

August 31, 2023

*Via E-mail*

H. Thomas Byron III, Secretary  
Committee on Rules of Practice and Procedure  
Administrative Office of the United States Courts  
One Columbus Circle, NE, Room 7-300  
Washington, DC 20544

*Re: Proposed Amendment to Federal Rule of Civil Procedure 15(c)(1)(C)*

Dear Secretary Byron,

We write as litigating public interest organizations to request that the Committee amend Federal Rule of Civil Procedure 15(c)(1)(C) to explicitly permit relation back where a plaintiff's failure to identify a defendant by name is due to lack of knowledge, so long as the proper defendant timely learns of the lawsuit and knew that the lawsuit was meant to be brought against them. Many courts have interpreted the current language of the Rule to categorically exclude such substitutions from relation back because they reflect a plaintiff's inadequate knowledge rather than a "mistake."<sup>1</sup> We therefore propose amending Rule 15(c)(1)(C)(ii) to allow relation back when the other requirements of the Rule were met and the new defendant "knew or should have known that the action would have been brought against it, but for a mistake or lack of knowledge concerning the proper party's identity."

The narrow interpretation many courts have given to the current Rule allows defendants to evade potentially meritorious claims based only on the technicality that the original, timely complaint does not use their name, even if the complaint clearly identifies them through other means. This leads to a windfall for defendants, who received timely notice of the claim against them but nevertheless can evade answering on the merits for the misconduct alleged.

Plaintiffs will often not immediately know the name of the person who wronged them, through no fault of their own. Indeed, the Howard Law School Civil Rights Clinic identified nearly 800 cases implicating relation back where the plaintiff

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<sup>1</sup> *E.g.*, *Herrera v. Cleveland*, 8 F.4th 493 (7th Cir. 2021); *Ceara v. Deacon*, 916 F.3d 208, 212-13 (2d Cir. 2019); *Winzer v. Kaufman County*, 916 F.3d 464, 470-71 (5th Cir. 2019); *Heglund v. Aitkin County*, 871 F.3d 572, 579-80 (8th Cir. 2017); *Garrett v. Fleming*, 362 F.3d 692, 696-97 (10th Cir. 2004); *Cox v. Treadway*, 75 F.3d 230, 240 (6th Cir. 1996). *But see Singletary v. Pa. Dep't of Corr.*, 266 F.3d 186, 200 (3d Cir. 2001) (rejecting majority rule); *Goodman v. Praxair*, 494 F.3d 458 (4th Cir. 2007) (en banc) (same).

lacked knowledge of the proper defendant's identity.<sup>2</sup> These cases illustrate both the frequency with which this issue may arise and the gravity of the scenarios in which they do. A plaintiff who is the victim of an assault may not know the name of the perpetrator, as happened when a restaurant employee attacked a customer with a piece of wood,<sup>3</sup> or a police officer sexually assaulted a woman as she visited a friend's home.<sup>4</sup> Or a plaintiff may not know the name of the health care provider who harmed them, as was true for a plaintiff who woke up from surgery alarmed to discover his penis had been mistakenly amputated.<sup>5</sup> But upon reviewing discovery from other defendants, plaintiffs will often be able to identify the unknown defendant.

This problem comes up frequently in civil rights cases due to the profound asymmetry created by the government's control over the information needed to identify public employees by name and the limited ability of individual plaintiffs to obtain that information before filing suit.<sup>6</sup> When defendants control the information about identity, they will know who the intended defendant is, but a plaintiff may not learn that information for months or years. Without relation back, it will often be too late. This problem is particularly acute when discovery is delayed due to motion practice or rules that delay or curtail discovery in certain suits.<sup>7</sup> For example, the plaintiff in *Murphy v. Kellar* filed a timely lawsuit that identified the defendants who attacked him by race, hair color, and rank, but was given no opportunity for discovery. 950 F.2d 290, 292 (5th Cir. 1992). Some five years after the attack, the Fifth Circuit held he should have been allowed to conduct discovery to identify their names—but by that point, this discovery was useless: the statute of limitations had long since expired, and the Fifth Circuit is among the courts that do

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<sup>2</sup> Brief for Amicus Curiae Howard University School of Law Civil Rights Clinic in support of petitioner, Appendix I, *Herrera v. Cleveland*, Case No. 21-771 (S. Ct.), [https://www.supremecourt.gov/DocketPDF/21/21-771/206584/20211227163102877\\_210239a%20Appendix%20for%20efiling.pdf](https://www.supremecourt.gov/DocketPDF/21/21-771/206584/20211227163102877_210239a%20Appendix%20for%20efiling.pdf).

<sup>3</sup> *Varlack v. SWC Caribbean, Inc.*, 550 F.2d 171, 174 (3d Cir. 1977).

<sup>4</sup> *Smith v. Ray*, No. 2:08CV281, 2011 WL 13371166, at \*3 (E.D. Va. June 2, 2011).

<sup>5</sup> *Davies v. LeBlanc*, No. CV 17-12575, 2020 WL 3128613, at \*1 (E.D. La. June 12, 2020).

<sup>6</sup> As Judge Becker observed, “[i]t is certainly not uncommon for victims of civil rights violations (e.g., an assault by police officers or prison guards) to be unaware of the identity of the persons or persons who violated those rights. This information is in the possession of the defendants, and many plaintiffs cannot obtain this information until they have had the chance to undergo extensive discovery, and hope that they can determine the assailants’ names before the statute of limitations expires.” *Singletary*, 266 F.3d at 202 n.5.

<sup>7</sup> E.g., Fed. R. Civ. P. 26(a)(1)(B)(iv) (exempting cases brought by prisoners from initial disclosure rule); SDNY L. R. 83.10 (automatically staying all discovery against New York City in Section 1983 cases except for specifically identified document requests). Other features make the information asymmetry especially severe in the prison context, as described in this amicus brief filed in *Herrera v. Cleveland*. [https://www.supremecourt.gov/DocketPDF/21/21-771/204525/20211208153339178\\_41811%20pdf%20Davy.pdf](https://www.supremecourt.gov/DocketPDF/21/21-771/204525/20211208153339178_41811%20pdf%20Davy.pdf).

not ever permit relation back based on lack of knowledge of the proper party's identity.<sup>8</sup>

The amended Rule would not prejudice defendants, as other features of Rule 15 ensure that relation back is only available when defendants timely “receive[] such notice of the action that [they] will not be prejudiced in defending on the merits” *and* that they “knew or should have known that the action would have been brought against [them].” Fed. R. Civ. P. 15(c)(1)(C). The Rule’s emphasis on defendants’ knowledge instead of the plaintiff’s makes sense, as the Rule reflects a desire to “balance the interests of the defendant protected by the statute of limitations with the preference expressed in the Federal Rules of Civil Procedure in general, and Rule 15 in particular, for resolving disputes on their merits.” *Krupski v. Costa Crociere S. p. A.*, 560 U.S. 538, 550 (2010). As the Supreme Court has recognized, disallowing suit against a defendant who received notice provides a “windfall for a prospective defendant who understood, or who should have understood, that he escaped suit during the limitations period only because the plaintiff misunderstood a crucial fact about his identity.” *Id.*

The current Rule, as interpreted by most courts, also leads to anomalous results. In most jurisdictions, relation back is allowed when a plaintiff establishes “an element of negligence, carelessness, or fault,”<sup>9</sup> but not when the plaintiff acts diligently and faultlessly, yet cannot identify a defendant (and acknowledges as much).<sup>10</sup> “[I]t makes no sense to allow plaintiffs who commit . . . clear pleading error[s] to have their claims relate back, while disallowing such an option for plaintiffs who, usually through no fault of their own, do not know the names of individuals who violated their rights.”<sup>11</sup>

Indeed, under the dominant view of the Rule, a plaintiff who incorrectly names only the government unit as the defendant,<sup>12</sup> or who names the *wrong* individual defendants in the original complaint, can typically pursue relation back to substitute in the names of the correct defendants, while a plaintiff who more cautiously uses Doe placeholders until she can confirm the correct state officers’ identities cannot. Perversely, under the majority rule, a plaintiff who is unsure of the names of the individuals who injured her is better off taking her best guess at the defendants’ names than she is signaling her uncertainty with Doe placeholders.<sup>13</sup>

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<sup>8</sup> *Jacobsen v. Osborne*, 133 F.3d 315, 320-22 (5th Cir. 1998).

<sup>9</sup> *Leonard v. Parry*, 219 F.3d 25, 29 (1st Cir. 2000).

<sup>10</sup> *Winzer v. Kaufman Cnty.*, 916 F.3d 464, 470-71 (5th Cir. 2019) (noting that it did not matter that “appellants diligently tried to identify the officers” because “an amendment to substitute a named party for a John Doe does not relate back.”).

<sup>11</sup> *Singletary*, 266 F.3d at 202 n.5.

<sup>12</sup> *Donald v. Cook Cty. Sheriff's Dep't*, 95 F.3d 548, 560 (7th Cir. 1996).

<sup>13</sup> See *Wyatt v. Owens*, 317 F.R.D. 535, 538 (W.D. Va. 2016) (allowing plaintiff to substitute Nicholson and Worsham in for “Harris and Pickeral”).

This Committee considered a similar amendment to Rule 15 in the 2000s, acknowledging that “[a]n expanded relation-back doctrine seems attractive” in many situations, but declined to intervene until “there is a clear problem in practice.”<sup>14</sup> Since then, a deeply entrenched and widely acknowledged circuit split has left courts in sharp disagreement and confusion over how to apply the Rule, and hundreds of plaintiffs who happen to live in the wrong circuit never had a chance to make their case. *See supra* n. 1, 2. The Supreme Court has declined to grant certiorari on this issue,<sup>15</sup> leaving conflicting views of the Rule in place until this Committee offers clarity. And scholars have continued to heap criticism on the narrow interpretation of Rule 15, calling it a “disingenuous” departure from the Rule’s purpose,<sup>16</sup> an “excessively formalistic interpretation that is not mandated by the rule’s text,”<sup>17</sup> “hard to justify,”<sup>18</sup> “offend[ing] the purpose of relation back doctrine,”<sup>19</sup> and “contradicting the notion that stringent procedure should not defeat substance.”<sup>20</sup> Indeed, *not one* piece of scholarship that we’re aware of defends the narrow interpretation of Rule 15 on policy grounds.<sup>21</sup>

These problems can be easily fixed by adding the phrase “lack of knowledge” to Rule 15(c)(1)(C)(ii). We welcome a chance to speak about our concerns or provide additional information, should be it be useful to the committee. Please do not hesitate to contact us via Joseph Mead at [jm3468@georgetown.edu](mailto:jm3468@georgetown.edu).

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<sup>14</sup> Comm. on Rules of Practice & Procedure, Judicial Conferences of the United States, *Minutes: May 2006* 26 (2006), [https://www.uscourts.gov/sites/default/files/fr\\_import/CV05-2006-min.pdf](https://www.uscourts.gov/sites/default/files/fr_import/CV05-2006-min.pdf).

<sup>15</sup> *E.g.*, *Herrera v. Cleveland*, 142 S. Ct. 1414, (2022) (denying petition for certiorari); *Heglund v. City of Grand Rapids*, 138 S. Ct. 749 (2018) (same).

<sup>16</sup> Brian J. Zeiger et al., *A Change to Relation Back*, 18 Tex. J. C.L. & C.R. 181, 186-96 (2013); see also Robert A. Lusardi, *Rule 15(c) Mistake: The Supreme Court in Krupski Seeks to Resolve a Judicial Thicket*, 49 U. Louisville L. Rev. 317, 333 (2011).

<sup>17</sup> Meg Tomlinson, *Krupski and Relation Back for Claims Against John Doe Defendants*, 86 Fordham L. Rev. 2071, 2102 (2018).

<sup>18</sup> Edward F. Sherman, *Amending Complaints to Sue Previously Misnamed or Unidentified Defendants After the Statute of Limitations Has Run: Questions Remaining from the Krupski Decision*, 15 Nev. L.J. 1329, 1346 (2015).

<sup>19</sup> Stacy H. Farmer, Comment, *The United States Supreme Court in Krupski v. Costa Crociere, S.p.A. Creates Additional Ambiguity in the Relation Back Doctrine*, 35 Am. J. Trial Advoc. 207, 215-16, 226 (2011).

<sup>20</sup> Howard M. Wasserman, *Civil Rights Plaintiffs and John Doe Defendants: A Study in Section 1983 Procedure*, 25 Cardozo L. Rev. 793, 798, 818 (2003).

<sup>21</sup> We acknowledge that Prof. Spencer argues that Rule 15(c)(1)(C) runs afoul of the Rules Enabling Act, A. Benjamin Spencer, *Substance, Procedure, and the Rules Enabling Act*, 66 UCLA L. Rev. 654, 706 (2019), but the alleged violation he identifies is *already* in the rule as written, and would not be affected by this proposal.

Sincerely,

Americans United for Separation of Church and State

Appellate Practice Clinic, Cleveland State U. College of Law

Bazelon Center for Mental Health Law

Boston College Law School Civil Rights Clinic

Center for Civil Justice

Democracy Forward Foundation

Equal Rights Advocates

Florida Legal Services, Inc.

Institute for Constitutional Advocacy and Protection at Georgetown University Law Center

Lawyers' Committee for Civil Rights Under Law

National Center for Law and Economic Justice

National Employment Law Project

National Health Law Program

National Women's Law Center

Public Justice Center

Shriver Center on Poverty Law

Southern Coalition for Social Justice