

Supreme Court, U.S.
FILED

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No. 21-1163

In the
Supreme Court of the United States

CAROLYN L. BABURKA,

Petitioner,

v.

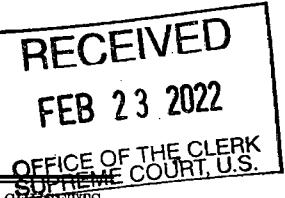
HAZLET TOWNSHIP, HAZLET POLICE DEPARTMENT,
HAZLET POLICE CHIEF MEEHAN and
POLICE OFFICER LOGOTHETIS,

Respondents.

On Petition for a Writ of Certiorari to the
Superior Court of New Jersey, Appellate Division

PETITION FOR A WRIT OF CERTIORARI

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FEBRUARY 18, 2022

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QUESTIONS PRESENTED

1. Did the courts below commit error by deciding the case based solely on New Jersey State law, failing to give any recognition to federal law such as 42 U.S. Code Sections 1983 and 1988 and the 4th, 5th and 14th Amendments to the United States Constitution?
2. Was the petitioner not only entitled to an expectation of her rights of privacy, but also to a trial jury concerning her injuries?
3. Under what circumstances is a police officer not entitled to qualified immunity?
4. Were all defendants deliberately indifferent to the rights of the petitioner to receive a reasonable conducted search of petitioner's body prior to entering the courtroom?

PARTIES TO THE PROCEEDINGS

Petitioner

- Carolyn L. Baburka

Respondents

- Hazlet Township
- Hazlet Police Department
- Hazlet Police Chief Meehan
- Police Officer Logothetis

LIST OF PROCEEDINGS

Superior Court of New Jersey, Law Division
Monmouth County

Docket No. MON-L-1266-18

Carolyn L. Baburka, *Plaintiff* vs. State of New Jersey (as Per Title 59 Requirements, Suing a Public Entity) County of Monmouth, Hazlet Township Police Department, Chief Philip Meehan, and Super Visor of the Hazlet Police Whomsoever That May Be, Hazlet Township, Scibal as Socia Tes of Somers, Point, Egg Harbor Township, New Jersey Also or Now Known as Qual-Lynx or Qualcare a/k/a Qualcare, Inc. a Division or Owned or Acquired by Cigna Insurance Companies, Qual-Lynx or 'Qualcare Inc. Having Its Offices Now at 30 Knightsbridge Rd., Piscataway Township, New Jersey, Et Al., *Defendants*

Final Order: May 22, 2020

Superior Court of New Jersey, Appellate Division

Docket No. A-4112-19

Carolyn L. Baburka, *Plaintiff-Appellant v. State of New Jersey (as per: Title 59 Requirements, suing a Public Entity), Defendant, and Hazlet Township, Hazlet Township Police Department, Police Chief Philip Meehan, and Police Officer Charleigh Logothetis, Defendants-Respondents.*

Final Order: June 10, 2021

New Jersey Supreme Court

No. A-004112-19

Carolyn L. Baburka, *Plaintiff-Petitioner v. State of New Jersey (as per: Title 59 Requirements, suing a Public Entity), Defendant, and Hazlet Township, Hazlet Township Police Department, Police Chief Philip Meehan, and Police Officer Charleigh Logothetis, Defendants-Respondents.*

Final Order: September 20, 2021

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED.....	i
PARTIES TO THE PROCEEDINGS	ii
LIST OF PROCEEDINGS.....	iii
TABLE OF AUTHORITIES	viii
PETITION FOR A WRIT OF CERTIORARI.....	1
OPINIONS BELOW	1
JURISDICTION.....	3
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	4
STATEMENT OF THE CASE.....	6
REASONS FOR GRANTING THE PETITION	11
I. RESPONSE TO QUESTION No. 1.....	11
II. RESPONSE TO QUESTION No. 2.....	14
III. RESPONSE TO QUESTION No. 3.....	19
IV. RESPONSE TO QUESTION No. 4	21
CONCLUSION.....	29

TABLE OF CONTENTS – Continued

	Page
APPENDIX TABLE OF CONTENTS	
Order of the Supreme Court of New Jersey (September 20, 2021).....	1a
Opinion of the Superior Court of New Jersey Appellate Division (June 21, 2021).....	3a
Rider and Statement of Reasons for Two (2) Orders of May 22, 2020 Granting All Defendants Motions for Summary Judgment.	27a
Order Granting the Motion of Defendants Hazlet Township and Chief Philip Meehan, and Dismissing Plaintiff's Claims Against Them (June 22, 2018)	64a
Order Granting Defendant Qual/Scibal's Motion and Dismissing Plaintiff's Claims With Pre- judice Pursuant to Rule 4:6-2(E) (June 22, 2018)	67a
Order of the Superior Court of New Jersey Law Division Monmouth County (June 22, 2018) ..	70a
Order of the Superior Court of New Jersey Law Division Monmouth County (June 25, 2018) ..	73a
Order Granting Summary Judgment (June 25, 2018)	76a
Order Granting Reinstatement/Restoring of Docket # L-1266-18 (March 5, 2019).....	79a
Order Granting Plaintiff's Motion to Amended Complaint Under Docket# L-1266-18 (April 12, 2019)	81a

TABLE OF CONTENTS – Continued

	Page
Order Granting the Motion of Defendant Hazlet Township and Chief Philip Meehan, and Dis- missing the Complaint (July 26, 2019).....	83a
Order Granting Summary Judgment in Favor of State Defendant (August 2, 2019)	86a
Order for Summary Judgment (September 16, 2019).....	88a
Confidentiality and Protective Order (January 24, 2020).....	91a
Order Granting Plaintiff's Motion to Extend Discovery & Adjourn Arbitration Date (January 27, 2020).....	97a
Order of the Superior Court Of New Jersey Law Division Monmouth County (January 27, 2020).....	99a
Report and Award of Arbitrator(s) (March 12, 2020).....	101a
Order for Summary Judgment (May 22, 2020)	104a
Order Granting Summary Judgment and Dis- missing All Claims Against Hazlet Township and Chief Meehan (May 22, 2020).....	107a

TABLE OF AUTHORITIES

	Page
CASES	
<i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242 (1986).....	24
<i>Camara v. Municipal Court, City, County of San Francisco</i> , 387 U.S. 523 (1967).....	15
<i>Felder v. Casey</i> , 487 U.S. 131 (1989)	7
<i>Jett v. Dallas Independent School District</i> , 491 U.S. 701 (1989)	19
<i>Lombardi v. Masso</i> , 207 N.J. 517 (2011)	16
<i>Malley v. Briggs</i> , 475 U.S. 1335 (1986)	20
<i>Matthews v. N.J. Institute of Tech.</i> , 717 F.Supp.2d 447 (2010)	8
<i>McMorris v. Alito</i> , 567 F.2d 887 (1978).....	26
<i>Minnesota v. Dickerson</i> , 508 U.S. 306 (1993)	18
<i>Monell v. Department of Soc. Svcs.</i> , 436 U.S 694 (1978)	24
<i>Morillo v. Torres</i> , 222 N.J. 104 (2015)	23
<i>N.J. v. T.L.O.</i> , 469 U.S. 325 (1985)	13, 14, 15, 26
<i>P.B.A. local No. 38 v. Woodbridge Police Dept.</i> , 832 F.Supp. 808 (D.N.J. 1993)	18

TABLE OF AUTHORITIES – Continued

	Page
<i>Pembaur v. City of Cincinnati</i> , 475 U.S. 469 (1986)	18
<i>People v. Blake</i> , 645 N.E.2d 580 (Ill. App.), <i>appeal denied</i> , 649 N.E.2d 419 (Ill. 1995)	18
<i>Plumhoff v. Rickard</i> , 572 U.S. 765 (2014)	24
<i>Schneider v. Simonini</i> , 163 N.J. 336 (2000)	19
<i>State v. Privott</i> , 203 N.J. 16 (2010)	17
<i>Tolan v. Cotton</i> , 572 U.S. 650 (2014)	24

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. IV	passim
U.S. Const. amend. V	passim
U.S. Const. amend. XIV	passim

STATUTES

28 U.S.C. § 1257(a)	3
42 U.S.C. § 1983	passim
42 U.S.C. § 1988	passim

JUDICIAL RULES

N.J. Rule 4:46-2(5)	15
---------------------------	----

TABLE OF AUTHORITIES – Continued

Page

LEGISLATIVE MATERIALS

Administrative Directive #15:06, Statewide municipal court security policy (August 7, 2006)	17, 21, 24
---	------------



PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.



OPINIONS BELOW

The Opinion of the Superior Court of New Jersey, Appellate Division, dated June 21, 2021, is included at App.3a. The Supreme Court of New Jersey denial of a petition for review on September 20, 2021 is included at App.1a.

The following orders were entered in the New Jersey Superior Court, Law Division:

Court Order dated June 22, 2018, N.J Superior Court, Law Division, Monmouth County, dismissing Plaintiff's complaint without prejudice

Court Order dated June 22, 2018, N.J. Superior Court, Law Division, Monmouth County, dismissing Qual-Care from the Complaint with prejudice.

Court Order dated June 22, 2018, N.J. Superior Court, Law Division, Monmouth County, dismissing complaint against the County of Monmouth, represented by Donald Greer, with prejudice.

Court Order dated June 22, 2018, N.J. Superior Court, Law Division, Monmouth County, dismissing complaint against defendants Hazlet Township and Police Chief Meehan

Court Order dated June 25, 2018, N.J. Superior Court, Law Division, Monmouth County, dismissing complaint against defendants Hazlet Police Department without prejudiced

Court Order Dated March 5, 2019, N.J. Superior Court, Law Division, Monmouth County, granting reinstatement/restoring of Docket L-1266-18, against State of New Jersey, Hazlet Township, Hazlet Township Police Chief Meehan, Hazlet Police Department, Hazlet Police Supervisor, Hazlet Police Officer Charleigh Logothetis

Court Order dated April 15, 2019, N.J. Superior Court, Law Division, Monmouth County, granting Plaintiff's Motion to Amend Complaint under docket #L-1266-18

Court Order dated July 26, 2019, N.J. Superior Court, Law Division, Monmouth County, denying Motion of Defendants Hazlet Township and Hazlet Police Chief Meehan to dismiss Plaintiffs complaint

Court Order dated August 2, 2019, N.J. Superior Court, Law Division, Monmouth County, granting Summary Judgment in favor of State Defendant

Court Order dated September 16, 2019, N.J. Superior Court, Law Division, Monmouth County, denying Defendant, Police Officer Logothetis' Attorney Andrew Walsh, Motion for Summary Judgment against Plaintiff

Court Order dated January 24, 2020, N.J. Superior Court, Law Division, Monmouth County, granting Defendant Police Officer Logothetis' attorney, Andrew Walsh, Esq. Confidentiality and Protective Order

Court Order dated January 27, 2020, N.J. Superior Court, Law Division, Monmouth County, granting Plaintiff's Motion to Extend Discovery and Adjourn Arbitration date

Court Order dated January 27, 2020, N.J. Superior Court, Law Division, Monmouth County, reinstating Plaintiffs complaint which was inadvertently dismissed by the clerk of Monmouth County without prejudice for lack of prosecution

Arbitration decision dated March 12, 2020, N.J. Superior Court, Law Division, Monmouth County, in favor of Defendants

Superior Court of New Jersey, Law Division, Monmouth County Notice Scheduling a court date for Trial of June 8, 2020



JURISDICTION

The New Jersey Supreme Court denied a petition for review on September 20, 2021. Petitioner filed a timely Petition for Writ of Certiorari in this Court. The Clerk of Court provided additional time, until February 18, 2022 by which to file a petition in the Rule 33.1 booklet format. The jurisdiction of this court is invoked under 28 U.S.C. § 1257(a).



CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CONSTITUTIONAL PROVISION

U.S. Const. amend. IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. amend. XIV

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges

or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTORY PROVISION

42 U.S.C. § 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1988(a)–Applicability of Statutory and Common Law

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of titles 13, 24 and 70 of the Revised Statutes for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conforming with the laws of the United States, so far as such laws are suitable to carry the same into effect; in all cases where they are not adapted to the object, all are deficient in the provisions necessary to furnish suitable remedy in punish offenses against law, the common law, has modified and changed by the constitution and statutes of the State wherein the court having

jurisdiction of such civil or criminal cause held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern said courts in the trial in disposition of the courts, and, if it is a criminal nature, in the infliction of punishment on the party found guilty.



STATEMENT OF THE CASE

The petitioner is a resident of the State of New Jersey.

On January 16, 2018, the petitioner was required to answer at the Hazlet Township Municipal court certain traffic violation tickets. When the petitioner entered into the Hazlet Township Municipal Building at approximately 4:00 P.M. of said date, petitioner noticed the sign inside the building that there would be a search for weapons. There was no indication in the sign that there would also be a video being made of petitioner's entrance into a designated area of the municipal building which is owned by Hazlet Township. When petitioner proceeded through the magnetometer, the magnetometer rang. The area was being handled by Police Officer ("P.O.") Logothetis of the Hazlet Township Police Department, who did not ask the petitioner whether or not she had an article on her which would have set off the magnetometer, nor did P.O Logothetis possess a wand to scan the petitioner, nor was she under any time pressure because there was only 1 or 2 other persons seeking entry into the area. Instead, P.O. Logothetis without requesting

petitioner's consent to conduct the frisk, ordered the petitioner to immediately turn around, wherein P.O. Logothetis immediately squeezed petitioner's breasts causing petitioner immediate and severe excruciating pain, total shock and embarrassment. At no time, did P.O. Logothetis inform petitioner before P.O. Logothetis ordered petitioner to turn around that a video was being made of P.O. Logothetis search of petitioner's body. Because of petitioner's reverent fear, shock and embarrassment, petitioner went into the courtroom. After petitioner left the courtroom, it was too late in the evening to seek medical attention. However, the very next day petitioner saw her primary care physician. Petitioner suffered emotional stress and mental trauma as indicated in her informing the caretaker nurse of her experience at the courthouse the prior day and the diagnosis was: breast pain, right chest wall tenderness, anxiety, sustained breast and chest wall trauma, experiencing pain and discomfort in the area. Right chest wall tenderness deep palpation, tenderness on palpation of right lateral breast tissue and intercostal area axillary tenderness, pain and tenderness anterior lower ribs.

On April 5, 2018, petitioner served a timely Notice of Tort Claim on the State of New Jersey, although she was not required to do so, because of the decision in the *Felder v. Casey*, 487 U.S. 131 (1989) case. In petitioner's amended pro se complaint filed on April 24, 2019, with the New Jersey Superior Court, Law Division of Monmouth County, petitioner set forth her injuries and indicated that her rights under the United States Constitution were violated. Petitioner sought five million dollars ("5,000,000") in damages. Although petitioner did not indicate the

specific United States constitutional grounds petitioner was proceeding on, petitioner was not required to do so, but the N.J. Superior Court law division, based its dismissal of petitioner's amended complaint on that fact, deciding the case solely on New Jersey State law, ignoring the protections the petitioner was afforded under federal law sections, 42 U.S. Code Section 1983 and 1988, and the 4th, 5th and 14th Amendments to the United States Constitution. The trial court based its decision on the case of *Matthews v. N.J. Institute of Tech.*, 717 F.Supp.2d 447 (2010). This case was misinterpreted by the New Jersey Superior Court, law division, because it had no application to matters which alleged a federal or U.S. constitutional claim. Petitioner never consented to be both frisked and videotaped. Petitioner was never informed that a videotape would be made of her being frisked. The notice to petitioner by sign only indicated to petitioner that there would be a search for weapons, not that if a frisk would be necessary, the frisk would be subject to a videotaping. To further complicate matters, petitioner's rights for procedural and substantive due process in the conduct of her case was extremely violated when some 2 years and 1 month subsequent to petitioner's court entry on January 16, 2018, and after petitioner conducting interrogatories, the attorney for the respondents, Hazlet Township and Police Chief Meehan, forwarded by letter dated, February 10, 2020, an unauthenticated video of petitioner entering the Hazlet Township Municipal Court on January 16, 2018. Although the trial court did not admit the unauthenticated video into evidence, petitioner's rights were prejudiced because the answers of the respondents to the interrogatories were based in part on their viewing of the video that

was unauthenticated and not admitted into evidence. Petitioner was further prejudiced by the trial court when it failed to give petitioner any favorable inference on respondents' two separate motions for summary judgment based on the unauthenticated video which petitioner was entitled to, especially so when the answers of the respondents to petitioner's interrogatories were based in part on the video that the court refused to enter into evidence. Without the admission into evidence of an unauthenticated video of the frisk made on petitioners body, the trial court should not have granted summary judgment to the respondents. An authenticated video was an integral part of the search that was made on petitioner's body and to come to the conclusion that the search made on petitioner was a reasonable one is a grave error, greatly prejudicing the petitioner.

On May 22, 2020, the Judge of the Superior Court of New Jersey, Henry P. Butehorn, granted summary judgment in favor of all the respondents named herein by 2 separate orders of summary judgment. One order was in favor of Officer Charleigh Logothetis and the Hazlet Township Police Department and an additional order for summary judgment was in favor of the respondents, Hazlet Township and Hazlet Township Police Chief Meehan. Petitioner appealed the orders of summary judgment to the Superior Court of the New Jersey Appellate Division. On June 10, 2021, by its opinion, the Superior Court of the New Jersey Appellate Division decided petitioner's appeal in favor of the respondents. The petitioner then sought by means of its petition for certification of the judgment by the Supreme Court of New Jersey to have its case reviewed by the said

Supreme Court. But such Petition for Certification was denied on September 20, 2021.

This case is most important to be heard by the Supreme Court of the United States because it concerns the right of an ordinary American citizen when such citizen enters a courthouse for the purpose of responding to traffic tickets. When an ordinary citizen seeks to enter the courtroom he/she is subject to an administrative search by a sign giving notice that there would be a search for weapons. But no way is the ordinary citizen provided with a notice that he/she is subject to a videotape. The ordinary citizen who enters the magnetometer may under special circumstances cause the magnetometer to ring. In petitioner's case, petitioner was required without any further to do was ordered to turn around without being requested for petitioner's permission to be frisked. Petitioner had a right to expect that her private parts would be subject to privacy. Instead, petitioner was immediately groped by the Police Officer Logothetis, who was monitoring the magnetometer. This case is important because it involves the right of an ordinary citizen to be protected by federal law, namely 42 U.S. Code Section 1983, and 1988, and the 4th, 5th and 14th Amendments to the United States Constitution. The State of New Jersey completely ignored the rights of petitioner to be so protected but instead invoked their own statutory laws which protects itself and its police officers and in the process completely ignored federal law and United States constitutional law. It is most important for the Supreme Court of the United States to indicate what are the rights of the petitioner who is an ordinary American citizen when she passes through the magneto-

meter and for some unknown reason causes the magnetometer to ring?



REASONS FOR GRANTING THE PETITION

I. RESPONSE TO QUESTION NO. 1

The New Jersey courts committed error by deciding this case based solely on New Jersey statutory law. They refused to give recognition to the federal law and the U.S. constitutional law consisting of the 4th, 5th and 14th Amendments to the U.S. Constitution. In petitioner's amended complaint and Jury Demand filed on April 24, 2019, petitioner clearly indicated in paragraph 9 of the amended complaint that it was the duty of the respondents to provide a public environment which would not violate ones person and space by inappropriate touching, or violate ones rights under the Constitution of the United States. At paragraph 23 of petitioner's amended complaint, petitioner stated that the deprivation of her constitutional rights occurred "pursuant to a governmental custom, policy, statement, ordinance, regulation and decision officially adopted and promulgated by governmental officials." Therefore, there should not be any basis for all of the New Jersey courts to ignore petitioner's federal statutory and constitutional rights. In petitioner's appeal to the New Jersey Appellate Division, the court in its decision recognized that petitioner's first argument against summary judgement was that the decision of the court below was contrary to established U.S. constitutional law concerning the 4th, 5th and 14th Amendments to the U.S. Constitu-

tion. In petitioner's amended complaint, petitioner had alleged that petitioner had lawfully submitted to the search, but petitioner was subject to an unreasonably harsh search that caused petitioner excruciating pain and had emotionally and mentally traumatized petitioner. The N.J. Appellate Division recognized that petitioner alleged that Hazlet Township and its Police Department failed to properly train P.O. Logothetis. It also recognized that petitioner's amended complaint indicated that the inaction of Hazlet Township rose to the level of deliberate indifference. Also, the N.J. Appellate Division recognized that petitioner alleged that the actions of the respondents caused petitioner to suffer severe physical injuries and mental trauma which will continue throughout petitioner's life, for which petitioner sought 5 million dollars in damages against the respondents individually and jointly. The N.J. Appellate Division recognized that attached to petitioner's amended complaint was a medical note prepared by a nurse at a January 17, 2018, medical office visit, which indicated that petitioner had complained of breasts and chest pain and discomfort from being frisked while going through a courthouse metal detector. According to the nurse's note, the physical examination had revealed tenderness and palpation of right lateral breast tissue and intercostal area and auxiliary tenderness. The diagnosis noted breast pain, right; chest wall tenderness; anxiety. The N.J. Appellate Division indicated that petitioner underwent a bilateral breast ultrasound on February 13, 2020, and submitted those, evidencing multiple visits to a licensed ED, clinical social worker for psychotherapy. The N.J. Appellate Division's decision indicated that the lower court judge had explained that although petitioner

had not specifically identified in petitioner's amended complaint, that the petitioner seemed to be asserting a claim under the federal civil rights act (42 US Code section 1983), or the New Jersey Civil Rights Act., or as well as negligent claims subject to the New Jersey Tort Claims Act. Additionally, the N.J. Appellate Division indicated that the lower court judge deciphered petitioner's claims as challenging both the frisks and the manner in which the frisk was conducted. The N.J. Appellate Division recognized that the lower court judge initially then started to review New Jersey law concerning the petitioner's contentions. It is petitioner's contentions that the fact that the lower court judge started initially to review New Jersey state law was a mistake on his part. It was his duty to initially make the review of petitioner's rights under federal statutory law, 42 U.S. Code Sections 1983 and 1988, and the 4th, 5th and 14th Amendments to the United States Constitution. Pursuant to Sections 1983 and 1988, the court would have to make a determination whether the action is to be determined pursuant to federal law and the United States Constitution. If the action cannot be decided pursuant to federal law and the United States Constitution, then and only then could the state court apply state law. In petitioner's action, the state court should have applied 42 U.S. Code Sections 1983 and 1988, and the 4th, 5th, and 14th Amendments to the United States Constitution. The petitioner was subjected to an unreasonable search of her body considering her age and sex, and her expectation of privacy in violation of the 4th and 14th Amendments to the United States Constitution, *see N.J. v. T.L.O. Supra*. Petitioner's rights pursuant to the 5th and 14th Amendments to the United States Constitution

was also violated more than 2 years, subsequent to the petitioner's incident at the Hazlet Township Municipal Building, petitioner was forwarded subsequent to taking interrogatories of the respondents, a video that was not authenticated by the forwarding party, the attorney for the Hazlet Township and Police Chief Meehan. This late forwarding of the unauthenticated video was highly prejudice to the petitioner. Such was the case because the interrogatories that were forwarded to the petitioner by the respondents was based in part on the respondents viewing of the unauthenticated video. Thus even though the video was never admitted to evidence in the case as the lower court refused to admit it into evidence because it was unauthenticated, nevertheless, the petitioner was prejudiced because the respondents' answers to interrogatories were based in part on their viewing the unauthenticated video. This was a clear violation of petitioner's rights for procedural and substantive due process pursuant to the 5th and 14th Amendments to the United States Constitution.

II. RESPONSE TO QUESTION NO. 2

The petitioner had an expectation of privacy when the petitioner entered the courtroom of the Hazlet Township Municipal Building that her body would not be subject to a violation of her private parts and privacy considering her age and sex. Petitioner was grossly violated when petitioner was frisked by Police Officer Logothetis, *see N.J. v. T.L.O.*, 469 U.S. 325 (1985). Petitioner had a right to a reasonable search consistent with her age and sex and that her rights for an expectation of privacy would not be violated by the Police Officer Logothetis. When petitioner entered the Hazlet Township Municipal Building

courtroom, she was fifty-seven-years of age. In this case, the female Police Officer Logothetis is deemed to be acting under color of law, *see N.J. v. T.L.O., supra*. The 4th Amendment to the United States Constitution applies to civil cases, *see Camara v. Municipal Court, City, County of San Francisco*, 387 U.S. 523 (1967). Had petitioner known about the existence of the unauthenticated video prior to her forwarding interrogatories to the respondents or had she been provided with an authenticated video prior to her forwarding interrogatories to the respondents, then the petitioner could have prepared questions about the video. As what happened here was that the respondents were in a position to view the unauthenticated video and answer petitioner's interrogatories in part based on their viewing of the unauthenticated video. This was prejudicial to petitioner's procedural and substantive due process rights pursuant to the 5th and 14th Amendments to the United States Constitution.

Police Officer Logothetis is not entitled to qualified immunity because this matter was never presented to a jury, which was entitled to hear this case, because it involved what was Police Officer Logothetis' intentions when she groped, and squeezed petitioner's breasts. Is this a case of mere negligence or was this a purposeful act or otherwise? The lower court failed to rule on New Jersey State Rule 4:46-2(5) at 2.3.4. in reference to state of mind or intent which indicates that the motion could ordinarily not be granted where an action or defense requires a determination of a state of mind or intent, such as claims of waiver, bad faith, fraud or duress. The rule cites various cases by the New Jersey courts in support thereof.

Also see the case of *Lombardi v. Masso*, 207 N.J. 517 (2011). The Masso case indicates that in a summary judgment situation where there is a defense of state of mind or intent, the determination of such was ordinarily a matter for the jury to decide. While the New Jersey Appellate Division in its decision could not find any liability for Police Officer Logothetis that required a jury trial, it completely ignored this important rule of New Jersey law. The New Jersey Appellate Division indicated in its decision that there was no dispute of facts which should be submitted as a jury question. This is not true, as was just indicated above pursuant to New Jersey rule. The New Jersey Appellate Division was also incorrect wherein it indicated that the petitioner does not point to any policy, nor does petitioner cite any ordinance which could possibly lead to a jury question concerning the Police Department of Hazlet Township. Hazlet Township officially adopted an unconstitutional policy. Such respondents did not present the petitioner with an authenticated video of her entry into the courtroom but instead some more than 2 years proceeding to such entrance presented petitioner with an unauthenticated video after completion of interrogatories of the respondents in violation of petitioner's due process rights pursuant to the 5th and 14th Amendments to the United States Constitution. Furthermore, the New Jersey Appellate Division indicated that there was no evidence to show that Police Officer Logothetis decision or manner in which she carried out the frisk was sanctioned or ordered by the municipal entity other than petitioner's blank allegation as set forth in her amended complaint. This is not true, as on the date of petitioner's entrance into the municipal court on January 16, 2018, the respondents had failed to

comply with a requirement of the New Jersey Attorney General and the Supreme Court of New Jersey concerning security for the municipal courtroom. *See Administrative Directive #15:06, Statewide municipal court security policy* (August 7, 2006), requiring municipal courts to submit security plans to the Assignment Judge of the Vicinage. On the date of the petitioner's entrance into the courtroom no such plans had been filed by the Hazlet Township Police Department. Such plans were filed subsequent to petitioner's incident on January 16, 2018. The security plan was finally filed 4 months later on May 10, 2018, which was 4 months after petitioner's incident. This is a perfect example of the indifference of Hazlet Township and its Police Chief Meehan in providing building security for the court. The Police Chief Meehan has sought to avoid liability by arguing that he was not present on the date of petitioner's incident. However, Police Chief Meehan was present by means of the video that was installed at the security checkpoint. On page 13 of the New Jersey Appellate Division opinion, the court indicates that petitioner cannot point to any evidence by other persons of incident or issues regarding screenings or security at the municipal court other than herself. However, petitioner's incident is sufficient by itself contrary to what the New Jersey Appellate Division has indicated.

It was indicated in the brief filed on behalf of Attorney for Hazlet Township and its Police Chief Meehan, before the Supreme Court of New Jersey at page 7 indicated the following cases were cited *State v. Privott*, 203 N.J. 16 (2010), where the police lifted up the subjects shirt instead of patting his outer clothing for a weapons check. Also, *Minnesota v.*

Dickerson, 508 U.S. 306 (1993), where a lump was deemed contraband after the police squeezed and manipulated the contents of the subjects pockets. Also, *People v. Blake*, 645 N.E.2d 580 (Ill. App.), *appeal denied*, 649 N.E.2d 419, also (Ill, 1995), where there was a seizure of marijuana by the police following a grope rather than a pat down. That is what Police Officer Logothetis did to me, petitioner, "she groped me."

The Attorney for Hazlet Township and Police Chief Meehan argued in his brief before the Supreme Court of New Jersey that even where a particular "Terry frisk," is prohibited by the 4th Amendment, that the Police Chief Meehan and Hazlet Township may not become liable. Contrary to such, *see also*, *P.B.A. local No. 38 v. Woodbridge Police Dept.*, 832 F.Supp. 808 (D.N.J. 1993), wherein it was indicated that in a Section 1983 situation, citing the case of *Pembaur v. City of Cincinnati*, 475 U.S. 469 (1986) which case was also cited in the brief of Hazlet Township and its Police Chief Meehan to the Supreme Court of New Jersey, "Recognizing that a single act of municipal policy makers can give rise to Section 1983 liability." It was also indicated by the Woodbridge court above cited, that officials who have final authority to establish municipal policy with respect to the action that was ordered, it was deemed to be policy. Additionally, the making of policy authority is a question of state law. As for municipal custom it arises, where there is a course of conduct although not formerly approved by official channels is so permanent and well settled that it virtually constitutes law. It is petitioner's duty to show that the policy making is responsible for the policy whereby its

acquiescence for the custom. Once it has been determined where the policy making authority lies, the jury must determine whether the decision of the policy making persons has caused a deprivation of issue. The court cites *Jett v. Dallas Independent School District*, 491 U.S. 701, 737 (1989).

III. RESPONSE TO QUESTION NO. 3

Police Officer Logothetis is not entitled to receive qualified immunity pursuant to federal law and United States constitutional law. Why is this so? To begin with, Police Officer Logothetis in her answers to interrogatories certified on December 3, 2019, at question #26, she was specifically asked; why she believed she was entitled to receive qualified immunity? Her response was she objected to this interrogatory because it called for a legal conclusion, which she said she was not qualified to provide. She referred to her counsel's advice, to a legal brief previously submitted to the New Jersey court should be looked at. So, if respondent Police Officer Logothetis does not know why she is entitled to qualified immunity, can any other reasonable police officer know any better? Since Police Officer Logothetis is not willing to indicate that she is personally entitled to qualified immunity, then she is not so qualified. In the brief submitted by the Attorney for Hazlet Township and Chief Meehan to the Supreme Court of New Jersey, reference is made at the bottom of page 12, "Affirming Summary Judgment granted by the Appellate Division, "this court held that even when probable cause to arrest does not exist a police officer, "is entitled to qualified immunity, if s/he could reasonably have believed its existence, "Id. At 345 this quote is from *Schneider v. Simonini*, 163 N.J. 336 (2000). In the

Schneider v. Simonini case, the Supreme Court of New Jersey indicated that it was holding in Section 1983 matters "when disputed historical facts are relevant to either probable cause or the existence of a reasonable, but mistaken, belief concerning its existence, the Trial Court must submit the disputed factual issue to the Jury in the form of Special Interrogatories for resolution by the Jury." The Supreme Court of New Jersey also indicated in the Simonini case that in the absence of probable cause the Judge must decide whether the defendant has proven by a preponderance of the evidence that his or her actions were reasonable under the particular facts. Based on the response of Police Officer Logothetis, who was unable to believe in the existence of qualified immunity in the present case, in which the petitioner is suing. Additionally, there are several other reasons Police Officer Logothetis is not entitled to qualified immunity. For instance, Police Officer Logothetis in her answer did not set up any defense for qualified immunity under federal law and/or United States constitutional law. *See Malley v. Briggs*, 475 U.S. 1335 (1986). Police Officer Logothetis in her answer only set up the defense of qualified immunity pursuant to New Jersey law. Additionally, Police Officer Logothetis is not entitled to qualified immunity because petitioner's matter was never presented to a jury, which was entitled to hear petitioner's case because it concerned what was Police Officer Logothetis' intentions when she groped petitioner and squeezed petitioner's breasts. Is this a case of mere negligence or was this a purposeful act or otherwise? An additional reason why Police Officer Logothetis was not to be considered acting in good faith, because the question of good faith has to be decided by a jury. In this case, the

court below did not permit such issue of intent to be referred to a jury. Furthermore, it would seem that the frisk conducted by Police Officer Logothetis upon petitioner would not be entitled to qualified immunity because such frisk should be considered a ministerial act performed by Police Officer Logothetis not entitled to qualified immunity with good faith consideration.

IV. RESPONSE TO QUESTION NO. 4

Hazlet Township and its Police Chief Meehan did not file security plans which they were required to do by Administrative Directive #15-06, as previously discussed, until nearly 4 months had passed after petitioner's incident at the municipal building. Additionally, in interrogatories that petitioner submitted to Police Chief Meehan, at question #2, the police chief indicated in his response concerning Police Officer Logothetis that, "training is received at the Academy; thereafter, it is my duty to make sure she had the necessary training for court security, which the police chief in his answer to interrogatory #5., concerning Police Officer Logothetis indicated, "I am obligated to make sure she has all the training for court security." Police Officer Logothetis attended police search security procedures in September 2014, and municipal court security procedures in May 2018." However, the municipal court security training received by Police Officer Logothetis in 2018, was approximately 4 months subsequent to petitioner's incident at the municipal building on January 16, 2018. In the Police Chief Meehan's response to interrogatory # 14, the Police Chief Meehan, indicated, "our department has always followed the requirements of the Administrative Director of the court and Supreme Court Directors, *see attached Hazlet Township Police Department municipal court*

security Policy and Procedures dated, May 10, 2018. However, such filing was more than 11 years after requested by the Attorney General of New Jersey and the Supreme Court of New Jersey. The New Jersey Appellate Division sought to excuse the conduct of the Police Chief Meehan as to his training of Police Officer Logothetis by indicating that he was not present at the time of petitioner's incident. However, the New Jersey Appellate Division appears to have forgotten that there were video tapes installed at the municipal building and by such means the Police Chief Meehan either knew or should have known what was going on at the municipal building at the entrance to the courtroom. In her response to interrogatories #13., Police Officer Logothetis indicated, "I attended the Monmouth County Police Academy from January 2013, through May 2013, in a Special Law Enforcement Officers Class II Program for Long Branch Police Department. On August 2013 through January 2014, I attended the Cape May County Police Academy for Basic Courses for Police Officers." Then Police Officer Logothetis was asked, "what did her training consists of," her response was, "I do not recall." Her response to interrogatory #14, Police Officer Logothetis was asked, "what training did she receive on how to frisk individuals properly without a wand?" She answered that she "did receive instructions, but at 13a., she was asked, "if yes, where did she receive such training and what did her training consists of?" Her response was, "see responses for interrogatory #4, and #13 above, "I don't know the specifics of the training." The field training for court security that Police Officer Logothetis received was subsequent to petitioner's incident at the Hazlet Township Municipal Building on January 16, 2018.

The New Jersey courts took the position that the Police Chief Meehan was not physically present at the courthouse and was not aware of the events of January 16, 2018. However, it completely forgot that Chief Meehan had the benefits of a video to substitute his physical presence at the courthouse and he was quite aware of the events of that day by means of viewing the video camera that had been installed in the municipal building. The N.J. Appellate Division indicated, "if the evidence of record—the pleadings, depositions, answers to interrogatories and Affidavits—" together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact," then the trial court must deny the motion. On the other hand, when no genuine issue of material fact is at issue and the moving party is entitled to a judgment as a matter of law, summary judgment must be granted. The N.J. Appellate Division then continued, "If there is no genuine issue of material fact, we must "decide whether, the trial court correctly interpreted the law." The New Jersey Appellate Division then indicated, "we agree with the judge's determination that there was no disputed issues of material fact and defendants were entitled to summary judgment as a matter of law." The New Jersey Appellate Division further indicated that, "the doctrine of qualified immunity shields law enforcement officers from personal liability for civil rights violations when the officers are acting under color of law in the performance of official duties," unless their performance was not "objectively reasonable." *Morillo v. Torres*, 222 N.J. 104 (2015) at 107-08. In the present case, how can it be stated that the conduct alleged by the petitioner that Police Officer Logothetis did to petitioner was

objectively reasonable? This matter can only be determined by a jury. The New Jersey Appellate Division indicated, "The inquiry requires analyzing the totality of the circumstances." *Plumhoff v. Rickard*, 572 U.S. 765, 776 (2014). Petitioner was entitled to obtain favorable inferences on the motion for summary judgment which the courts below failed to recognize. *See Tolan v. Cotton*, 572 U.S. 650 (2014), which stated, "in ruling on a motion for summary judgement" the evidence of the non-movant is to be believed and all justifiable inferences are to be drawn in his favor," *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Furthermore, the court went on to indicate it's the court's duty to resolve genuine issues of fact and not to weigh the evidence and determine the truth of the matter. It also indicated that qualified immunity immunizes governmental officials unless their conduct has violated a clearly established right. The New Jersey Appellate Division indicated, "A local governmental entity is deemed "a person under Section 1983 only where the action alleged to be unconstitutional "implements or executes a policy statement, ordinance, regulation or decision officially adopted and promulgated by that body's officers." It goes on to state, "It is only when execution of a governments policy or custom . . . inflicts the injury that the government as an entity is responsible for under Section 1983." This quote was taken from the *Monell* case at 436 U.S 694 (1978). Its petitioner's intentions that the respondents were not entitled to summary judgement whereas here the local government, Hazlet Township, its Police Department and Police Chief Meehan were required by the Attorney General of New Jersey and its Supreme Court by an Administrative Directive 15:06, issued in 2006 to submit security plans con-

cerning the Hazlet Township Municipal Building. At the date of petitioner's injury after petitioner entered the Municipal Building on January 16, 2018, no such plans had been filed as required in 2006. There had been a passage of more than 11 years and the respondents had ignored such filing to the detriment of the petitioner. Evidently, it was petitioner's injury that may have forced a security plan to be finally filed nearly 4 months subsequent to petitioner's injury. Additionally, there was an obvious failure on the part of Hazlet Township and its Police Department and its Police Chief Meehan to adequately train police officer Logothetis as to her need for court security training. On the date of petitioner's incident on January 16, 2018, Police Officer Logothetis had not received her court security training. However, once again Police Officer Logothetis subsequently received such security court training nearly 4 months subsequent to petitioner's injury on January 16, 2018. Once again, the respondents had to know about petitioner's injury because of the presence of a video camera. It was by such means that all the respondents were present in the Municipal Building on January 16, 2018, and therefore, are not in a position to claim ignorance about the injuries sustained by the petitioner in the municipal building. It was by means of the unauthenticated video that the respondents should have been aware of facts from which there could have been drawn an inference that Police Officer Logothetis who is a subordinate was acting in an unconstitutional manner which could cause a substantial risk in the causation of serious harm being inflicted on invitees to the Hazlet Township Municipal Building. The fact that the trial court did not accept into evidence the unauthenticated video did not prevent serious pre-

judice to the petitioner because the respondents had utilized the viewing of the unauthenticated video in part to help them certify their answers to the petitioner's interrogatories. An authenticated video of petitioner's entry into the municipal court was an indispensable fact in the determination of whether or not the petitioner had obtained a reasonable search of her body for weapons which respected her expectation of privacy which petitioner was entitled to see, *N.J. v. T.L.O. Supra*. The case of *McMorris v. Alito*, 567 F.2d 887 (1978) is a matter that should be considered by this court because it involved a limited search conducted as a condition of entry into a state courthouse. One of the issues before the McMorris court was whether or not there had been a violation of the 4th and 14th Amendments to the United States Constitution, which provided the petitioner to be free from unreasonable searches and seizures. The McMorris court indicated,

"We infer from the record that as an individual activated the magnetometer, he could empty his pockets of metals and pass through a second time. If after the second pass, the individual continued to activate the device he would not be admitted into the courthouse unless he submitted to a pat-down search. It is explicit in the record that pat-down searches were conducted only if the visitor first gave express consent. Officers would also inspect briefcases and parcels, but were specifically instructed not to examine written material. The Officers were further directed to inspect only those briefcases and parcels in which weapons could be concealed."

The court went on to indicate, "The search must be limited and no more intrusive and necessary to protect against the danger to be avoided but nevertheless reasonably effective to discover the materials sought. The inspection must be conducted for a purpose other than the gathering of evidence for criminal prosecutions." The court went on to indicate, "Officers who conducted the search were specifically instructed to limit their inspection to the detection of weapons and to avoid conducting any further search of persons and property." In the McMorris case, the court referring to one entering the courthouse, indicated the persons passing through the magnetometer who activate the magnetometer, "They are apparently given more than one opportunity to pass through the magnetometer. Finally, even after activating the device a person may not be subject to a pat-down search unless he fully and voluntarily agrees to it. He is under no compulsion to submit." The court went on to further indicate, "The requirement that a person give this qualified consent to the search strictly circumscribes the state's authority and validates the limited intrusion at issue here." In petitioner Baburka's case herein, petitioner was not given the opportunity to consent to the pat-down search, in fact, petitioner never consented to a pat-down frisk because she was ordered immediately to turn around by Police Officer Logothetis and sustained injuries to her breasts when Police Officer Logothetis squeezed petitioner's breasts. Nor, was petitioner asked if there was anything in her possession that could have caused the magnetometer to ring? Nor was she requested to re-enter the magnetometer once again. Finally, the administrative search conducted upon my person violated my rights pursuant to the 4th, and 14th Amendments to the United

States Constitution and 42 U.S. Code Sections 1983, and 1988. Petitioner's right for an authenticated video was ignored by the respondents who sought more than 2 years and one month later after petitioner's entry into the Municipal Court on January 16, 2018, to admit into evidence an unauthenticated video which respondents had utilized in part to answer interrogatories put forth by petitioner to them to respond to. Petitioner was greatly prejudiced by all the respondents. Petitioner is merely seeking to obtain civil justice for which she was unable to obtain in the New Jersey court system and petitioner also seeks to have her rights under the 42 U.S. Code Sections 1983 and 1988, and the 4th, 5th and 14th Amendments to the United States Constitution adjudicated. Petitioner was a victim of an illegal search and seizure and the New Jersey courts refused to apply federal law and U.S. constitutional law to petitioner's fact situation.

At the top of page 7 of the trial court's decision, it is indicated that the defendants Hazlet Township and its Police Chief Meehan indicate that "plaintiff's claim deprivation would be protected under the Section 1983 claim." Although they assert that there is no basis for the 1983 action, they concede that "the plaintiff could pursue a claim-if she had one-through that remedy negates claim under N.J.C.R.A." So what Hazlet Township and its Police Chief Meehan are conceding here is that the court would first have to consider petitioner's claim under Section 1983 and 1988 before it can consider any claim concerning the N.J.C.R.A. Petitioner did not make any claim under the N.J.C.R.A. Petitioner's claims were solely based pursuant to federal and the United States Constitution. At pages 9 and 10 of the trial court judge's deci-

sion, the basis for petitioner's opposition to the 2 motions for summary judgment were indicated. The trial court judge referred mainly to the Certification that the petitioner had provided the trial court. Petitioner's Certification is to be found in Appendix H.



CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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FEBRUARY 18, 2022

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