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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1802-21**

**DR. CHRISTOPHER BINETTI, PHD,**

**Plaintiff-Appellant,**

**v.**

**STATE OF NEW JERSEY, PHILIP D.  
MURPHY, GOVERNOR OF THE  
STATE OF NEW JERSEY, and  
MATTHEW J. PLATKIN, ATTORNEY  
GENERAL OF THE STATE OF  
NEW JERSEY, in their capacity as  
agents of the State defendants,  
including the LEGISLATURE, THE  
OFFICE OF THE SECRETARY  
FOR HIGHER EDUCATION AND  
THE DEPARTMENT OF STATE,**

**Defendants-Respondents.**

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**Submitted May 23, 2023 – Decided August 15, 2023**

**Before Judges Susswein and Berdote Byrne.**

**On appeal from the Superior Court of New Jersey,  
Chancery Division, Mercer County, Docket No.  
C-000120-20.**

Ballon Stoll, PC, attorneys for appellant (Edward M. Tobin and Moshe Warga, on the briefs).

Matthew J. Platkin, Attorney General, attorney for respondents (Melissa H. Raksa, Assistant Attorney General, of counsel; Jacqueline R. D'Alessandro, Deputy Attorney General, on the brief).

#### PER CURIAM

Plaintiff Christopher Binetti, Ph.D. appeals from a January 10, 2022 Chancery Division order dismissing his second amended complaint with prejudice. He filed suit against the State of New Jersey, the Governor of New Jersey, the Attorney General of New Jersey, the State Legislature, the Office of the Secretary for Higher Education, and the New Jersey Department of State. In his complaint, plaintiff challenged the constitutionality of two 2020 public ballot questions concerning the legalization of marijuana and delaying the State's voting redistricting process. He also alleged the State is discriminating against Italian Americans, claiming he has been and continues to be discriminated against in his pursuit of a career in academia.

Assignment Judge Robert Lougy issued a comprehensive and thoughtful twenty-seven-page written opinion ruling plaintiff does not have standing to bring these claims and has failed to demonstrate a cognizable harm. After

carefully reviewing the record in light of the governing principles of law, we affirm.

## I.

We need only briefly summarize the pertinent facts and procedural history. Prior to the 2020 general election, the State Legislature voted to present various referenda on the ballot—one regarding the legalization of regulated cannabis (Public Question No. 1<sup>1</sup>) and another delaying the State's voting redistricting process (Public Question No. 3<sup>2</sup>). A.C.R. 840/S.C.R. 183 (2019); A.C.R. 188/S.C.R. 123 (2019). On November 3, 2020, voters approved both referenda challenged by plaintiff.<sup>3</sup> After the referenda passed, the New Jersey

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<sup>1</sup> Public Question No. 1 asked: "Do you approve amending the Constitution to legalize a controlled form of marijuana called 'cannabis'?" Div. of Elections, Dep't of State, Public Question No. 1, <https://www.state.nj.us/state/elections/assets/pdf/election-results/2020/2020-public-question-01-english.pdf>.

<sup>2</sup> Public Question No. 3 asked: "Do you approve amending the Constitution to change when new legislative districts are created if the federal census data is delayed?" Div. of Elections, Dep't of State, Public Question No. 3, <https://www.state.nj.us/state/elections/assets/pdf/election-results/2020/2020-public-question-03-english.pdf>.

<sup>3</sup> See Div. of Elections, Dep't of State, Official List: Public Question Results for 11/03/2020 General Election Public Question No. 1 1 (Oct. 14, 2021), <https://nj.gov/state/elections/assets/pdf/election-results/2020/2020-official-general-results-public-question-1.pdf>; Div. of Elections, Dep't of State,

Constitution was amended, and the Legislature passed various enabling statutes, which the Governor signed into law.

On December 14, 2020, plaintiff filed a pro se verified complaint and order to show cause seeking preliminary injunctive relief pursuant to Rule 4:52-1(a). Plaintiff sought to block the constitutional amendment concerning marijuana legalization from taking effect. He contended that the referendum, the resulting constitutional amendment, and the related enabling legislation violated the state and federal constitutions, as well as the New Jersey Civil Rights Act (NJ CRA), N.J.S.A. 10:6-1 to -2. He further asserted that the Legislature was unconstitutionally composed because the 2010 redistricting scheme included "unauthorized immigrants" for the purposes of representation.

Defendants moved to dismiss plaintiff's initial complaint on December 28, 2020. On December 29, 2020, the trial court denied plaintiff's request for injunctive relief.

On January 15, 2021, plaintiff filed his first amended complaint, claiming that both the cannabis and redistricting referenda violated Article I of the State

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Official List: Public Question Results for 11/03/2020 General Election Public Question No. 3 1 (Oct. 14, 2021), <https://nj.gov/state/elections/assets/pdf/election-results/2020/2020-official-general-results-public-question-1.pdf>.

Constitution; the two resulting constitutional amendments violated Article IX of the State Constitution and the NJCRA; and the systemic ethnic discrimination against Italian Americans other Mediterranean Americans violated the New Jersey Law Against Discrimination (NJLAD), N.J.S.A. 10:5-1 to -50. Plaintiff alleged he was the subject of employment discrimination based on his Italian American ethnicity.

On February 25, 2021, defendants moved to dismiss the first amended complaint. Plaintiff sought and was granted leave to amend his complaint a second time on May 19, 2021. Plaintiff filed his second amended complaint—the subject of this appeal—on May 25, 2021.

In his second amended complaint, plaintiff reasserted his claims that the two constitutional amendments resulting from the referenda violated Articles I and IX of the State Constitution and the NJCRA and that defendants unlawfully engaged in systemic ethnic discrimination against Italian Americans. Plaintiff additionally claimed defendants: engaged in a criminal conspiracy to sell cannabis in contravention of federal law, thereby violating the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961–1968;<sup>4</sup>

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<sup>4</sup> RICO provides for a civil cause of action for acts performed as part of an ongoing criminal organization.

violated 42 U.S.C. § 1981 and 42 U.S.C. § 1983 by "treating Italians differently than other minorities"; deprived Italian Americans and other Mediterranean Americans equal protection of the law, violating the Fourteenth Amendment to the U.S. Constitution, Section 1983, and the NJCRA; committed a tort by interfering with plaintiff's rights to employment and public accommodations; aided and abetted the retaliation against plaintiff by public universities and colleges, thereby violating the NJLAD; and illegally created a protected class of recreational marijuana users, thereby violating the State Constitution's guarantee of equal protection under the laws.

On July 2, 2021, defendants moved to dismiss plaintiff's second amended complaint with prejudice for lack of standing and failure to state a claim. In response, plaintiff filed an opposition brief in which he "voluntarily dismis[s]e[d] with prejudice" his claim concerning the alleged "protected class" of recreational marijuana users. By leave of the court, he also filed a sur-reply in which he alleged for the first time to have suffered harm by being forced to "retreat while in a public place" due to an unknown individual allegedly smoking marijuana at the train station.

The trial court heard oral argument on defendants' motion on December 7, 2021. On January 10, 2022, the court issued an order dismissing plaintiff's second amended complaint in its entirety with prejudice.

Plaintiff raises the following contentions for our consideration:

POINT I

APPELLANT HAS STATED VIABLE CAUSES OF ACTION AND HAS STANDING TO PURSUE THE CLAIMS ASSERTED IN THIS ACTION.

POINT II

SOVEREIGN IMMUNITY DOES NOT BAR THE CLAIMS ASSERTED BY APPELLANT IN THIS ACTION.

POINT III

APPELLANT SHOULD HAVE BEEN AFFORDED THE OPPORTUNITY TO FURTHER AMEND HIS COMPLAINT AS A RESULT OF HIS PRO SE STATUS.

II.

In its comprehensive written opinion, the trial court concisely but thoroughly recounted plaintiff's arguments, explaining:

Regarding the referenda, [p]laintiff alleges [d]efendants violated Articles I and IX of the New Jersey Constitution, the [NJ CRA], N.J.S.A. 10:6-2(c), and the federal RICO statute. First, [p]laintiff argues the referenda were improperly put on the ballot in

violation of Articles I and IX of the New Jersey Constitution as well as the [NJCRA], so the resulting laws are also unconstitutional. In support of this theory, [p]laintiff explains [s]enators who advanced the referenda to the ballot were unauthorized to vote for it because the State improperly included unauthorized immigrants in the 2010 redistricting process that led to the [s]enators' election to office. Second, [p]laintiff alleges both referenda discriminate against Italian Americans in violation of the [NJCRA], the [NJLAD], and the state and federal Equal Protection Clauses because that group was "disproportionately opposed to the legalization of marijuana," "will not be allowed to participate in dispensaries proportionate to their size of the [New Jersey] population," and continued inclusion of unauthorized immigrants in voting districts and postponing redistricting disproportionately disadvantages Italian Americans. Plaintiff also claims the [L]egislature committed fraud, violated Article IX, and violated the [NJCRA] because the statute passed to enable Public Question No. 1 is inconsistent with the language in the [p]ublic [q]uestion itself. Finally, [p]laintiff alleges he was considered "a major candidate" for a position in the voter redistricting commission but that the postponement of the redistricting process as authorized by Public Question No. 3 deprived him of that opportunity.

Plaintiff separately alleges [d]efendants violated the [NJLAD], the [NJCRA], the Equal Protection Clauses of both the U.S. and New Jersey Constitutions, and federal statutes § 1981 and § 1983 and committed common law tortious interference because [d]efendants discriminated against [p]laintiff based on his Italian American and Mediterranean American ethnicity. Plaintiff contends the State has discriminated against Italian Americans and Mediterranean Americans in higher education because the State "categorically



denied" Italian American students, employees, and applicants affirmative action, the groups are underrepresented in public higher education, and the State excludes the groups in calculating its own demographic statistics. Plaintiff claims to have evidence of a public employee stating the employee "believed that it was the job of policy makers to reduce Italian Americans' political representation" but [p]laintiff failed to include such evidence. Plaintiff also alleges that executives at Rutgers-Newark and Rutgers-New Brunswick stated to him that Italian Americans will never gain equal civil rights or respect without State action. Plaintiff claims he was denied employment as an adjunct professor, despite his qualifications, due to his Italian American ethnicity.

[(Internal citations omitted) (twelfth alteration in original).]

The court concluded that plaintiff lacked standing "to bring his numerous and wide-ranging claims" because he could not demonstrate any harm and failed to state any claim upon which relief could be granted. It "generously scoured [plaintiff's] complaint for any suggestion of a cause of action," but concluded that "[n]one exists." The court also determined that further amendment to plaintiff's complaint would be futile.

We affirm substantially for the reasons set forth in the trial court's twenty-seven-page opinion. We add the following comments.

We apply a de novo standard of review to a trial court order dismissing a complaint under Rule 4:6-2(e). Baskin v. P.C. Richard & Son, LLC, 246 N.J.

157, 171 (2021) (citing Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, PC, 237 N.J. 91, 108 (2019)). We owe no deference to the trial court's conclusions. Rezem Fam. Assocs., LP v. Borough of Millstone, 423 N.J. Super. 103, 114 (App. Div. 2011).

In considering a Rule 4:6-2(e) motion for failure to state a claim, "[a] reviewing court must examine 'the legal sufficiency of the facts alleged on the face of the complaint,' giving the plaintiff the benefit of 'every reasonable inference of fact.'" Baskin, 246 N.J. at 171 (quoting Dimitrakopoulos, 237 N.J. at 107). We assume the allegations of the complaint are true, viewing the pleading generously "to determine whether a cause of action can be gleaned even from an obscure statement." Seidenberg v. Summit Bank, 348 N.J. Super. 243, 250 (App. Div. 2002) (citing Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989)). The test for determining the adequacy of a pleading is "whether a cause of action is 'suggested' by the facts." Printing Mart-Morristown, 116 N.J. at 746 (quoting Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988)).

"A pleading should be dismissed if it states no basis for relief and discovery would not provide one." Rezem Fam. Assocs., 423 N.J. Super. at 113. "Dismissals under Rule 4:6-2(e) are ordinarily without prejudice." Mac Prop.

Grp. LLC & The Cake Boutique LLC v. Selective Fire & Cas. Ins. Co., 473 N.J. Super. 1, 17 (App. Div. 2022). "Yet, a dismissal with prejudice is 'mandated where the factual allegations are palpably insufficient to support a claim upon which relief can be granted,' or if 'discovery will not give rise to such a claim.'" Ibid. (first quoting Rieder v. Dep't of Transp., 221 N.J. Super. 547, 552 (App. Div. 1987); and then quoting Dimitrakopoulos, 237 N.J. at 107).

Plaintiff argues that he sufficiently pleaded claims of discrimination before the trial court and that the court erred in dismissing them with prejudice. But none of his allegations were pleaded with sufficient specificity. Even on appeal, plaintiff offers no support for his claims of "widespread discrimination against Italian Americans by the State."

Plaintiff alleges that "systemic" ethnic discrimination against Italian Americans violates the public accommodation and employment portions of the NJLAD and that his career has been "damaged by this systemic discrimination." His complaint, however, does not allege any specific actions by these defendants in violation of the NJLAD in either the employment or public accommodation contexts. Even affording plaintiff a "generous and hospitable approach," Printing Mart, 116 N.J. at 746, he fails to provide details concerning positions for which he applied, when he applied, and what the outcome of any such

application might have been. Moreover, he asserts no claims against any specific employer and does not allege that any State defendant was an actual or potential employer. In sum, plaintiff fails to make any showing of unlawful discrimination under the NJLAD by any of the defendants.

Plaintiff summarily alleged that the State has violated Sections 1981 and 1983 "by treating Italians differently than other minorities." The trial court determined that plaintiff could not seek relief under Sections 1981 and 1983 as a matter of law. On appeal, plaintiff argues that his claims are not barred by sovereign immunity but does not otherwise address the limitations imposed under the pertinent federal statutes.

Plaintiff's Section 1981 claim fails as a matter of law because Section 1981 does not contain a private right of action against state governmental units. McGovern v. City of Phila., 554 F.3d 114, 121 (3d. Cir. 2009). Therefore, plaintiff's claim under Section 1981 is not and never will be viable.

Plaintiff's Section 1983 claim also fails as a matter of law. Section 1983 provides a private right of action against:

Every person who, under the color of any statute, ordinance, regulation, custom, or usage, of any State . . . 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.

[42 U.S.C. § 1983.]

For purposes of Section 1983, the United States Supreme Court has explained, "[o]bviously, state officials literally are persons. But a suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office. As such, it is no different from a suit against the State itself." Will v. Mich. Dep't of State Police, 491 U.S. 58, 71 (1989) (citing Brandon v. Holt, 469 U.S. 464, 471 (1985)). Here, plaintiff sued the State, the Governor and the Attorney General—in their official capacities—as well as the State Legislature, the Office of the Secretary for Higher Education, and the Department of State. Because defendants are not "persons" under the law, and therefore not susceptible to suit, plaintiff's claims against them are not and never will be viable under Section 1983.

Plaintiff also alleges violations of the Fourteenth Amendment's Equal Protection Clause, Section 1983, and the NJCRA by "creat[ing] a system in which Mediterranean academics are represented at a much lower level than their percentage of the legal or total population." Plaintiff attributes this to Arab Americans, Italian Americans, and other Mediterranean Americans not being included in "affirmative action, Diversity, Equity, and Inclusion, and proper representation" mandates while "white Latinos are treated as minorities." He

alleges that Rutgers, a public state university, "showed its utter contempt for Italian Americans being represented in academia" and that this "behavior was spurred by the State's policies of marginalization, deprivation, and systemic ethnic discrimination."

As we have already noted, plaintiff cannot state a claim upon which relief can be granted under Section 1983 because the State and state officials acting in their official capacity are not "persons" liable under the act. See Will, 49 U.S. at 71. Moreover, civil claims for a violation of the New Jersey Constitution may only be asserted by way of the NJCRA, which is interpreted analogously to Section 1983. Brown v. State, 230 N.J. 84, 97–98 (2017); Martin v. Unknown U.S. Marshals, 965 F. Supp. 2d 502, 548 (D.N.J. 2013). In Brown, our Supreme Court confirmed that the State and its officials acting in their official capacities are entitled to qualified immunity against NJCRA claims. 230 N.J. at 98. Accordingly, because the defendants are immune from suit under the NJCRA, plaintiff's claims against them are not and never will be viable.

Lastly, plaintiff alleges defendants "aided and abetted the retaliation" against him by public universities and colleges in violation of the NJLAD. Plaintiff claims that "[p]ublic schools will not hire [him] in part or solely because of his ethnicity, coupled with his suit against the State." Plaintiff asserts

he "has reason to believe that the lack of interviews for jobs and other troubles with public universities and colleges are directly linked to the State and the other defendants' failure to instruct these entities not to retaliate against [p]laintiff." He further contends that the State's has a duty "to ensure that its entities and affiliates, such as public universities and colleges, do not retaliate against [him]."

To establish a cause of action for retaliation under the NJLAD, plaintiff must demonstrate: (1) he "engaged in a protected activity known by the employer"; (2) "thereafter [the] employer unlawfully retaliated against [him]"; and (3) his "participation in the protected activity caused the retaliation." Henry v. N.J. Dep't of Hum. Servs., 204 N.J. 320, 332 (2010) (first alteration in original) (quoting Tartaglia v. UBS PaineWebber, Inc., 197 N.J. 81, 125 (2008)). Plaintiff does not make any such showing in his second amended complaint. He failed to plead any specific adverse employment decision by any specific employer.

Indeed, the complaint itself acknowledges that "the State has not directly retaliated against [p]laintiff." As the trial court found, "[n]othing in the complaint provides any factual allegations to support his claim of retaliation,

generally, against other entities, and nothing in the complaint suggests that these [d]efendants aided and abetted any such retaliation."

We also agree with the trial court's conclusions with respect to standing. "The concept of standing in a legal proceeding refers to a litigant's 'ability or entitlement to maintain an action before the court.'" N.J. Dep't of Env'tl. Prot. v. Exxon Mobil Corp., 453 N.J. Super. 272, 291 (App. Div. 2018) (quoting People for Open Gov't v. Roberts, 397 N.J. Super. 502, 508–09 (App. Div. 2008)). As a threshold determination, "[a] lack of standing . . . precludes a court from entertaining any of the substantive issues" raised by a litigant. Ibid. (omission in original) (quoting EnviroFinance Grp. v. Env'tl. Barrier Co., 440 N.J. Super. 325, 339 (2015)).

"A litigant has standing only if the litigant demonstrates 'a sufficient stake and real adverseness with respect to the subject matter of the litigation [and a] substantial likelihood of some harm . . . in the event of an unfavorable decision.'" Edison Bd. of Educ. v. Zoning Bd. of Adjustment of Edison, 464 N.J. Super. 298, 306 (App. Div. 2020) (alteration and omission in original) (quoting Jen Elec., Inc. v. Cty. of Essex, 197 N.J. 627, 645 (2009)). As we have previously explained:

The "essential purpose" of the standing doctrine in New Jersey is to "assure that the invocation and exercise of



judicial power in a given case are appropriate. Further, the relationship of plaintiffs to the subject matter of the litigation and to other parties must be such to generate confidence in the ability of the judicial process to get the truth of the matter and in the integrity and soundness of the final adjudication."

[Triffin v. Somerset Valley Bank, 343 N.J. Super. 73, 80 (App. Div. 2001) (quoting N.J. State Chamber of Com. v. N.J. Election L. Enf't Comm'n, 82 N.J. 57, 69 (1980)).]

New Jersey has embraced a much more liberal standing doctrine than the one applied under federal case law. People for Open Gov't, 397 N.J. Super. at 509 (quoting Crescent Park Tenants Ass'n v. Realty Equities Corp., 58 N.J. 98, 101 (1971)). " Standing has been broadly construed in New Jersey as 'our courts have considered the threshold for standing to be fairly low.'" Triffin, 343 N.J. Super. at 81 (quoting Reaves v. Egg Harbor Twp., 277 N.J. Super. 360, 366 (Ch. Div. 1994)). Thus, where "the proceeding serves the public interest" and the "plaintiff is not simply an interloper," standing will likely be found. N.J. Citizen Action v. Riviera Motel Corp., 296 N.J. Super. 402, 415 (App. Div. 1997) (quoting In re Quinlan, 70 N.J. 10, 34–35 (1976)). Additionally, courts "will not render advisory opinions or function in the abstract." Crescent Park Tenants, 58 N.J. 98, 107 (1971).

Here, plaintiff contends the State's actions caused him to lose employment opportunities without alleging any facts to support his claim of widespread discrimination against Italian Americans by the State. As the trial court found, plaintiff does not provide concrete statements to indicate "adverseness with respect to the subject matter[] and a substantial likelihood that the party will suffer harm in the event of an unfavorable decision." In re Camden Cty., 170 N.J. 439, 449 (2002).

Finally, plaintiff argues that the trial court should not have dismissed his discrimination claims with prejudice in light of his self-represented status. He argues the judge instead should have allowed him to further amend his complaint. Ordinarily, a dismissal for failure to state a claim is without prejudice, and the court has the discretion to permit a plaintiff to amend the complaint to allege additional facts to state a cause of action. Hoffman v. Hampshire Labs, Inc., 405 N.J. Super. 105, 116 (App. Div. 2010). Trial courts should not dismiss complaints if the facts suggest a potential cause of action that may be better articulated by an amendment of the complaint. Printing Mart-Morristown, 116 N.J. at 746. However, "the existence of the fundament of a cause of action . . . is pivotal." Teamsters Loc. 97 v. State, 434 N.J. Super. 393, 412–13 (App. Div. 2014) (quoting Banco Popular N. Am. v.

Gandi, 184 N.J. 161, 183 (2005)). Accordingly, "our courts have not hesitated to dismiss complaints with prejudice when a constitutional challenge fails to state a claim." Id. at 413.

As the trial court correctly determined, plaintiff's 1981, 1983 and NJCRA claims fail as a matter of law. Amendments will not improve those claims. The same is true with respect to plaintiff's NJLAD claims of discrimination and retaliation.

To the extent we have not specifically addressed them, any remaining arguments raised by plaintiff lack sufficient merit to warrant discussion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.



CLERK OF THE APPELLATE DIVISION