No. 19-1326

IN THE
**SUPREME COURT OF THE UNITED STATES**

*Scarborough,*
Petitioner

*v.*

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

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

# PETITION FOR REHEARING

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## INTRODUCTION

Pursuant to Rule 44, E. Thomas Scarborough III respectfully petitions for rehearing of the Court's decision issued on October 5, 2020, which will officially determine acceptable boundaries between government and citizen. The issues presented will have exceptional importance and broader ramifications to fathers' rights and to individuals with protected disabilities.

## GROUNDS FOR REHEARING

### I. THIS CASE PRESENTS DIFFICULT QUESTIONS THAT CANNOT BE CLARIFIED ABSENT A FACTUAL RECORD.

In *Tennessee v. Lane,* 124 S.Ct. 1978, 514-515 this Court cites *Popovich v. Cuyahoga County Court,* 276 F.3d 808 when remanding to clarify facts. This Court would not dismiss genuine issues of triable fact which if clarified, are federal questions that this Court has previously exercised jurisdiction over. This Court has reversed decisions with genuine issues, identical to material facts advanced herein:

1.) *Palmore v. Sidoti,* 104 S.Ct. 1879, for the unconstitutional custody award.
2.) *Armstrong v. Manzo,* 85 S.Ct. 1187, for custody deprivations without Due Process of law.
3.) *May v. Anderson,* 73 S.Ct. 840 for custody deprivations by a court without personal jurisdiction over a parent.
4.) *Troxel v. Granville,* 120 S.Ct. 2054 to protect fundamental parental rights.
5.) *Chafin v. Chafin,* 133 S.Ct. 1017 to ensure consideration of a child's best interest.
6.) *J.E.B. v. Alabama,* 114 S.Ct. 1419, for state actor - intentional gender discrimination.

Federal jurisdiction, "where the state court demonstrated inability or unwillingness to protect federal rights." *Haring v. Prosise,* 103 S.Ct. 2368, 314. Federal jurisdiction has been exercised over other identical issues of material fact.

1.) a state actor county court's disregard for conspiracies to violate Constitutional rights, when awarding custody; *Brokaw v. Weaver, Mercer County, State of Illinois,* 305 F.3d 660.
2.) "harm suffered" from a county's miscalculation of child support payments, which was determined to violate the Equal Protection Clause; *Mackey v. Stanton,* 586 F.2d 1126.
3.) the injunctive relief sought against the state and the transgressor C.C.P. for denying father access to the court with child custody; *Evans v. Cordray, C.C.P. Franklin,* 424 Fed. Appx. 537.
4.) the C.C.P.'s neglect to accommodate father for his daughter's custody hearing; *Popovich* supra, 15.

To clarify this salient fact; Petitioner's protected communication deficit [ADD], frustrates the court's understanding of the complicity involved. This deficit may cause issue with organizing thoughts, especially with oral arguments.

28 CFR §35.160 commands courts to accommodate the simple, reasonable request to read pleas, but C.C.P. Northampton's President Judge will not read or consider pleadings. *"I have no idea what [Plaintiff's] petition for recusal is all about," "Well I don't know that anyone is going to want to read it"* and *"I don't want to know about the background, it doesn't matter to me at all,"* (5a)#53. Communication with the court is futile.

Attorney Schroll has preserved for review this principal issue in (5a)#57, #64cc. This fact requires clarification as the court held, 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.*"

Petitioner's ADA claim raised below is significant because Congress made its intention unmistakably clear, "A State shall not be immune under the Eleventh Amendment... for a violation of this chapter," i.e. 42 U.S.C. §12202; eg. *Atascadero State Hospital v. Scanlon,* 105 S.Ct. 3142, 243.

This Court should grant rehearing to "clarify difficult questions" and "create a factual record," to protect Petitioner's right to present to the judiciary these allegations concerning violations of his fundamental Constitutional rights. See *Wolff v. McDonnell,* 94 S.Ct. 2963, 579.

## II. THE COURT CANNOT SAY THAT THERE IS NO GENUINE ISSUE AS TO ANY MATERIAL FACT.

### A. One Of The First Duties Of Government Is To Afford The Law's Protection.

The fact that this "fast track" custody matter remains unprepared for trial, validates genuine issue of material fact. The court is unaware of the discovery interference, by state court officials conspiring to injure. Neither the state Disciplinary Board [for lawyers] nor the J.C.B. [for judges] will oversee the conduct of a conference officer. Complaints are deferred to county President Judges' because by state practice or policy, the conduct of a custody conference officer is not subordinate to the supervision of the Pennsylvania Supreme Court, cf. Monell.

Conference officers are indeed county employees, but act "in the name of and for the state, and [are] clothed with her power, his act is her act," *Ex Parte Virginia,* 100 U.S. 339.

C.C.P. Northampton's President Judge will not consider the facts advanced herein, he doesn't "*want to know about the background,*" "*it doesn't matter at all.*" I.e. Pennsylvania courts deny access.

Conference officers are empowered to maliciously abuse the process via non-recorded conferences, convoluted with unethical ex parte communications with evaluators, attorneys and judges. These state actors deliberately rotate unfamiliar judges, prohibit evaluators from contacting Petitioner/Father and fraudulently quash contempt petitions. These facts validate genuine material issues.

The voluminous case file hides the abandoned factual procedural history from unfamiliar judges, who are intentionally rotated and unduly influenced by colleagues that manipulate.

For example, the custody conference officer deliberately rotated the trial judge after the court fined Mother for her ongoing contemptuous conduct in June, 2016 and then fraudulently documented that Petitioner agreed to quash his fifth petition for contempt in October. See *Ex Parte Young.*

The conference officer refused to consider the Parties agreed custody evaluator but instead appointed the officer's preference, fraudulently documenting that Petitioner agreed to be prohibited from contacting said evaluator.

In January 2017 after the final hearing, the trial judge pejoratively characterized Petitioner as a "serial pro se litigant," his claims were mocked "a waste of time," as the deliberately rotated judge was disconcerted and prejudiced by hearsay. (8a) 28 p.7, 33, 35, 40.

This order does not require Mother to coparent, which has in essence terminated Petitioner/Father's fundamental parental rights. It remains unknown if or when, he will again have contact with his daughter.

Procedural safeguards are required, that insure "the accuracy and justice of the decision," to avoid "the risk that a parent will be erroneously deprived." *Lassiter v. Department S.S.*, 101 S.Ct. 2153, 27-28.

B. The Inherent Power Of The Federal Court To Investigate Whether A Judgement Was Obtained By Fraud Is Beyond Question.

Fraud was preserved for review, raised in (5a)#28 because Bucks County prothonotary receipts together with the initial plea for shared custody [1] not only validate genuine issues of material fact but substantially show a conspiracy to willfully deprive constitutional rights under the color of state law.

These documents provide clear and convincing evidence that Petitioner and his daughter are victims of fraud committed upon the court, by the court itself and clearly show the initial unconstitutional custody award "void on its face." The record shows a custody agreement [1] but Petitioner could not consent as the Parties are unable to share in a foreign county and filed for <u>shared</u> custody in Bucks County.

1. (8a) Kings Bench exhibits 1, 2, 8.

Primary custody was not a even before the court but was awarded fraudulently by gender, by a conference officer without authority, by a county court without personal jurisdiction.

"If a court lacks jurisdiction over a party, then it lacks "all jurisdiction" to adjudicate that party's rights." *Rankin v. Howard,* 633 F.2d 844, 848 citing *Kulko v. Superior Court,* 98 S.Ct. 1690.

This Court held if a court "act without authority, its judgments and orders are regarded as nullities... and all persons concerned in executing such judgments or sentences, are considered in law, as trespassers." *Elliot v. Piersol,* 26 U.S. 328, 340.

The Pennsylvania Supreme Court has held that custody conferences are "not a tribunal," [2] however as clearly shown by these documents, Mother was iniquitously and fraudulently awarded primary custody by the foreign venue without jurisdiction, agreement, discovery nor a trial, more then two months after the initial contested custody conference.

The court withheld notice of case status, as the outcome of the second conference is not recorded. The next conference was delayed another year and so on.

C. The Hearing Must Be At A Meaningful Time And In A Meaningful Manner.

The court waited over eleven years for a meaningless unprepared hearing, whereas discovery was not allowed prior to trial. Moreover, the court waited five

2. *Ashford v. Ashford,* 576 A.2d 1076, 129, id. *VanDine v. Gyuriska,* 713 A.2d 1104; *Littman v. VanHoek,* 789 A.2d 280.

years to allow family vacation. These facts not only validate genuine material issues, but confirm a conspiracy to willfully deprive rights.

Shared custody was retrospectively offered by C.C.P. Northampton, however because Petitioner was unwilling to relocate to the foreign venue; additional time, right of first refusal, vacation and custody evaluation were deferred or withheld until his child enrolled in kindergarten five years later. I.e. once in school, sharing custody is not plausible.

The withholding of Petitioner's parental rights was expressly contradicted by the documented opinions of the agreed custody evaluator, which have since been confirmed with every other unsuccessful attempt with discovery.

Mother's compliance with her participation in the Parties agreed custody evaluation would have been ordered, had pretrial statements been read.

Petitioner's attorney would not have assumed the unauthorized order to be interim, had it been read. The fraudulent order should have been appealed as his client demanded, to enforce Mother's compliance with the discovery necessary for trial preparation. Ever since, the court has firmly abandoned discovery.

D. Parental Rights Are Constitutionally Protected Against Government Interference.

Respondent courts failed the clear duty to discover this child's best interest, but instead interfere with evaluation. Meritless excuses are manufactured for the ongoing refusal to appoint the Parties agreed custody evaluator, as his reports cannot be unduly influenced, but instead uniquely understand Mother's avoidance of evaluation. Only he could best determine her motive to relocate back then [inter Alia].

In 2006 his role was materially modified in the record, to rule out his involvement which has been speciously ruled out several times since.

In violation of the May 15, 2007 order, Mother's 2006 MMPI-2 raw data was not released until 2008. When finally released, it was obstructed by order. Custody evaluators' are prohibited from reviewing psychological data on Mother. These facts not only validate genuine material issues, but show a conspiracy to willfully deprive rights. (7a)#48-70.

Among other things, the court must determine a parents motive to relocate prior to endorsing the relocation; or in this case Mother's motive to relocate must be determined prior to procuring jurisdiction. [3]

By enacting orders without consent in the wrong jurisdiction, Respondent courts aided and abetted Mother's scheme to weaponize the legal system, by removing this child from the proper venue; whereas the Parties are unable to share custody of their child in a foreign county.

Because Mother's motives were not discovered prior to her nefarious award of primary custody, the agreed evaluator's role was materially modified and Mother's MMPI-2 raw data was obstructed by order.

The motives of Mother and of the accomplices are revealed by the most objective evidence (MMPI-2); which affirms why Mother relocated and why the expert testimony regarding Mother's mental fitness continues to be veiled by court officials conspiring to injure. This evidence demonstrates that Mother was coached by her

3. *Gruber v. Gruber,* 583 A.2d 434, 185.

attorney, to conceal "significant elevation in a scale called psychopathic deviant" and "suffers from borderline personality disorder." [4]

The connivance alleged obstructs discovery of: 1.) this child's best interest; 2.) Mother's mental fitness; 3.) Mother's motive... Parental Alienation Syndrome.

With determining a child's best interest, C.C.P. Northampton has determined PAS significant, [5] yet has abandoned what is best for this child allowing this minor to be chronically alienated, essentially terminating Petitioner's parental rights.

State court officials found to have interfered with discovery, participate in the federal crimes and are alleged to be accessories after the fact, i.e. 18 U.S.C. §241, 42 U.S.C. §1985(3) and §1986.

## III. A PRO SE LITIGANT MUST BE GIVEN LEAVE TO AMEND THEIR COMPLAINT UNLESS IT IS ABSOLUTELY CLEAR THAT THE DEFICIENCIES OF THE COMPLAINT COULD NOT BE CURED BY AMENDMENT

Rehearing should be granted as the court finds this complaint *"not at all clear,"* but "must be" "absolutely clear" whether there are deficiencies to amend.

This Court should further explore whether equitable relief is proper under §1983, to cure the blatantly unconstitutional custody award, or proper to recover for harm suffered as a result of deprivations of federal rights, or whether a favorable decision on the merits will redress injures in fact.

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4. See (5a)#36, #47, #48 and #64(f). The court remains silent to plea below to seal the record, i.e. MMPI-2 (PHI). Respondent courts sealed the record for the same sensitivity; whereas consent may be assumed by the lack of response or objection.
5. *Popovice v. Popovice,* No.1996-C-2009.

The decision below can not be correct, where the federal government is not legally obligated nor procedurally empowered to remedy injuries caused by a fraudulent, unconstitutional state court custody order. The judgement should be reversed.

The plain language of §5 of the Fourteenth Amendment specifically commands the federal government to enforce any Constitutional or any other federally protected guarantee; Abrogation, *Fitzpatrick v. Bitzer*, 96 S.Ct. 2666.

Respondent asserts entitlement to summary judgement "considering the legal defenses," however Sovereign Immunity is not a justifiable defense where Respondent courts have a subordinate duty to preserve Petitioner/Father's guaranteed Fourteenth Amendment and other federally protected rights.

As in *Mitchum v. Foster,* 92 S.Ct. 2151, the courts' below have held that in every situation, the acts of this subordinate state court system are <u>never</u> reviewable and federally protected guarantees are inapplicable. Were it tenable, this position would decree §1983 and §12202 meaningless.

The view presented dramatically departs from the unanimously accepted standards and binding precedents established by this Court, which expressly 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, i.e. *Scheuer v. Rhodes,* 94 S.Ct. 1683.

This case is easily resolved under the plain rule of *Scheuer,* where no one is above the law. Conversely, the appeals court upheld the District Judge's error, that "*<u>all</u> claims brought under §1983 are subject to Eleventh Amendment immunity.*" It's

judgement should be reversed. This Court has long held that §1983 is an available remedy for violations of federal law, e.g. *Maine v. Thiboutot*, 100 S.Ct. 2502.

## IV. SUMMARY JUDGEMENT MAY NOT BE GRANTED WHERE THERE IS THE SLIGHTEST DOUBT AS TO THE FACTS.

Rehearing should be granted because the court finds the outlines of this claim *"not at all clear."* The causes of action raised in District Court are a species of protected property, where facts could not be dismissed without clarification. *Mullane v. Central Hanover Bank*, 70 S.Ct. 652.

Multiple causes of action were adroitly asserted below in (5a); [fraud]#28, [ADA]#57 and #64cc, etc. Claims raise significant Constitutional issues involving liberty and property interests, that are entitled to both procedural and substantive Due Process protections.

Enough genuine issues of triable fact have been advanced, to raise a reasonable expectation that discovery will reveal that Petitioner and his child are victims of fraud committed upon the court, by the court itself. The initial petition for shared custody, filed in Bucks County is both clear and convincing. The custody award is clearly shown "void on its face."

There is no other precedent where the court dismisses credible allegations of discoverable fraud without consideration, exploration nor concern. Who will investigate federal crimes, if not this Court? (6a).

Taking these allegations as true and drawing reasonable inferences therefrom, the complaint does sufficiently allege facts that these state actors not only foresaw

the danger of harm their actions presented, but were deliberately indifferent in protecting fundamental rights by policies of action and inaction. Findings are not disputed by either party; thus, facts have been alleged from which a jury could find that these state actors are liable for injuries suffered from Constitutional torts or from other federal deprivations.

Had pretrial statements been read, or were conferences recorded, Mother's compliance with her participation in the Parties agreed custody evaluation would have been ordered and the court would not have abandoned the discovery of this child's best interest.

Had the unauthorized order been read, Petitioner's attorney would have appealed it as his client demanded and the court would have expedited proceedings and provided notice of case status.

Had the multiple Kings Bench petitions and other cries for relief been considered, evaluator's would not have been prohibited from reviewing psychological data on Mother and the court would not have waited eleven years for an unprepared hearing.

Had the Pennsylvania Supreme Court accepted responsibility for the conduct of custody conference officers, equal time to include family vacation would not have been withheld for five years, unfamiliar judges would not be deliberately rotated, contempt petitions would not be fraudulently quashed, the Parties agreed custody evaluator would be appointed where he would not be prohibited from contacting Petitioner and this case would be prepared for trial.

Had reasonable accommodations for a protected disability been provided, the law's protection would have been afforded to remedy ongoing failures. Had any of these facts been adequately considered or investigated, this child would not be chronically alienated from her father.

These triable issues, substantially demonstrate that Respondent's undisputed policy deficiencies are the moving force behind the injuries inflicted by the continuing deprivation of his protected federal rights.

Every burden has been met, to confirm that these identified deficiencies are closely related to the ultimate injury, establishing that the injury would have been avoided with proper policies, *Gibson v. Washoe County*, 290 F.3d 1175, 1196.

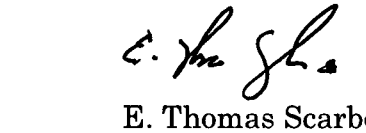
The facts pled are sufficient to survive a dismissal motion, as the facts are "live" and accord subject matter jurisdiction.

## CONCLUSION

Barring discovery, conclusions are unattainable. Therefore, Petitioner respectfully requests that this Court grant the petition for rehearing and order full briefing and argument on the merits of this case.

Respectfully submitted,

October 15, 2020

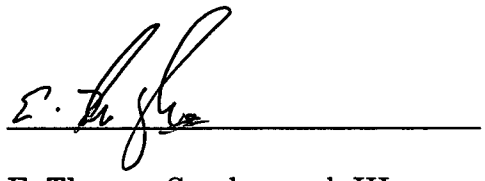


E. Thomas Scarborough III pro se

## CERTIFICATE OF COUNSEL

By An Unrepresented Party

I hereby certify that this petition for rehearing is presented in good faith and not for delay and that it is restricted to the grounds specified in Rule 44.



E. Thomas Scarborough III, pro se

October 15, 2020