No. 22-_____

SUPREME COURT OF THE UNITED STATES

Edward Scanlon IV,

Petitioner,

Vs.

Valerie Lawson, Felix Mickens, Robert Balicki, Veronica Surrency, Michael Baruzza, William M. Burke, (aka Bill Burke), Bobby Stubbs, David Fuentes, Harold Cooper, Wesley Jordon, Carol Warren, JOHN and/or JANE DOES [1]7-45 (Fictitious individuals), ABC CORPS 1-45 (Fictitious Corps), Jointly and Severally

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In the wake of dismissing all federal claims and in conflict with settled Third Circuit jurisprudence and due process of law, whether the courts below in the context of a complaint of institutional abuse of a disabled juvenile, should the panel have declined supplemental jurisdiction on his remaining New Jersey Civil Rights Act (NJCRA) claims regarding a more liberal application of New Jersey Law and its interest of justice standard, providing more protections regarding the assessment of the "due diligence" standard impacting the statute of limitations?

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PETITION FOR WRIT OF CERTIORARI

Edward Scanlon IV, by and through Lon C. Taylor, Esq., of counsel for The Law Office Of Kevin T. Flood, Esq., LLC, respectfully petitions this court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit.

OPINIONS BELOW

The Decision by the Third Circuit Court of appeals denying Mr. Scanlon IV's direct Appeal is reported as Scanlon v. Lawson, 2022 U.S. App. LEXIS 15498, 2022 WL 1940420. The Third Circuit Court of Appeals denied Mr. Scanlon IV's petition for rehearing on June 13, 2022.

BASIS FOR JURISDICTION

Mr. Scanlon IV's petition for hearing to Third Circuit Court of Appeals denied Mr. Scanlon IV's petition for rehearing on June 13, 2022, in particular, his request to decline supplemental jurisdiction on his state law claims under the New Jersey Civil Rights Act (NJCRA), N.J.S.A. 10:6-1. Mr. Scanlon IV invokes this Court's jurisdiction under 28 U.S.C. §1254, having timely filed this petition for a writ of certiorari within ninety days of the Third Circuit Court of Appeals' judgment.

CONSTITUTIONAL PROVISIONS

United States Constitution, Amendment 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 offense to be put twice 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.

United States Constitution, Amendment 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.

United States Constitution, Amendment X:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

STATUTORY PROVISION

28 USCS § 1367 (c) provides,

> (c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if—
> (1) the claim raises a novel or complex issue of State law,
> (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,
> (3) the district court has dismissed all claims over which it has original jurisdiction, or
> (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

STATEMENT OF THE CASE

This appeal involves plaintiff Edward Scanlon, IV, a mentally and behaviorally handicapped individual, who while detained as a juvenile at the Cumberland County Juvenile Detention Center ("CCJDC") was neglected and subject to physical and psychological abuse throughout his detainment. The abuse first came to light when it was uncovered that Scanlon and several other juveniles at CCJDC were subject to a sadistic fight club in March of 2012, orchestrated by defendant guard Jordan, who had juveniles physically fight each other until they could no longer stand the pain. Ultimately, the Department of Children and Families ("DCF"), confidentially investigated and found abuse and neglect of these juveniles at CCJDC. In addition to the sadistic fight club events, the panel ignored the fact that it was eventually revealed during discovery that defendants utterly failed to enact or follow their own policies that would fulfill their duties to ensure the health, safety and welfare of Scanlon, as well as ensure communication among staff and the administration regarding injuries, classification, and the status of juveniles, especially those with severe mental health issues, such as Scanlon.

On March 6, 2012, plaintiff's father, Mr. Scanlon, was contacted by DCF who informed him that there was an incident at CCJDC involving his son and there would be an investigation. On March 7, 2012, Mr. Scanlon again spoke with DCF attempting to gain the identities of individuals involved in the incident with his son.

The DCF report noted, "Mr. Scanlon inquired which Officer was involved with this incident *and this INV. Informed Mr. Scanlon that this INV. cannot release that information*." Mr. Scanlon then made several calls to CCJDC to obtain the identities of individuals involved in the incident and was told names would not be given because of an ongoing internal 'investigation.' Mr. Scanlon then made attempts to see his son but was prevented by the CCJDC; defendant Surrency even cancelled a March 22, 2012 visit claiming Scanlon was acting up in class and placed Scanlon in 24-hour lockdown.

On June 20, 2012, DCF and the Institutional Abuse Investigation Unit (IAIU), issued a confidential report regarding Child Neglect of Scanlon and other juveniles detained at the CCJDC on March 3 & 4, 2012. The DCF report made two investigative findings substantiating the abuse and neglect of Scanlon and several other children at the CCJDC that included neglect/cuts, bruises, welts, abrasions and oral injuries (first finding); and Neglect/Substantial Risk of Physical Injury/Environment Injurious to Health and Welfare of Children (second finding). (Id.) Thereafter, Scanlon timely served defendants with a Tort Claims/Spoliation Notice on September 18, 2012.

On March 29, 2016, Scanlon filed his Complaint in the Superior Court of New Jersey, Cumberland County, asserting claims against defendants Lawson, Mickens, Balicki, Surrency and Baruzza, as well as Doe-captioned co-defendants. At that

time, counsel could not identify those involved in the fight club because the two-page DCF report to Scanlon's father—the "Confidential Statement"—included no names on the basis that 'identifying information is confidential.' More, all documents identifying Scanlon's abuser(s) were shielded by layers of confidentiality laws, thus the documents were not subject to OPRA, nor were they public documents.

Scanlon's primary abuser could not be identified until the initial disclosures were produced by Surrency/Balicki in October of 2016. However, no discovery detailing the incident was provided for months to allow an assessment of what occurred and level of involvement, and if there was anyone else involved outside of those references made in the initial disclosures. On December 12, 2016, a consensual Confidential Discovery Order was executed, in January 2017 the undersigned finally received discovery detailing the fight club, and included voluminous documents involving Scanlon which had never been revealed before, including partial references to the confidential DCF Investigation. (JA236)

The Honorable Joel Schneider, USMJ held a status conference January 23, 2017, Scanlon's counsel informed he could now amend the complaint, but that another amendment might be needed depending upon review of DCF records, *especially in light of Scanlon and his father's inability to identify perpetrator(s) of*

fight club. The Court placed a *de facto* hold on amending the Complaint until after DCF records were received to avoid amending the Complaint twice. (JA237)

On January 24, 2017, Judge Schneider began his *in camera* review of the DCF records, on May 9, 2017, Judge Schneider forwarded DCF records to the undersigned and Ordered them Bate numbered and labeled "Attorney Eyes Only," and a copy to each defense counsel. On June 15, 2017, a conference was conducted whereby amending the Complaint was addressed now that counsel had received and reviewed the DCF discovery, and on same date Judge Schneider entered an order stating: "…Scanlon shall file his motion to amend his pleading without prejudice to defendants' right to assert timeliness defenses by 7/17/2017." Upon request of Scanlon's counsel, a second Order was entered on July 13, 2017, extending the date to amend to July 21, 2017.

Scanlon filed his motion to amend the Complaint on July 21, 2017 adding Jordan, Warren, Burke, Fuentes, Cooper and Stubbs; opposition was filed by DAG Bueno August 7, 2017; and an order granting the motion entered October 20, 2017; the FAC was filed on October 26, 2017. *No defendant filed a Rule 12(b)(6) motion to dismiss the FAC raising statute of limitation defenses, rather, all defendants fully engaged in the discovery process.*

On separate decisions and orders beginning January 15, 2020 through September 29, 2020, the District Court dismissed all of plaintiff's federal claims

and, instead of declining jurisdiction pursuant to 28 U.S.C. Sec. 1367(c) regarding application of New Jersey's more expansive and liberal assessment of its court rules and that of "due diligence," misapplied that law and dismissed the State claims under The New Jersey Civil Rights Act (NJCRA) as well.

On May 17, 2022, the panel of the Third Circuit Court of Appeals affirmed the District Court's decision and, as with the District Court, disregarded New Jersey's liberal application of their court rules which are more protective of its citizens, and as it relates to the crucial importance of assessing the lack of prejudice to Scanlon's main abuser, defendant Jordan, regarding the statute of limitations defense, and the more expansive and liberal application of New Jersey State Court Rules regarding "due diligence." Under 28 U.S.C. § 1367(c), "district courts may decline to exercise supplemental jurisdiction" over a state law claim if "the claim raises a novel or complex issue of State law . . . [or] the district court has dismissed all claims over which it has original jurisdiction." 28 U.S.C. § 1367(c).

The panel should have at least declined to exercise supplemental jurisdiction over Scanlon's New Jersey Civil Rights Act state law claims, pursuant to 28 U.S.C. Sec. 1367(c), which involve complex issues of state law relating to confidentiality of documents within N.J.'s *Juvenile Code* and dual confidential investigations (I.A. and DCF) which protected the identity of Scanlon's abusers and directly impacted statute of limitation defenses, which are controlled by the state's liberal 'Discovery

Rule' rules, along with other greater state law protections that are afforded Scanlon by the state of New Jersey, thus requiring these state issues to be adjudicated by a state court.

On June 13, 2022, the Third Circuit Court of Appeals denied plaintiff's application for *en banc* review.

ARGUMENT/REASON FOR GRANTING WRIT

I. In the wake of dismissing all federal claims and in conflict with settled Third Circuit jurisprudence and due process of law, the courts below in the context of a complaint of institutional abuse of a disabled juvenile, should have declined supplemental jurisdiction on his remaining New Jersey Civil Rights Act (NJCRA) Claims regarding a more liberal application of New Jersey Law and its 'interest of justice' standard, providing more protections regarding the assessment of the "due diligence" standard impacting the statute of limitations defense.

In our primary brief to the District Court, we pointed out that:

> Under 28 U.S.C. § 1367(c), "district courts may decline to exercise supplemental jurisdiction" over a state law claim if "the claim raises a novel or complex issue of State law . . . [or] the district court has dismissed all claims over which it has original jurisdiction." 28 U.S.C. § 1367(c). In the unlikely event this court dismisses all of plaintiff's federal constitutional claims, we ask the Court decline to exercise supplemental jurisdiction and remand plaintiff's state law claims to state court.

Instead, the Courts below not only wrongly exercised supplemental jurisdiction, in the wake of dismissing all of the Federal Claims, but misapplied New Jersey law regarding due diligence and failed to provide plaintiff with requisite favorable

inferences, contrary to Third Circuit jurisprudence as well as this Court's heightened concern and respect for State's rights.

In this civil rights case involving the abuse of the confined and disabled Scanlon, the panel incompletely acknowledges that:

> During the DCF's investigation, Scanlon's father was told that information regarding the identity of the officer [Jordan] could not be released, and at the time the complaint was filed, Scanlon asserts that this information was still unavailable. Scanlon's father further states that Scanlon could not remember the officer's name after the incidents due to memory issues.

(7a) The panel then erroneously claims:

> Prior to filing the complaint, Scanlon, his father and his counsel failed to demand information formally, attempt to speak with other juveniles or employees at the CCJDC, file a request under the New Jersey Open Public Records Act, or search public records. We conclude that Scanlon cannot rely on New Jersey's fictitious party rule and therefore his claim against Jordan based on the March 2012 fighting incidents does not relate back. [footnote omitted]

(8a) The panel's decision omits critical facts regarding the problematic identification of Jordan as Scanlon's primary tormentor, including the fact that there was dual confidential and damning internal investigation which revealed Jordan's identity but which was not disclosed until January 2017, after the original complaint was filed, as well as other saliant details about the institutional abuse of Scanlon and other juveniles. More, the names of juveniles could not be disclosed, the information was not permitted to be released under the New Jersey Open Public Records Act, nor could you obtain the information from a search of public records.

First of all, New Jersey's due diligence standard is especially suited for State, rather than Federal review, since such a standard involves a unique sense of the local practice, what attorneys in New Jersey ordinarily do to satisfy that more expansive notion. Moreover, the Third Circuit sets forth a deferential standard, the default is State review. See Hedges v. Musco, 204 F.3d 109, 123 (3d Cir. 2000) (quoting Borough of W. Mifflin v. Lancaster, 45 F.3d 780, 788 (3d Cir. 1995)); "In a case such as this, where the jurisdiction of the federal court was premised on alleged federal claims which are found to be subject to dismissal, the proper course generally is for "the court [to] decline to exercise supplemental jurisdiction over the plaintiff's state law claims. 28 U.S.C. § 1367(c)(3)…." See also Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure*, § 3567.3 (3d ed.) ("As a general matter, a court will decline supplemental jurisdiction if the underlying [federal question] claims are dismissed before trial").

Secondly, the facts support deference for State review since the panel grossly misapplied New Jersey law. New Jersey provides the applicable statute of limitations and liberally allows relation back using an "interest of justice" standard. Fede v. Clara Maass Hosp., 221 N.J.Super. 329, 339 (Law Div. 1987). Thus, a motion to dismiss on statute-of-limitations grounds in the context of fictitious party practice is governed by the "interests of justice," which the courts below did not apply. (Id.)

N.J. Ct.Rule 4:26-4, the fictitious party rule, suspends the running of the statute of limitations when a plaintiff does not know the true identity of a defendant and therefore fictitious parties are named in the complaint. Viviano v. CBS, Inc., 101 N.J. 538, 547 (1986). This equitable rule developed from the courts' "attempt to balance the defendant's interest in repose with the plaintiff's interest in a just determination of his or her claim. The need to submit claims promptly to judicial management must be tempered by the policy favoring the resolution of claims *on their merits*." Id. at 547. To use this rule, a plaintiff must exercise due diligence to discover the defendant's true name before and after filing the complaint. DeRienzo v. Harvard Indus., Inc., 357 F.3d 348, 353 (3d Cir. 2004).

In determining due diligence, "a crucial factor is whether the defendant has been prejudiced by the delay in its identification as a potentially liable party and service of the amended complaint." Claypotch v. Heller, Inc., 360 N.J.Super. 472, 480 (App. Div. 2003). By way of example, New Jersey has held dismissal was warranted due to a lack of diligence where the name of the fictitious party was contained in medical or police records readily available to the plaintiff. Nehmad v. BJ's Wholesale Club Inc., 2019 U.S. Dist. LEXIS 108287, 2019 WL 2710511, p.10. Here, Jordan's name was not contained in any medical or police report readily accessible to plaintiff, rather, Jordan's name was shielded in both confidential IA

and DCF investigation materials not accessible to plaintiff nor his father without first filing the Complaint. Thus he had no way of obtaining them pre-suit.

Public records requests would have provided no help, either. Because such requests would not result in disclosure of identifying information. New Jersey state courts reject claims that failing to seek that information via records request amounts to a lack of due diligence. *See* Hodges v. State, 2020 N.J.Super. Unpub. LEXIS 968, 2020 WL 2562932,*10. The Court also observed that their "decision finds further support in the absence of prejudice suffered by [defendant] and the interest of justice." Id. at 10-11.

Failing to allow back-substitution in this context based on lack of diligence runs afoul of New Jersey precedent, which does not require plaintiffs to file OPRA requests to show due diligence, and this Circuit's own law about Doe-captioned defendants. The District Court erred by finding a lack of due diligence based upon a failure to use a futile process that state precedent does not require. The diligence due is that which plaintiff utilized here—using the discovery process to unearth the identities of torturous perpetrators, and amending accordingly.

The courts below diligence findings not only relied on misreading of the law, but also construed facts against the plaintiff despite the summary judgment posture. The District Court should also have considered plaintiff's condition during the time prior to filing suit—plaintiff was disabled, incarcerated, hospitalized several times

because he was engaging in self-harm, suicidal, kept in maximum security, subject to keep-separate orders, *and was a serious threat to himself and others*. He was not in a position to identify officers without the assistance of discovery.

The District Court's decision would also allow defendants to benefit from their own stonewalling. Plaintiff's father diligently made several attempts to find the names of plaintiff's abusers by contacting CCJDC and DCF. He was told each time they could not give him that information. Not only should an inference about diligence be construed in plaintiff's favor in light of those attempts, but defendants should not benefit from their own refusal to provide information pre-suit.

Jordan has not asserted "prejudice or reliance nor is [he] in any just position to do so; clearly [he] has no vested right in its own formulation of the 2-year limitation bar." Farrell v. Votator Div. of Chemetron Corp., 62 N.J. 111, 122-23, (1973) Jordan cannot claim the lapse of time "resulted in loss of evidence or impairment of ability to defend [the action]; nor is there any suggestion that [plaintiff has] been advantaged by it." Id. (See also Worthy v. Kennedy Health Sys., 446 N.J. Super. 71, 90 (App. Div. 2016).

The Court in Fede v. Clara Maass Hosp., 221 N.J.Super. 329, 338-39 (Law Div. 1987) allowed an amendment under the fictious person rule and in doing so referred to New Jersey's relaxation rule, R. 1:1-2, finding a motion to dismiss on statute of limitation grounds is ultimately governed by the "interests of justice." Citing

Viviano, supra, 556. In granting the motion to amend, the Fede Court further cautioned,

> We must not forget that the aim of our rules of procedure "is to better serve the cause of justice."(citations omitted), and that "justice is the polestar and our procedures must ever be moulded and applied with that in mind." (citations omitted)

Fede, supra, 339.

Jordan abused a mentally and behaviorally handicapped child, along with many other children, that were in his custody, care, and control. Thus, the interest of justice "…impels strongly towards affording [Plaintiff his] day in court on the merits of [his] claim; and the absence of prejudice, reliance or unjustifiable delay, strengthens the conclusion that this may fairly be done in the matter at hand 'without any undue impairment of the two-year limitation or the considerations of repose which underlie it[,]'" Farrell v. Votator Div. of Chemetron Corp., 62 N.J. 111, 122-23, (1973)(citations omitted).

The panel ignores the "crucial" importance, under New Jersey law, of assessing the 'minimal' prejudice to Jordan. Furthermore, the due diligence standard must be viewed through the lens of dealing with the serious cognitive limitations of *the handicapped juvenile Scanlon, and that he continued to be incarcerated and hospitalized throughout pre-litigation*. Finally, the panel erroneously implies that "due diligence," even in this difficult setting, requires pre-complaint litigation despite the fact that the institutional defendants maintained that the identity of Jordan

was strictly confidential, subject to a Confidentiality Order which was entered into after litigation commenced, and therefore not in the public domain, or subject to OPRA requests.

The panel, as did the District Court, virtually omits the entire protracted and complex discovery period culminating in a Confidential Discovery Order in December of 2016, a review of critical and classified materials from the defendants provided in January 2017, and a *de facto* stay of amending the complaint to include Jordan as a named defendant in the wake of an *in camera* review of DCF records by Magistrate Schneider.

The panel also failed to acknowledge our reference to Singletary v. Pennsylvania Dep't of Corr., 266 F.3d 186, 190 (3d Cir.2001) wherein this Court acknowledged that in §1983 causes of actions involving correctional facilities, a complainant needs discovery to determine the names of his attackers, although he cannot get that discovery until he files a §1983 complaint.

Thus, the panel failed to acknowledge that this matter not only involved a correctional facility, but a juvenile correctional facility where all discoverable information was layered in statutory protections providing that these documents remain strictly confidential, not to mention being subject to a confidential damning internal investigation which revealed wholesale instances of abuse and neglect

More, the District Court accepted as true that Scanlon could not identify his abuser by name. (154a). Thus, in line with Singletary, supra, and the fact that the institutional defendants maintained that the internal report was confidential, including Jordan's identity, the only way Scanlon could obtain the identity of his abuser, Jordan, was by filing the complaint and subsequently obtaining the confidential discovery.

Moreover, the panel neglects to point out that the amended complaint and disputed facts must be given reasonable inferences in favor of Scanlon. Hugh, supra. The fact that neither Scanlon nor his father were able to discern the identity of Scanlon's abuser, despite the fact that the institutional defendants already conducted a confidential internal investigation, provides a reasonable inference on behalf of Scanlon, that further pre-complaint investigation would be futile, and more, that the only diligence due was for Scanlon to file his §1983 complaint. See Singletary.

Most importantly, the panel downplays, in one sentence, the importance of assessing prejudice to the defendant, and ultimately neglects to even assess whether and to what extent Jordan suffered any prejudice whatsoever in the delay in naming him in the amended complaint. (7a) Instead, New Jersey recognizes the crucial importance of defense prejudice in assessing due diligence, which was cited in our brief to the panel:

The purpose of the requirement that a plaintiff exercise due diligence in ascertaining the true name of a fictitiously named defendant and promptly serve an amended complaint with the defendant's correct name is to prevent undue prejudice as a result of delay in that defendant being made aware of the action.

However,

> …even though a defendant suffers some prejudice merely by the fact that it is exposed to potential liability for a lawsuit after the statute of limitations has run, absent evidence that the lapse of time has resulted in a loss of evidence, impairment of ability to defend or advantage to plaintiffs, justice impels strongly towards affording the plaintiffs their day in court on the merits of their claim. [emphasis added]

Claypotch v. Heller, Inc., 360 N.J. Super. 472, 480 (App. Div. 2003). (citations and quotations omitted)

Here, there were dual confidential investigations into the fight club: DCF and Internal Affair (IA) both conducted their own independent investigations. *Jordan eventually signed a partial and confidential admission on April 28, 2012.* Thereafter, Scanlon timely served a Tort Claims/Spoliation Notice on September 18, 2012. The upshot of all of this, ignored by the panel, was that the institutional defendants as well as Jordan himself all knew, even before the filing of the Tort Claims Notice, that Jordan was a key figure in the abuse. The internal investigation uncovered and preserved all relevant evidence as well as Jordan's "ability to defend" himself in a subsequent lawsuit. Consequently, the prejudice in later naming Jordan

along with the other named institutional co-defendants is minimal and his identity in the amended complaint relates back to the when the original complaint was filed.

The panel's suggestions that counsel could just walk into a juvenile detention facility and interview other juvenile residents as well as review "public reports" (8a) shows a concerning unfamiliarity with the non-disclosure provisions of New Jersey's *Juvenile Code* pursuant N.J.S.A. 2A:4A-60, DCF and IA statutes requiring confidentiality, which necessitated a Confidentiality Order and an *in camera* review of DCF records by the Magistrate well after the complaint was filed, not to mention that the confidentiality of the damning internal investigation would further compel the institutional defendants simply to prohibit such an expedition into their facility. Moreover, the courts below do not cite to any authority that counsel or Scanlon is to engage in pre-complaint litigation to ferret out the classified identity of Jordan.

The panel disposes of Compliance Supervisor Burke and CCJDC nurse Warren, added to the amended complaint, as similarly barred by the statute of limitations erroneously finding "[t]here is nothing in the record supporting that Scanlon made any inquiry into whether Burke or Warren were at fault for his injuries." (9a) However, the panel again disregarded New Jersey's liberal 'discovery rule', where a plaintiff is "allowed two full years from the date of such discovery to bring his action." Moran v. Napolitano, 71 N.J. 133, 134, (1976)(Citations omitted).

Contrary to the panel's decision, the additional discovery material finally disclosed by defendants in January of 2017 by way of a Confidentiality Order, *actually did* illuminate Burke and Warren's complicity, as detailed in Scanlon's brief to the panel. In particular, Warren's liability was not discovered until a review of that discovery revealed that Scanlon saw her on March 2, 2012 for numerous injuries, which was noted in a Nurse's Progress report written by Warren.

The panel also ignored, and therefore, gave no favorable inferences to Scanlon regarding: Warren's testimony that Scanlon "*had bruises all the time*." That another juvenile (initials TM), reported that Jordan allowed these fights to go on all the time, and at times prior to the March 2012 fight club incident. Scanlon also stated he saw a nurse prior to the fight club incident occurring. Finally, Surrency's startling admission, "Who knows how long this has been actually going on."

Incredibly, there were no policies or procedures that existed requiring nurses to report injuries observed on juvenile detainees at CCJDC, thus the continuous bruising to Scanlon that Warren observed "*all the time*" was never investigated, except for that bruising related to fight club. All the foregoing information as to Warren was "discovered" after the disclosures were provided in January 2017 allowing the causes of action against Warren to relate back under N.J. law. See Moran, supra.

Moreover, the idea that such interconnected officials were unaware of the institutional abuse seems far-fetched, especially since they have an affirmative duty to ensure the care and rehabilitation of Scanlon pursuant to the *Juvenile Code*. N.J.S.A. 2A:4A-21(b), especially a juvenile with such handicaps.

We provide further reasons to support our position to decline supplemental jurisdiction since original jurisdiction no longer existed. The New Jersey Supreme Court in State v. Hempele, 120 N.J. 182, 196 (1990) confirmed that "[w]hen the United States Constitution affords our citizens less protection than does the New Jersey Constitution, we have not merely the authority to give full effect to the State protection, we have the duty to do so." Despite the similarity in language of the two documents, the New Jersey Supreme Court has recognized that New Jersey's Constitution affords its citizens greater protections than those afforded by its federal counterpart. State v. Harris, 211 N.J. 566, 581 (2012) (citations and quotations omitted).

Most importantly, New Jersey's relaxation rule controls and permeates its rules of procedure, including statute of limitations defenses. See Rule 1:1-2 (a)(Construction and Relaxation of Court Rules)-any rule may be relaxed or dispensed with by the court in which the action is pending if adherence to it would result in an injustice.

The interest of justice standard ultimately controls and permeates New Jersey's statute of limitation defenses. See Fede v. Clara Maass Hosp., 221 N.J.Super. 329, 339 (Law Div. 1987).(New Jersey provides the applicable statute of limitations and liberally allows relation back using an "interest of justice" standard.)

Finally, New Jersey has a very liberal pleading standard, and is controlled by the interest of justice standard. See N.J. Ct. Rule 4:5-7, requiring "all pleadings shall be liberally construed in the interest of justice." More, "New Jersey is a notice-pleading state, meaning that only a short statement of the claim need be pleaded." MHA, LLC v. HealthFirst, Inc., 2018 N.J. Super. Unpub. LEXIS 1860, 2018 WL 367296 *11, see Velop, Inc. v. Kaplan, 301 N.J. Super. 32, 56, 693 A.2d 917 (App.Div. 1997).

As it relates to qualified immunity, in July of 2020, the New Jersey Supreme Court in Baskin v. Martinez, 243 N.J. 112, 124 (2020) reaffirmed that in evaluating qualified immunity, where disputed issues of material facts exist, as here, the case must first be submitted to the jury to determine "the who-what-when-where-why type of historical fact issues," and for the jury to resolve those disputed facts. Id. (quoting Brown v. State, 230 N.J. 84, 99 (2017) (quoting Schneider v. Simonini, 163 N.J. 336, 359 (2000))). Only "[a]fter the jury makes its ultimate findings, the trial court can determine the merits of the application for qualified immunity." Id.

New Jersey Supreme Court noting the "broad power of amendment should be liberally exercised at any stage of the proceedings, including on remand after appeal,

unless undue prejudice would result." Kernan v. One Wash. Park Urban Renewal Assocs., 154 N.J. 437, 457 (1998) (quoting Pressler & Verniero, Current N.J. Court Rules, cmt. on R. 4:9-1 (1998)). See Cuesta v. Classic Wheels, Inc., 358 N.J. Super. 512 (App.Div. 2003) (Opposing party is deemed to be on notice of a claim that has not been formally pled if the issue has been raised in the case prior to trial, even if in a technically deficient manner). Such liberal standards afford New Jersey litigants greater protection and leeway compared to the ruling in Jones v. Treece, 774 F. App'x 65, 67 (3d Cir. 2019), that a plaintiff generally 'may not amend his complaint through arguments in his brief in opposition to a motion for summary judgment.

CONCLUSION

Mr. Scanlon, IV requests this Court grant his writ of certiorari, reverse the panel's decision, and remand to state court for further proceedings on Mr. Scanlon's New Jersey Civil Rights claims, as is ordinarily done.

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