IN THE SUPREME COURT OF PENNSYLVANIA

No. 120 MAP 2016

Franklin County et al.,
Appellants-Defendants
v.
John Doe et al.,
Appellees-Plaintiffs

Brief of Appellants Franklin County, Franklin County Sheriff's Office, and Sheriff Dane Anthony

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Appeal from the Order by the Commonwealth Court of Pennsylvania, 1634 CD 2015, Reversing in part and affirming in part the Order of the Franklin County Court of Common Pleas, Docket No. 4623-2014

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Dated: January 30, 2017

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I. Statement of jurisdiction:

This Court has jurisdiction pursuant to 42 Pa.C.S. §724(a) to allow this appeal from the Commonwealth Court's Order. This Court further has jurisdiction pursuant to 42 Pa.C.S. §726 to review this matter of public importance.

II. Order in question:

> NOW, May 20, 2016, the Order of the Court of Common Pleas of the 39th Judicial District (Franklin County branch) (common pleas) in the above-captioned matter, is **AFFIRMED** in part and **REVERSED** in part, as follows:
>
> (1) Common pleas' Order sustaining the preliminary objections of Franklin County, Franklin County Sheriff's Office, and Franklin County Sheriff Dane Anthony (together, Defendants) to Count I of John Doe 1, John Doe 2, John Doe 3, and Jane Doe 1's (Licensees) Complaint, is REVERSED;
>
> (2) Common pleas' Order sustaining Defendants' preliminary objections to the claim asserted in Count II the Licensees' Complaint against Franklin County Sheriff's Office, is REVERSED;
>
> (3) Common pleas' Order sustaining Defendants' preliminary objections to Count III of Licensees' Complaint, is REVERSED;
>
> (4) Common pleas' Order sustaining Defendants' preliminary objections to all claims asserted in the Licensees' Complaint against Employee John/Jane Does, is REVERSED;
>
> (5) Common pleas' Order sustaining Defendants' preliminary objection to Count V of Licensees' Complaint alleging that Defendants are immune to Licensees' invasion of privacy claim, is AFFIRMED;
>
> (6) Common pleas' Order sustaining Defendants' preliminary objection to Count VI of Licensees' Complaint alleging that Licensees have not stated

a cause of action under Section 6109(h) of the Pennsylvania Uniform Firearms Act of 1995, 18 Pa.C.S. §6109(h), is AFFIRMED;

(7) Common pleas' Order sustaining Defendants' preliminary objections to Count VI of Licensees' Complaint alleging that Defendants are immune to Licensees' breach of fiduciary duties, is AFFIRMED;

(8) Common pleas' Order sustaining Defendants' preliminary objection alleging that Defendants are immune to Licensees' conversion claim in Count VII of Licensees' Complaint, is AFFIRMED;

(9) Common pleas' Order sustaining Defendants' preliminary objections to Licensees' request for declaratory and injunctive relief associated with Defendants' policy of requiring references on License to Carry Firearm applications in Count VIII of Licensees' Complaint, is AFFIRMED;

(10) Common pleas' Order sustaining Defendants' preliminary objections to Licensees' request in Count VIII for an injunction requiring Defendants to use $1.50 of the License to Carry Firearms Fee to send renewal notices, is AFFIRMED; and

(11) Common pleas' Order sustaining Defendants' preliminary objections to Licensees' remaining request for injunctive relief, is REVERSED.

The matter is remanded for further proceedings.

Jurisdiction relinquished.

III. Scope and standard of review:

"These issues present pure questions of law, over which our standard of review is de novo and our scope of review is plenary." *In re Vencil*, -- A.3d --, 2017 WL 227792, at *5 (Pa. Jan. 19, 2017).

IV. Question for review:

Whether the General Assembly intended to abrogate high public official immunity when it enacted 18 Pa.C.S. §6111(i)?

The Commonwealth Court answered the question in the affirmative.

V. Statement of the case:

A. Form of action and procedural history:

This is a civil action. Plaintiffs are anonymous concealed carry license holders who, in a suit filed on December 19, 2014, allege that postcards announcing the approval of their applications and renewals violate state law that bars "public disclosure." R.R. 1a, 14a-16a. Specifically, Plaintiffs claim that the use of postcards as opposed to sealed envelopes violates 18 Pa.C.S. §6111(i), which provides that, "All information provided by the… applicant, including, but not limited to, the… applicant's name or identity… shall be confidential and not subject to public disclosure."

Plaintiffs seek to certify a class of more than 12,000 license holders in Franklin County. R.R. 17a. Franklin County, the Sheriff's Office, and now-former Sheriff Dane Anthony (collectively, "Franklin County") filed preliminary objections on February 2, 2015, arguing that—among other things—the postcards did not violate Section 6111(i), and Sheriff Anthony is entitled to high official immunity. R.R. 1a, 64a-68a, 111a-123a. On March 27, 2015, Franklin County filed a motion to supplement their

preliminary objections, claiming that Act 5 of 1997 violates the Pennsylvania Constitution. R.R. 2a, 145a, 150a, 157a-58a.[1]

All members of the Court of Common Pleas of Franklin County were recused from this matter. The matter was assigned to Senior Judge Stewart L. Kurtz of the Court of Common Pleas of Huntingdon County. On May 8, 2015, Judge Kurtz permitted Franklin County to supplement their objections. A copy of the Order is appended as exhibit 1.

On August 13, 2015, Judge Kurtz sustained preliminary objections and dismissed this case, holding that Sheriff Anthony is entitled to high official immunity and use of the postcards did not violate Section 6111(i). Judge Kurtz did not reach the issue of whether Act 5 of 1997's damages and fee provisions violate the Pennsylvania Constitution. A copy of Judge Kurtz's Opinion is appended as exhibit 2.

Plaintiffs appealed on August 31, 2015. R.R. 3a. On October 7, 2015, Judge Kurtz submitted an Opinion pursuant to Pa.R.A.P. 1925. A copy of the Opinion is appended as exhibit 3.

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[1] Franklin County complied with Pa.R.C.P. 235 before the Trial Court and notified the Attorney General's Office of their constitutional challenge to the statute. R.R. 2a. Franklin County also complied with Pa.R.A.P. 521 before the Commonwealth Court on December 18, 2015, as reflected in the appellate docket.

On May 20, 2016, Judge Renée Cohn Jubelirer, writing for a panel of the Commonwealth Court, reversed in part and affirmed in part in a reported opinion. Of particular relevance, the Commonwealth Court reversed the Trial Court's holdings that that Sheriff Anthony is entitled to high official immunity and use of the postcards did not violate Section 6111(i). The Commonwealth Court also held that Franklin County's challenge to Act 5 of 1997 is stale, declining to decide whether the statute is constitutional. A copy of the Opinion is appended as exhibit 4. The Commonwealth Court Opinion is available at *Doe v. Franklin Cty.*, 139 A.3d 296 (Pa. Commw. 2016).

Franklin County, the Sheriff's Office, and now-former Sheriff Anthony timely filed a petition for allowance of appeal on June 20, 2016.[2] On December 21, 2016, this Court granted allowance of appeal on the question of "[w]hether the General Assembly intended to abrogate high public official immunity when it enacted 18 Pa.C.S. §6111(i)."

B. Prior determinations by any Court in this case:

All members of the Court of Common Pleas of Franklin County were recused from this matter. The matter was assigned to Senior Judge

[2] Because June 19th was a Sunday, the deadline fell on the following Monday, June 20th.

Stewart L. Kurtz of the Court of Common Pleas of Huntingdon County. On August 13, 2015, Judge Kurtz submitted an unpublished Opinion sustaining preliminary objections and dismissing this case. A copy of that Opinion is appended as exhibit 2. On October 7, 2015, Judge Kurtz submitted an unpublished Opinion pursuant to Pa.R.A.P. 1925. A copy of the Opinion is appended as exhibit 3.

On May 20, 2016, Judge Renée Cohn Jubelirer, writing for a panel of the Commonwealth Court, reversed in part and affirmed in part in a reported opinion. A copy of the Opinion is appended as exhibit 4. The Commonwealth Court Opinion is available at *Doe v. Franklin Cty.*, 139 A.3d 296, (Pa. Commw. 2016).

C. Judges whose determinations are to be reviewed:

Judge Renée Cohn Jubelirer wrote the opinion for the Commonwealth Court, which Judge Michael H. Wojcik and Judge Bonnie Brigance Leadbetter joined.

D. Facts necessary to be known to determine points in controversy:

In 1997, the General Assembly created a statutory cause of action for disclosure of confidential information about firearm owners. *See* 18 Pa.C.S. §6111(i). The legislative history of the provision is non-existent.

When the statute (Act 5 of 1997) was considered by the General Assembly, not a single legislator in either Chamber even mentioned the lawsuit provision. *See* Senate Journal, attached as exhibit 5 for this Court's convenience, pages 317-329; House Journal, attached as exhibit 6 for this Court's convenience, pages 726-734.

In this case, multiple firearm owners allege that postcards announcing the approval of their applications and renewals violates the state law that ban on "public disclosure" of their information. R.R. 1a, 14a-16a. Plaintiffs seek to certify a class of more than 12,000 license holders in Franklin County. R.R. 17a. The Commonwealth Court held that the statute, which does not mention immunity, abrogated high official immunity for Sheriffs by implication.

E. Order under review:

On May 20, 2016, Judge Renée Cohn Jubelirer, writing for a panel of the Commonwealth Court, reversed in part and affirmed in part the Trial Court's decision in a reported opinion. Of particular relevance, the Commonwealth Court reversed the Trial Court's holdings that that Sheriff Anthony is entitled to high official immunity and use of the postcards did not violate Section 6111(i).The Commonwealth Court also

held that Franklin County's challenge to Act 5 of 1997 is stale, declining to decide whether the statute is constitutional. A copy of the Opinion is appended as exhibit 4. The Commonwealth Court Opinion is available at *Doe v. Franklin Cty.*, 139 A.3d 296, (Pa. Commw. 2016).

F. Place of raising or preservation of issues:

Franklin County, the Sheriff's Office, and now-former Sheriff Dane Anthony (collectively, "Franklin County") filed preliminary objections on February 2, 2015, arguing that—among other things—the postcards did not violate Section 6111(i), and Sheriff Anthony is entitled to high official immunity. R.R. 1a, 64a-68a, 111a-123a. On March 27, 2015, Franklin County filed a motion to supplement their preliminary objections, claiming that Act 5 of 1997 violates the Pennsylvania Constitution. R.R. 2a, 145a, 150a, 157a-58a.[3] On May 8, 2015, Judge Kurtz permitted Franklin County to supplement their objections. A copy of the Order is appended as exhibit 1.

On August 13, 2015, Judge Kurtz sustained preliminary objections and dismissed this case, holding that Sheriff Anthony is entitled to high

[3] Franklin County complied with Pa.R.C.P. 235 before the Trial Court and notified the Attorney General's Office of their constitutional challenge to the statute. R.R. 2a. Franklin County also complied with Pa.R.A.P. 521 before the Commonwealth Court on December 18, 2015, as reflected in the appellate docket.

official immunity and use of the postcards did not violate Section 6111(i). Judge Kurtz did not reach the issue of whether Act 5 of 1997's damages and fee provisions violate the Pennsylvania Constitution. A copy of Judge Kurtz's Opinion is appended as exhibit 2.

Plaintiffs appealed on August 31, 2015. R.R. 3a. On October 7, 2015, Judge Kurtz submitted an Opinion pursuant to Pa.R.A.P. 1925. A copy of the Opinion is appended as exhibit 3. Franklin County filed a brief arguing, among other things, that the postcards did not violate Section 6111(i), Sheriff Anthony is entitled to high official immunity, and Act 5 of 1997 violates the Pennsylvania Constitution. *See* Franklin County Defendants brief before Commonwealth Court p. 26-44, 51-54, 62-65.

On May 20, 2016, Judge Renée Cohn Jubelirer, writing for a panel of the Commonwealth Court, reversed in part and affirmed in part in a reported opinion. Of particular relevance, the Commonwealth Court reversed the Trial Court's holdings that that Sheriff Anthony is entitled to high official immunity and use of the postcards did not violate Section 6111(i).The Commonwealth Court also held that Franklin County's challenge to Act 5 of 1997 is stale, declining to decide whether the statute is constitutional. A copy of the Opinion is appended as exhibit 4. The

Commonwealth Court Opinion is available at *Doe v. Franklin Cty.*, 139 A.3d 296, (Pa. Commw. 2016).

Franklin County, the Sheriff's Office, and now-former Sheriff Anthony timely filed a petition for allowance of appeal on June 20, 2016.[4] In the petition, Franklin County argued, among other things, that the postcards did not violate Section 6111(i), Sheriff Anthony is entitled to high official immunity, and Act 5 of 1997 violates the Pennsylvania Constitution. *See* Petition for Allowance of Appeal p. 9-35. On December 21, 2016, this Court granted allowance of appeal on the question of "[w]hether the General Assembly intended to abrogate high public official immunity when it enacted 18 Pa.C.S. §6111(i)."

[4] Because June 19th was a Sunday, the deadline fell on the following Monday, June 20th.

VI. Summary of argument:

In direct conflict with this Court's precedent, the Commonwealth Court held that Act 5 of 1997 abrogated absolute immunity for high official by implication.[5] A couple facts make the Commonwealth Court's decision even more troubling: 1) on a matter of first impression, the Commonwealth Court retroactively applied its interpretation that punishes Sheriffs who (like the Trial Court) did not believe use of postcards was public disclosure, and 2) Plaintiffs seek to certify a class that would potentially expose Sheriff Anthony to $12 million in damages.

In addition, the Commonwealth Court decision will force Sheriffs to litigate and defend any incidental disclosure under the statute, taking duly elected officials away from their duties and forcing them to fear litigation even when they act in good faith. This Court should reverse because absolute immunity, as its name implies, is absolute.

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[5] Act 5 of 1997 also clearly violates the single subject and original purpose clauses of our Pennsylvania Constitution because the firearm owner lawsuit provisions were tacked onto a bill preventing sex offenders from obtaining expungement of their criminal records through A.R.D. R.R. 162a-181a. The Commonwealth Court held that it is too late to challenge the statute.

VII. Argument:

A. The Commonwealth Court violated this Court's clear precedent by turning absolute immunity into sometimes immunity.[6]

Plaintiffs seek more than $12 million from the Franklin County taxpayers due to the Sheriff's reasonable interpretation of Section 6111(i)—an interpretation that the Trial Court agreed with. By denying absolute immunity, the Commonwealth Court retroactively punishes Sheriffs acting in good faith for falling on the losing side of a debate between judges. Further, Plaintiffs seek to certify a class of thousands going back up to six years. *See* R.R. 217a. Sheriffs should not be burdened with monstrous litigation and damage exposure about possible incidental viewing of a postcard years ago.

The Commonwealth Court created an exception to absolute immunity for high public officials in cases involving statutory causes of action. The Commonwealth Court's ruling in a published decision

[6] Franklin County, the Sheriff's Office, and now-former Sheriff Dane Anthony (collectively, "Franklin County") preserved this issue for review in its preliminary objections, R.R. 1a, 64a, 111a-114, brief before Commonwealth Court, pages 51-54, and petition for allowance of appeal before this Court, pages 31-34.

threatens to gut absolute immunity for public officials into no real protection at all.[7]

Contrary to the Commonwealth Court's ruling, "[a]bsolute privilege, as its name implies, is unlimited…" *Matson v. Margiotti*, 371

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[7] Sheriff Anthony's plight is further complicated by the fact that Act 5 of 1997, which added these statutory damages and fee-shifting provisions, clearly and plainly violates the single subject and original purpose rules in Article III of the Pennsylvania Constitution. These 1997 amendments to the Uniform Firearms Act were added to a bill preventing sex offenders from obtaining expungement of their criminal records through A.R.D. R.R. 162a-181a. This Court does not take these constitutional demands lightly, and has not shied away from enforcement in similar circumstances. *See Leach v. Com.*, 141 A.3d 426 (Pa. 2016); *Com. v. Neiman,* 84 A.3d 603 (Pa. 2013); *Jury Comm'rs v. Com.,* 64 A.3d 611 (Pa. 2013); *City of Phila. v. Com.,* 838 A.2d 566 (Pa. 2003); *Marcavage v. Rendell,* 936 A.2d 940 (Pa. Commw. 2005), *aff'd*, 951 A.2d 345 (Pa. 2008).

The Commonwealth Court sidestepped the Constitution by holding that Sheriff Anthony and Franklin County cannot challenge the statutory damage and fee-shifting provisions because of laches. The Court ignored 1) Plaintiffs' lack of diligence in filing suit, 2) the fact that Sheriff Anthony and Franklin County lacked standing to challenge the statutory damage or fee-shifting provisions until Plaintiffs filed suit, and 3) Plaintiffs suffered no prejudice by any delay. *Sernovitz v. Dershaw*, 127 A.3d 783, 791 (Pa. 2015) (rejecting laches argument because plaintiff could not sue until injured). In fact, Franklin County and Sheriff Anthony would have created liability for their taxpayers under the Dragonetti Act by filing a frivolous suit without standing. 42 Pa.C.S. §8351. Nor did the Sheriff have any reason to file suit as he reasonably believed he was in compliance with Section 6111(i). In short, local governments have more pressing duties and lack the resources to scour the legislative history of every piece of potentially applicable legislation (or, as in this case, unconstitutional amendments to legislation) and litigate hypothetical questions. Furthermore, Sheriff Anthony assumed office in 2008, not 1997 or in between.

The Commonwealth Court assumed public reliance on the litigation provisions, but this assumption makes little sense. It is not like license holders obtain licenses because of the fee-shifting or statutory damage provisions added by Act 5 of 1997. In addition, enforcing the unconstitutional statute in this case directly and substantially harms the public—taxpayers who lacked any basis to challenge the statutory damages before Plaintiffs filed suit.

Pa. 188, 193 (1952) (emphasis by this Court). As this Court recognized more than 60 years ago, "the authorities almost universally hold … that statements or acts of high public officials which are made in the course of and within the scope of their official powers or duties give them complete immunity from legal redress." *Id.* at 203. This case is no exception. Sheriff Anthony has more pressing duties than being deposed about whether a postal worker read a postcard's exterior years ago.

Absolute immunity "exempts a high public official from all civil suits for damages," even for "statements or actions motivated by malice." *Lindner v. Mollan*, 677 A.2d 1194, 1195 (Pa. 1996). In this case, there is no evidence whatsoever of malice, and this case at its core is about alleged incidental release of information. This Court extends high official immunity to malicious prosecution and defamation, which involve much more devious allegations of corruption and wrongdoing. There can be no doubt that immunity cloaks Plaintiffs' allegations that Sheriff Anthony misinterpreted a statute at a time before any Court in this Commonwealth had ever ruled upon its scope or meaning.

Sheriff Anthony is clearly a high official as courts have given high official immunity to a state police captain, municipal coroner, deputy

commissioner, revenue commissioner, comptroller, architect, attorney, and parole superintendent. *Feldman v. Hoffman*, 107 A.3d 821, 827 (Pa. Commw. 2014) (collecting cases). A Sheriff likewise "should not be under an apprehension that the motives that control his official conduct may at any time become the subject of inquiry in a civil suit for damages." *Matson* 371 Pa. at 195 (quoting *Spalding v. Vilas*, 161 U.S. 483, 498 (1896)).

Absolute immunity is necessary to protect Sheriffs from having to prove their good faith to a jury. "Whereas qualified privilege could be successful only after a full trial, thus placing a government official at the whims and mercy of a jury, the purpose of absolute immunity is to foreclose the possibility of suit." *Montgomery v. City of Phila.*, 392 Pa. 178, 183 (Pa. 1958). (quoting Note, 20 U. of Chi.L.Rev. 677, 679 (1953)). This Court should protect Sheriffs "from the suit itself, from the expense, publicity, and danger of defending the good faith of his public actions before a jury" and protect "society's interest in the unfettered discharge of public business." *Id.* (quoting Note, 20 U. of Chi.L.Rev. 677, 679 (1953)). *See also id.* n.6 (quoting *Chatterton v. Secretary of State for India, in Council*, [1895] 2 Q.B. 189, 191-192) ("[I]t would be necessary

that he should be called as a witness to deny that he acted maliciously. That he should be placed in such a position, and that his conduct should be so questioned before a jury, would clearly be against the public interest, and prejudicial to the independence necessary for the performance of his functions as an official of state.").

Allowing suits against Sheriffs about their decisions would "deter all but the most courageous or the most judgment-proof public officials from performing their official duties." *Matson*, 371 Pa. at 203. In this case, Sheriff Anthony interpreted a statute in unchartered waters and reasonably concluded that use of postcards is not "public disclosure." Notably, Postal workers are barred by federal law from disclosing contents of mail. 39 U.S.C. §§410(c)(1), 412(a); USPS Admin. Support Manual §274.1, 274.5.[8]

The Sheriff's view was in line with a long line of cases defining the word "public."[9] The Trial Court not only agreed with the Sheriff's

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[8] http://www.apwu.org/ir-usps-handbooks-manuals

[9] P.O. Opinion (ex. 2) p. 13, citing *Harris v. Easton Pub.*, 488 A.2d 1377 (Pa.Super.1994) (matter "made public, by communicating it to the public at large, or to so many persons that the matter must be regarded as substantially certain to become one of public knowledge."); *Burger v. Blair Med.*, 964 A.2d 374, 378 (Pa. 2009) (disclosure to employer not "made public"); *Vogel v. W.T. Grant*, 458 Pa. 124, 131-32 (1974) ("matter is made public, by communicating it to the public at large, or to so

interpretation but commented "we don't think our obligation to parse Section 6111(i) is all that difficult." P.O. Opinion (ex. 2) p. 12. Ultimately, the Commonwealth Court created a new interpretation of the statute and applied its reading retroactively to the Sheriff's actions. The Commonwealth Court's retroactive standard is not self-explanatory from the statutory text and will expose Sheriffs across the Commonwealth to undeserved liability for acts taken in good faith under the law at the time. Denying immunity would deter other high officials from acting in uncertain areas of the law for fear of being dragged before a jury if a Court later adopts a different interpretation of a statute.

This is particularly troubling given the continued uncertainty under the statute as the Commonwealth Court did not give the Trial Court any guidance as to the necessary mens rea to violate the law. Particularly applicable here, a Sheriff has statutory duties to find out whether an

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many persons that the matter must be regarded as substantially certain to become one of public knowledge.") (quoting Restatement (2d) Torts §652D, comment b (Tent. Draft No. 13, 1967)); *Doe v. Wyoming Valley Health Care*, 987 A.2d 758, 765-66 (Pa. Super. 2009) (matter not "made public" by disclosure "to a single person or even to a small group of persons.") (quoting Restatement §652D, Comment A, §652E, Comment A)); *Chicarella v. Passant*, 494 A.2d 1109, 1114 n. 4 (Pa. Super. 1985) (disclosure to few persons not public); *DeBlasio v. Pignoli*, 918 A.2d 822, 824 n. 3 (Pa. Commw. 2007) (disclosure to single person who did not spread information not public); *Kryeski v. Schott Glass Tech.*, 626 A.2d 595, 601-02 (Pa. Super. 1993) (comments to two friends not public); *Curran v. Children's Service Ctr*, 578 A.2d 8 (Pa. Super. 1990) (disclosure within company not public).

applicant is of sound mind, a drug addict, a drunk, or otherwise of dangerous character. 18 Pa.C.S. §6109(e)(i), (v), (vi), (vii). Sheriffs need to discharge these duties without constant litigation over each conversation. Denial of immunity here "would seriously cripple the proper and effective administration of public affairs as intrusted to the executive branch of the government." *Matson*, 371 Pa. at 195 (quoting *Spalding*).

Absolute immunity is necessary to prevent litigating every mere accusation of wrongdoing:

> [I]t is impossible to know whether the claim is well founded until the case has been tried, and that to submit all officials, the innocent as well as the guilty, to the burden of a trial and to the inevitable danger of its outcome, would dampen the order of all but the most resolute, or the most irresponsible, in the unflinching discharge of their duties.

Montgomery, 392 Pa. at n.7 (quoting *Gregoire v. Biddle*, 177 F.2d 579, 581 (2d Cir. 1949) (Chief Judge Learned Hand)). Without immunity, "time will be taken from performance of duties which are of importance to the public." *Montgomery*, 392 Pa. at n.6 (quoting Note, 69 Harv.L.Rev. 875, 917-918 (1956)).

In spite of these clear holdings that immunize high officials, the Commonwealth Court held that Act 5 of 1997 creates an implicit

exception to high public official immunity. *Doe*, 139 A.3d at 314-15. However, this Court's holding in *Linder*, 677 A.2d at 1196-98, directly refutes this reasoning. In *Linder*, this Court rejected the argument that the Pennsylvania Tort Claim Act abrogated high official immunity. The Tort Claim Act provides statutory immunity for local agency employees unless the employee commits willful misconduct. 42 Pa.C.S. §8550. It is clear from *Linder* that this Court does not believe that the General Assembly has or would abrogate high official immunity by implication. Notably, *Linder* dealt with a statute that explicitly defines the scope of immunity for local government employees; this case, on the other hand, deals with a statutory cause of action that says nothing about immunity at all, much less high official immunity.

When considered by the General Assembly, not a single legislator in either Chamber even mentioned the lawsuit provision. *See* Senate Journal, attached as exhibit 5 for this Court's convenience, pages 317-329; House Journal, attached as exhibit 6 for this Court's convenience, pages 726-734. None of this Court's cases allow statutory abrogation of high official immunity sub silento. This Court "has never called in question, much less overruled" the doctrine. *Lindner*, 677 A.2d at 1196.

The Commonwealth Court departed from this Court's precedent by doing so.

Act 5 permits suit against "any person, licensed dealer, State or local governmental agency or department" who violates Section 6111(i). The "any person" language certainly does not evidence an intent to secretly abolish high official immunity as the statute applies to low- and mid-ranking officials and private persons, such as employees and agents of a "licensed dealer."

The Commonwealth Court held that the Sheriff is actually an "agency" subject to suit directly. The Court relied upon its prior decision in *Gardner v. Jenkins*, 116 Pa. Cmwlth. 107, 110 (1988), which held that a Sheriff is a local agency under the Local Agency Law, and, accordingly, that an aggrieved person can appeal a Sheriff's final determination. The Commonwealth Court ignored the fact that a person could sue the county, agency, or department without directly suing the Sheriff.

Gardner is not helpful or binding on this Court. It does not address or inform the question of whether a Sheriff sued in their individual capacity should receive high official immunity or whether the

General Assembly covertly negated high official immunity against Sheriffs by enacting Section 6111(i). Nor does *Gardner* inform this Court as to whether Act 5 of 1997, passed almost a decade after *Gardner*, intended to abrogate high official immunity for Sheriffs.

The Commonwealth Court also relied upon *Hidden Creek v. Lower Salford Twp. Auth.*, 129 A.3d 602 (Pa. Commw. 2015), which is likewise inapposite and not binding on this Court. That case addressed a completely different question: whether the Tort Claims Act bars statutory actions under the Municipality Authorities Act. *Hidden Creek* did not address whether the MMA, or any other statutory cause of action, terminated absolute immunity against individual high officials by implication.

In short, none of the Commonwealth Court's prior cases justify a departure from absolute immunity. Even if those cases could be so construed, this Court's precedent controls. This Court has not created an exception to absolute immunity for statutory torts. The Commonwealth Court's exception could eviscerate immunity for high officials in a multitude of statutory actions, frequently subjecting them to the burdens of litigation and exposing them to damages. This Court

should reverse and reiterate that absolute immunity just so happens to be absolute.

VIII. Conclusion:

For these reasons, this Court should reverse the Commonwealth Court's holding that the Sheriff lacks immunity from this suit.

Respectfully submitted,

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Dated: January 30, 2017

Certificate of Word Count

I certify that this petition does not exceed 14,000 words, exclusive of the cover, pages containing the table of contents, table of citations, proof of service, signature block and anything appended to the petition as required by the rules of procedure. This certificate is based on the word count of the word processing system used to prepare the petition.

s/ Josh Autry

Dated: January 30, 2017

Certificate of Service

I certify that on this date, I served this filing by this Court's electronic filing system and by United States, First Class Mail, to:

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Prince Law Offices, PC
646 Lenape Rd.
Bechtelsville, PA 19505
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s/ Amyra W. Nadberazny
Legal Assistant for Josh Autry

Dated: January 30, 2017