgement dated September 27, 2019. These unabridged exhibits include the Parties MMPI-2 raw data (exhibit 17).

For additional clarity, please refer to the conclusions drawn, stated in these abridged exhibits (5a) #36, #47, #48, #64(f) inter Alia.

Respondent's consent may be assumed by the lack of response or objection in the Appellate Court. Moreover, Respondent has Ordered the record to be sealed in the State Court proceeding for these same reasons. WHEREFORE; Petitioner respectfully requests that the Court issue an Order to seal the record.

### **III. RESPONDENT CONTINUES TO NEGLECT ASSERTIONS OF FACT.**

Pursuant to Rule 60 (d)(3), Respondent is again culpable for the neglectful failure to answer. Rule 60 (d)(3) binds this Court to except jurisdiction over this claim of fraud.

The State Court bears the burden of proving that there is “no genuine issue of material fact,” but again fails to adequately address claims. 14

By failing to properly address assertions of fact, Respondent has again failed to overcome this initial burden, conceding that all claims are actionable and has again conceded that all requests for relief are unobjectionable.

Because the right of access to the Court is Constitutionally guaranteed and because there is a strong public interest for the Court to protect a citizens’ rights, this Court should grant certiorari to hear allegations concerning violations of fundamental Constitutional rights, notwithstanding Respondent’s bewildering objection.

#### **A. The Court must not refuse to afford the protection of the laws.**

While disappointing, Respondent’s failure to respond is not surprising because for more than a decade, Respondent has failed to afford protection of the laws by repeatedly ignoring and dismissing Petitioner’s pro se pleas to investigate fraud.

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14. *Adickes v. Kress*, 398 U.S.144.

“The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection.” 16

This failed duty is central to 42 U.S.C. §12202 and §504 claims. Making known the intricacies of this obfuscated proceeding, would be onerous even for someone without protected communication deficits.

Communication with the Court has been futile because every Court has failed to adequately accommodate the requirement to read pleadings and every Court has failed to take the time needed to consider the background of this complex, complicit matter. Reading pleas would considerably improve understanding and credibility. 17

Case in point, no Court has ever been able to adequately articulate Petitioner’s first cause of action... primary custody was fraudulently awarded by gender, by a County Court without jurisdiction.

Respondent not only fails to meaningfully address the recognized Due Process claims, but again fails to articulate, have regard for, nor respond to any cause of action. Instead, Respondent claims immunity from any duty or legal obligation to protect federal rights.

These ongoing failures (i.) adequately substantiate the need for accommodation, (ii.) substantially demonstrate “deliberate indifference” to federal guarantees, and (iii.) ubiquitously withhold protection of the laws.

When taking ample time to read and consider the civil conspiracy detailed in 126 MM 2018 (7a), the facts raised should be shocking.

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16. *Marbury v. Madison*, 5 U.S.137.

17. See 5a. #53.

Despite Petitioner's repetitive begging for the investigation of crimes, no Court has ever recognized, articulated nor meaningfully addressed the fraud upon the court.

For more than a decade, the State Court has apathetically permitted the deliberate ongoing obstruction of discovery and the willful deprivation of Petitioner's protected rights, by court officials conspiring to injure. "The Due Process Clause requires provision of a hearing at a meaningful time." 18

By again neglecting claims and by again refusing to consider or properly address any assertions of fact, the State Court has again wrongfully denied Petitioner access, to claim protection of the laws.

Contrary to Respondent's assertions, sovereign immunity does not permit a State Supreme Court to repudiate the United States Constitution, nor to allow its citizenry to be violated. The right of access to the Courts is inherent in the rule of law.

Granting certiorari will remedy this failed duty, by permitting Petitioner/Father access to the Court.

#### **B. The Pennsylvania Supreme Court wrongfully refuses to remedy the unconstitutional custody Order.**

Since 135 MM 2009, Petitioner has repeatedly begged the Supreme Court of Pennsylvania to vacate the initial unauthorized Order "void ab initio" and restore jurisdiction to Bucks County. The State Court immutably ignores Petitioner.

Confirmation bias has precluded the investigation of the federal crimes alleged. Rather than

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18. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S.532;  
*Goldberg v. Kelly*, 397 U.S.254.

investigate the fraud upon the Court, raised again by Attorney Schroll at #28 (5a), and again raised by Petitioner at #40 and #156 (7a), Respondent superciliously neglects valid claims, preferring to avoid crimes upon the Court.

Rather than challenge any claim, Respondent maintains immunity to act autonomously from the United States Constitution. Rather than remedy the unconstitutional Order, the Pennsylvania Supreme Court instead asserts sovereignty.

In *Bostock*, Circuit Judges Rosenbaum and Pryor dissented because the Court has an obligation to:

“give a reasoned and principled explanation for our position... the legitimacy of the law demands that we explain ourselves.” 19

Respondent again fails to respond because it has been determined that the Eleventh Amendment absolutely bars actions against a State Court’s failure to protect its citizens’.

Petitioner sorely prays that an authority, any authority, read and earnestly act upon his desperate cries for relief. This Court must now decide whether to protect the Constitution or turn a blind eye to it.

Justice demanded judicial intervention to remedy the unconstitutional custody Order, however the Pennsylvania Supreme Court continues to refuse, considering the task beyond its judicial capabilities or interest.

“law repugnant to the Constitution is void” 20

The State Court’s ability and obligation to remedy an unconstitutional Order is not dependent upon

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19. *Bostock v. Clayton County*, Supp. App. 7,8

20. *Marbury v. Madison*, supra.

preference nor inclination. The duty to preserve and protect any Constitutional guarantee is not aspirational. 21

This Supreme Court accepts jurisdiction over abandoned substantive Due Process claims and over claims where the State Court has demonstrated the unwillingness to protect federal rights.

Nevertheless, the Supreme Court of Pennsylvania agrees with the Third Circuit's anomalous finding that *Rooker-Feldman* renders this Court powerless to remedy injuries caused by a fraudulent, unconstitutional State Court custody Order.

Petitioner/Father's rights continue to be overridden by the exercise of State authority because no Court has ever considered the Amended Petition for shared custody and Bucks County prothonotary receipts. See 8a, 126 MM 2018 exhibits 1 and 2.

These documents provide clear and convincing evidence that Petitioner/Father did not consent to the foreign venue, whereas the Parties are unable to share custody in Northampton County (emphasis added).

This Supreme Court has the authority, under the Supremacy Clause and Article III, §2 of the Constitution, to review legislative or other governmental acts and find them unconstitutional, and therefore render these acts null and void.

This Court also has the inherent equitable power to vacate a judgement obtained through fraud upon the Court. The initial unauthorized custody Order under attack is "void on its face" and should be immediately struck off pursuant to 28 U.S.C. §2106. "A right delayed is a right denied." [MLK Jr]

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21. *Cooper v. Aaron*, 358 U.S.1, 78 S.Ct. 1401.

## CONCLUSION

This Court should grant the Petition for a Writ of Certiorari to protect fundamental rights, by curing the blatantly unconstitutional award of primary custody by gender; and,

(i.) to swiftly eradicate the unconstitutional practice and to ensure a fair process, by "striking off" the initial unauthorized, fraudulent Order (void ab initio) and remand this "fast track" custody matter to C.C.P. Bucks County Pennsylvania, and,

(ii.) to remedy the maliciously abused process, by accepting jurisdiction over the federal crimes alleged, by Ordering the federal investigation of said crimes,

(iii.) to guard the Constitution, by reversing and remanding the remaining federal questions to District Court.

(iv.) to protect sensitive information, by sealing the record.

Respectfully submitted,

June 23, 2020



E. Thomas Scarborough III pro se



UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

SUPP a1

No. 19-2455

E. THOMAS SCARBOROUGH, III, Appellant

v.

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

On Appeal from the United States District Court for  
the Eastern District of Pennsylvania  
(D.C. Civil Action No. 5-18-cv-02436)  
District Judge Jeffrey L. Schmehl

Submitted Pursuant to Third Circuit LAR 34.1(a)  
February 18, 2020

Before: SHWARTZ, RESTREPO and NYGAARD,  
Circuit Judges

JUDGEMENT

This cause came to be considered on the record from the United States District Court for the Eastern District of Pennsylvania and was submitted pursuant to LAR 34.1(a) on February 18, 2020. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the judgement of the District Court entered June 14, 2019, be and the same is hereby affirmed. Each side to bear its own costs. All of the above in accordance with the opinion of this Court.

ATTEST:  
s/Patricia S. Dodszuweit  
Clerk

Dated: February 20, 2020

Certified as a true copy and issued in lieu  
of a formal mandate on May 22, 2020