

No. **21-131**

Supreme Court, U.S.  
FILED

**JUL 26 2021**

OFFICE OF THE CLERK

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**In The  
Supreme Court of the United States**

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**B. BROWN**

*Petitioner*

v.

**POLICE CHIEF B. JOSEPH FRIEL,  
VALLEY TOWNSHIP BOARD OF SUPERVIORS, ET AL**

*Respondent*

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**On 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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B Brown, *Unrepresented*  
P.O. Box 266  
Atglen, PA 19310

**RECEIVED**

**JUL 30 2021**

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

## QUESTIONS PRESENTED

IT IS BELIEVED that: A Permanently Disabled Medically Vulnerable Patient's RIGHT to: (1) REPORT Patient ABUSE; Elder ABUSE to an abuser's Govt Medical Center employer; (2) Report Domestic Violence to Law Enforcement and to (3) REPORT Child Abuse, Firearm Violence, Stalking and attempts on victim's life; (4) PETITION the State for Protection From ABUSE (5) Alert the abuser's employer to credible threats of workplace violence made by the abuser (6) Offer Moral Support and Communicate with her abuser's Other Abuse Victims . . .

--ARE ALL non-criminal ACTIVITIES that are PROTECTED by THE US CONSTITUTION—even if the exercise of the Victim's rights causes annoyance and distress for her abuser.

1 Pennsylvania Criminal Statute 18 PA Code §2709: provides,--a person can be Criminally Prosecuted for criminal harassment for any unwanted action toward another person done repeatedly, with a *Clear Intent* to annoy, alarm, or frighten.

However, ¶(e) of the Statute presumably Erases PROBABLE CAUSE--- because it Expressly EXCEPTS Constitutionally Protected Activity and States :

*"This section shall NOT apply to Constitutionally Protected Activity."*

2. PA Act 70: Adult Protective Services Act was enacted to Provide Protection for Vulnerable Adults who are unable to protect themselves, and are at risk of abuse

3. Per 23 PA Code § 6107 (Protection from Abuse Act): The court may ORDER an ABUSER to RELINQUISH FIREARMS to local law enforcement within 24 hours as part of a temporary *Protection From Abuse order* if the **petition demonstrates** (1) abuse involving a firearm OR (2) an immediate and present danger of abuse. Failure to Relinquish firearms may subject the abuser to penalties under 18USC 922(g).

4. \*\*\*However, Neither 23 PA Code nor Court Restraining Orders or VAWA state that a **PROTECTED PARTY** (abuse victim) who Files a Petition for Protection can be held to violate the Court Order or be arrested or **Prosecuted** for *allegedly violating the Restraining Order*; OR **Prosecuted** for REFUSING the abuser's and Police Demand to WITHDRAW the Protection from Abuse **Petition**.

### THEREFORE 2 QUESTIONS ASKED ARE:

1. Will a Municipal Chief Law Enforcement Officer's pretext of **PROBABLE CAUSE** for RETALIATORY PROSECUTION of ABUSE VICTIMS automatically DEFEAT Plaintiff's constitutional claims:

Whenever a Police Chief, acting in the role of Prosecutor DECLARES (absent proof of criminal intent) that:

- Domestic Abuse VICTIMS who MAIL a copy of her COURT PROTECTION ORDER to her abuser "Violates her own Protection From Abuse Order" --

Even though NEITHER the *Protection From Abuse* Statute *NOR* the *Court Orders* RESTRAIN the petitioning ABUSE VICTIM

**Whenever a Police Chief in the role of Prosecutor DECLARES (absent proof of criminal intent) that:**

- **Patient Abuse VICTIMS** criminally **harass** their violent **ABUSERS**—when the VICTIM reports PATIENT ABUSE to their Treating Government Medical Center (abuser's employer) and contact the ABUSER'S previous medical center assault victim . . . *thereby causing the **abuser** distress and annoyance*

Even though the specific state criminal statute **Expressly EXCEPTS** Constitutional Protected Activity from its application

## **2. IS IT PROCEDURAL (DUE PROCESS) ERROR TO GRANT DEFENDANT'S RULE 56 SUMMARY JUDGMENT MOTION**

When The Court **COPIED and PASTED** into the Court's Dispositive Judgment "Opinion", **Defendant's Summary Judgment Motion Briefs** nearly WORD-FOR-WORD (to include Defendant's Bates Document Number System) —giving undue weight to Defense Counsel's finding of fact, conclusions of law and reasoning -- hence failing to conduct its OWN INDEPENDENT Balanced, Measured, Researched and Reasoned analysis; or form it's own Fully Informed Opinion. . . . **and**

- **Absent Supporting Evidence** from Defendant or in the Case File
- **To the Complete EXCLUSION** of Plaintiff's (NON-MOVING Party) Counter-motion and Opposing Response
- **Without CONSIDERING EVIDENCE** in the case file and in Plaintiff's Brief and Exhibits that Counter Defendant's claims, BUT Support ALL of Plaintiff's Claims *of Malicious Prosecution, Abuse of Process and State Created Danger;*

**PARTIES TO THE PROCEEDING**

**Petitioner,**

B Brown who was the Plaintiff and Appellant

**Respondent**

Valley Township (Former) Police Chief B. Joseph Friel

Valley Township Board of Advisors

Valley Township Police Bureau

Who were the Defendants and Appellees

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18 Pa CS 2709 (e)

Violence Against Women Act (VAWA)

18 USC 922(g)

US Constitution: 1<sup>st</sup>, 4<sup>th</sup>, 6<sup>th</sup>, 14<sup>th</sup> Amendments

PA Protection From Abuse Act 23 PA SC§ 6101, § 6102; §6105; §6113

PA Act 70: Adult Protective Services Act

18 Pa CS § 2711

234 PA Code : Rules 402, 405, 406, 407, 410, 411, 430

Rule 1002

### US SUPREME COURT CASES

*Lozman v City of Riviera Beach* (2018)

*Mount Healthy City School District v Doyle* (1977)

*Tolan v Cotton* (2014)

### CIRCUIT CASES

*Albright v Oliver* (3<sup>rd</sup> Cir. 1994)

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*Bright v. Westmoreland County* (3d Cir. 2006),

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*Halsey v Pfeiffer et al*, (3<sup>rd</sup> Circuit 2014)

*Harvey v. Plains Twp. Police* (3d Cir. 2011)

*Lomando v. United States* (3d Cir. 2011)

*Michelle Owen Black v Montgomery County et al* (Aug 30, 2016)

*Rivas v. City of Passaic* (3d Cir. 2004)

*Vargas v City of Philadelphia* (3d Cir. 2015)

## PETITION FOR WRIT OF CERTIORARI

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Petitioner Blanche Brown respectfully petitions for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Third Circuit

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### INTRODUCTION

Permitting prosecution of ABUSE VICTIMS absent proof of Criminal Intent or Probable Cause not only intimidates the victim, but also chills the victim's First amendment rights to report abuse and to petition the state courts for protection from abuse

In this matter The Police Chief, who himself has a Criminal Domestic Violence and Felony Burglary Record, identifies with Domestic Abusers and others who abuse women, children, the infirmed and other vulnerable populations—as he stated that he'd known the abuser for 27 years, is aware of his mental health issues and long history of violence against women, children and disabled veterans.

The Police Chief ADVISED the ABUSER to file a criminal complaint against the VICTIM unless she WITHDRAWS her Petition for PROTECTION FROM ABUSE. And then he accompanied the ABUSER to the Magisterial District Court to file the Criminal Charges because the ABUSE VICTIM Refused to withdraw the Petition for Protection. When the Victim inquired about a summons she'd received and the Criminal Statutes under which she was charged.

In the Police Chief's own words he told Plaintiff/Petitioner:

*"I Make MY Own Laws", and "I won't be making the Citations available to you" and "I'm Going to Be The Prosecutor at this criminal hearing and I'm not going to let you speak in your own defense"*

He ALSO acknowledged in writing that he KNEW that the ABUSER was **"Putting on a 'Fake Front' and 'Pretending to Be A Victim'"** Yet he and the county courts were amused and indulged the abuser at the REAL victim's expense.

Defendant failed to send out citations and summons. Instead he and MDJ held a hearing in Petitioner's absence and the "summons" became an **Arrest Warrant**.

**NEITHER THIS COURT NOR ANY OF THE CIRCUITS HAVE VISITED THE CRITICAL INTERSECTION OF IMPORTANT FEDERAL QUESTIONS:** under 42 USC §§ 1983, 1985; 18 USC 922(g) and in the context of Constitutional Rights of Abuse Victims to Petition for Protection-- against the backdrop of long established state Protection From Abuse Laws and Federal Violence Against Women Act (VAWA):--

... All in CONTRAST with the law enforcement practice of intentional distortion and mis-use of criminal statutes for **Retaliatory Prosecution** of the vulnerable ABUSE VICTIMS --and other actions giving rise to **State Created Danger** and punctuated by persistent **Judicial Sanctioning at every level through Apathy.**

1. **Lack of Judicial IMPARTIALITY** and Judicial Complicity in Relation to eliminating the requirement for Defendant Law Enforcement Bureaus and Chief Law Enforcement Officers to **PROVE PROBABLE CAUSE** to Counter the evidence in Civil Claims (under 42 USC

1983) of RETALIATORY PROSECUTION of ABUSE VICTIMS (Chilling Victim Constitutional Rights) ---when ABUSE VICTIMS:

- **Report and Seek Protection** From Patient Abuse and Domestic Violence and Gun Violence
- **Refuse to Withdraw their Petition** for Protection From Abuse despite intimidation, threats, attempts at coercion and **demands** from her abuser and the abuser's allied Municipal Chief Law Enforcement officer:

2. Under What Circumstances Does (or does not) unproven **Probable Cause** DEFEAT Retaliatory Prosecution and State-Created Danger Claims made by VICTIMS of Patient Abuse and, Domestic Violence, and Violence Against Women in the absence of Civil or Criminal Statutory Provisions that Require or Permit Prosecution of Victims of Abuse?

3. It is not uncommon for District Courts to Countermand standards set out in the FRCP 56 (summary judgment) by disregarding the Rule's requirement to weigh and consider evidence submitted by the Non-moving party.

Nor is it news that a small minority of Circuits frown on Court Practices of Copying, Pasting and substituting the narrative of a party's summary judgment motion --for the Court's own reasoned organic analysis and informed opinion--to the exclusion of evidence submitted by the non-moving party.

However, these important procedural errors are amplified in context of the **unanswered questions** about Probable Cause for Criminal Prosecution vulnerable and disabled victims of Patient Abuse; Elder Abuse; Domestic Abuse and Violence Against Women

**In this Matter**, the Police Chief stated that he is aware of the Abuser's long history of violence—as he charged him 10 years earlier for choking a woman and counseled him in 2012 in a workplace violence matter. The Police Chief advised the abuser to seek anger management and helped him work through recent (in his words, “just 2 months ago” ) an assault matter against a nurse.

Moreover, The Police Chief ALSO stated that he identifies with the Abuser's Anti-Jew, Anti-Hispanic, Anti-Veteran and Anti-women sentiments that (“*they act like they're entitled!*”) and AGREED with the Abuser's Declarations (“*These People Bring Out The Violence In Me*”)

More Importantly **In this matter**, the municipal law enforcement bureau and its Chief Law Enforcement officer did not merely misinterpret or misapply a state criminal statute. Rather, Defendant established a locally accepted practice in which they knowingly truncated, countermanded and undermined the state criminal statute 18 Pa §2709; and distorted/manufactured non-existent provisions of the State *Protection From Abuse* Statute for illegitimate, malicious and unconstitutional purposes-- which the Magisterial District justice adopted for his own political campaign-- and while the Township Board of Supervisors looked on and acquiesced.

Specifically, through the Police Chief's reckless, unlawful and unconstitutional actions against Plaintiff/Petitioner—and his overt support (emboldenment, encouragement and endorsement) of the ABUSER, he **placed a target** on the ABUSE VICTIM, by refusing to CONFISCATE the ABUSER'S FIREAMS per Court

Order and then declaring OPEN HUNTING SEASON on this abuse victim to punish her and to PREVENT her from going to Court to Testify against his fellow abuser.

The Police Chief's protracted deliberate and malicious conduct placed Plaintiff/Petitioner in far greater danger than before she sought Police Help and Intervention—giving the abuser PERMISSION to make repeated attempts on Petitioner's life—hence establishing a STATE-CREATED DANGER.

### **OPINIONS AND ORDERS BELOW**

United States Court of Appeals for the Third Circuit on January 28, 2021 entered its judgment and opinion affirming the District Court's Granting of Defendant's Summary Judgment Motion. A copy of that Opinion is Attached as Appendix A.

March 2, 2021 The 3<sup>rd</sup> Circuit Panel Denied Plaintiff's Request for Rehearing En Banc (electronic filing Rc'd March 3, 2021) . That Notice is Attached also in Appendix A.

The District Court's August 27, 2019 Final Order and Opinion Granting Defendant's Summary Judgment Motion is Attached as Appendix B. The District Court Denied Plaintiff's Request For Reconsideration on April 10, 2020 The Order is attached also as Appendix B.

### **JURISDICTION**

This Court has jurisdiction under 28 USC 1254 (1).

### **CONSTITUTIONAL PROVISIONS INVOLVED**

**The First Amendment** Guarantees the to Right Free Speech and the Right To Petition the Government for a redress of grievances.

**The 14<sup>TH</sup> Amendment's Equal Protection Clause** Provides:

*"... nor Shall any State . . . Deny to any person within its jurisdiction, the equal Protection of the Laws*

**THE 6<sup>TH</sup> AMENDMENT** guarantees the rights of **criminal defendants**, which including the right to a public trial . . . the right to an impartial arbiter of facts, and the right to know nature of the charges and evidence against you.

### STATUTORY PROVISIONS INVOLVED

**42 USC 1983** provides for civil action and municipal and police liability when a state actor, under the color of law, deprives the plaintiff of rights, privileges, or immunities guaranteed under federal law or the U.S. Constitution

**42 USC 1985** provides in part that 2 or more persons obstruct the course of justice and intimidate a party when they conspire to deter, by force, intimidation, or threat, any party . . . ain a court of the United States from attending such court or from testifying to any matter pending therein . . .

**The Violence Against Women Act** Title IV of PL 103-322 was enacted to address congressional concerns about violent crime against women in several ways;

Among issues that VAWA addresses are domestic violence . . . and Stalking. The fundamental goals of VAWA are to prevent violent crime; respond to the needs of crime victims; learn more about crime; and change public attitudes . . .

**PA Title 23 Ch 61** (*Domestic Violence Act*) provides:

The court MAY order the defendant to relinquish firearms as part of a temporary order if the petition demonstrates (1) abuse involving a firearm OR (2) an immediate and present danger of abuse. 23 Pa.C.S. §6107(b)

**18 Pa. §6105**; MANDATES law enforcement to CONFISCATE firearms of

Abusers who are subjected to *Court Protection From Abuse Orders*;

**Section 6113 of Title 23** provides for arrest of ABUSERS who violate Court Orders.

**55 Pa Code § 5100.53 Patient Bill of Rights**: Provides in Part:

- A Patient's right to make complaints and to have one's complaints heard and adjudicated properly
- A right to not be subjected to any harsh or unusual treatment

**PA Criminal Code 18 Code §2709** (Harassment) Provides in Part:

¶ (a) A person commits the crime of harassment when, with intent to harass, annoy or alarm another, the person

¶ (e) **Application of section.**—This section shall not apply to constitutionally protected activity.

**18 PaCS 6105.2 and 23 Pa CS 6108** provide:

If a Defendant (Abuser) subject to a Court Restraining Order FAILS TO RELINQUISH firearms to the appropriate law enforcement agency, that law enforcement agency SHALL immediately notify the necessary parties, including the court and the plaintiff of the failure to relinquish

**18 USC 922(g)** Prohibits individuals who are subjected to Domestic Violence Court Orders from owning or possessing Firearms

**P.L. 484, No. 70 Cl. 23- ADULT PROTECTIVE SERVICES ACT** Provides for protection of abused, neglected, exploited Adults

**Section 102. Legislative policy. States:**

Adults who lack the capacity to protect themselves and are at imminent

risk of abuse neglect, exploitation or abandonment must have access to services necessary to protect their health, safety and welfare

**PA Criminal Code 18 Code §2709 (Harassment) Provides in Part:**

¶ (a) A person commits the crime of harassment when, with intent to harass, annoy or alarm another, the person

¶ (e) **Application of section.**--This section shall not apply to constitutionally protected activity.

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**STATEMENT**

**A. Factual Background**

Petitioner, B Brown is a medically vulnerable cardiac patient and permanently disabled veteran who in 2014 was recovering from emergency OPEN CHEST, OPEN-HEART Surgery—rendering her physically and medically DISABLED.

Her abuser's gun violence and stalking (and police apathy and complicity) became so stressful in April 2014, that Plaintiff WENT INTO HEART FAILURE.

For weeks in April 2014, in retaliation for Plaintiff having stood up for and provided moral support to the ABUSER'S recent assault victim (a nurse employed by Plaintiff's treating medical center),--and because Plaintiff questioned the abuser's reported long history of battering women and children--- Plaintiff's Abuser (half brother with whom she had only recently become barely acquainted) made credible threats to "*bust down her door*", He's "*gonna give her a problem she can't handle*", sending profane emails from his previous victims email address; attempting to break into Plaintiff's home with loaded firearm; discharging his loaded firearm outside Plaintiff's bedroom window, cutting her telephone line,

stalking her in the middle of the night; making 3<sup>rd</sup> party threats that if Plaintiff reports the PATIENT ABUSE to his employer, "*there's gonna be trouble*".

THEN MAKING FALSE REPORTS OF HARASSMENT TO HIS LOCAL POLICE PRECINCT about Plaintiff.

On April 18, 2014 Plaintiff was HOSPITALIZED—and needed to wear a HEART MONITOR. Upon her discharge from the Hospital on April 21, 2014, she filed a *Petition for Protection From Abuse* to keep her abuser away from her at hom, church and at the medical center where her abuser was employed-- and where Plaintiff was a CARDIAC PATIENT.

**\*\* After Plaintiff filed her Protection From Abuse Petition, Police Retaliation began—which encouraged escalated violence by her abuser.**

### **1. Police Misconduct And State-Created Danger**

It is axiomatic that Law Enforcement may not do indirectly **or by proxy** what the Constitution Does not Permit or what is prohibited by law. **But they do it anyway when they believe they can get away with it.**

It is apparent that the Police Chief, who himself is Domestic Abuser (GOOGLE news article, "Chester County Police Chief Again Charged . . ." ), used a disaffected and mentally disturbed career domestic batterer as his own **proxy** through whom he himself could vicariously and indirectly engage in his pastime of Violence Against Women and a stalking campaign that lasted for more than 4 years

a. In this matter, the Police Chief intentionally misled the VICTIM by inviting her to contact him at any time and giving her false promises of helping her.

He stated that he was going to "Monitor her abuser's emails". But instead he illegally TAPPED the VICTIM'S phone and enticed the ABUSER to access Plaintiff's **protected Medical Files at the Medical Center** where the abuser was employed. Also the Police Chief reported back to Plaintiff's abuser, the content of conversations between himself and Plaintiff—in the process, instigating and inciting escalated violence, threats by the ABUSER and attempts on Plaintiff's life.

b. **And then the Police Chief CRIMINALLY CHARGED Plaintiff (the actual VICTIM)**

2. Defendant Police Chief acknowledged that **he knew the abuser was NOT a victim (but was "*Only Putting on a Fake Front and Pretending to Be a Victim*")**

a. But he nonetheless advised the actual ABUSER to file a CRIMINAL COMPLAINT on April 24, 2014 against his victim—and told the ABUSER to inform the Common Pleas Court about the "Pending Criminal Charges" against his victim during his VICTIM'S May 2014 *Civil Protection From Abuse* Hearing—in order to **prejudice the male judges against the abuse victim and make it less likely for his victim to be granted protection and for the Abuser to be convicted of Abuse or lose his government job for patient abuse.**

3. Also, in this matter the County courts looked on in amusement, bought into the Police Chief's mythology and played along with his very dangerous game<sup>1</sup>.

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<sup>1</sup> The Police Chief called in favors within the county Courts, as the MDJ was a former police officer in the same Township and many of the Common Pleas judges are former ADAs who know and have worked with the Police Chief.

They denied Plaintiff's request for a permanent restraining order--attributed the Abuser's life-threatening stalking and gun violence toward his Victim to an intra-family dispute and to intra-group dynamics and CULTURAL NORMS in "*Some Groups*"—"therefore *does NOT rise to the level of Abuse*" The Common Pleas court DENIED Plaintiff's Petition for Protection WITH PREJUDICE—despite her abuser's pattern of stalking, vandalism, attempted break-ins; and possession & discharging illegal firearms outside her home.

4. After the Court REFUSED to Extend Plaintiff's Protection from Abuse Order beyond the Temporary restraining order, the Police Chief (by his own admission) **ADVISED the ABUSER to file a retaliatory PETITION for *Protection From Abuse* AGAINST HIS VICTIM** (absent legitimate cause or supporting evidence of violence or threats of violence). The abuser's petition stated as much when it referenced Plaintiff's original case number as being related to his civil action against his victim (Plaintiff).

5. The Common Pleas judge who presided over what was clearly a Retaliatory action by the ABUSER/STALKER had apparently presided over an earlier PFA civil action where the ABUSER was the defendant with a DIFFERENT abuse victim.

6. The Common Pleas judge bullied Plaintiff (the Actual Abuse Victim) , resorted to name calling and making personal attacks—and played demeaning games and tricks on Plaintiff—asking her what she'd like the court to command her abuser to do---then denying the request. The presiding judge even ADVISED Plaintiff's

ABUSER to work with the police to try to have THE VICTIM involuntarily committed to a mental institution.

7. But because The Police Chief's Proxy ABUSER friend produced NO EVIDENCE to support his retaliatory Civil Action, the presiding Common Pleas judge RELUCTANTLY Denied the ABUSER'S petition (but *without* prejudice—opening the door for ENDLESS retaliation, harassment and stalking).

8. On October 6, 2014, ADA exclaimed, "These People Are Terrorizing You". But she took NO action.

**\*\*\*The ABUSER stalked Plaintiff/Petitioner for the NEXT 4 YEARS—** returning with loaded firearm in Late 2014, as well as in 2015, 2017 (when Plaintiff commenced this civil action) and again in 2018 to dissuade Plaintiff from testifying against him and an accomplice in a HIPAA violation matter.

9. The ADA exclaimed on October 6, 2014, "*These People Are Terrorizing You*", —but DID NOTHING.

#### **B. Additional Relevant Background Information**

1. Plaintiff had always had a great deal of respect and admiration for Police, Firefighters and other first responders because of what she viewed as their selfless public service and valor.

However, in April 2014 Valley Township Police Bureau disabused Plaintiff of such lofty notions (when on April 28, 2014, she received a criminal summons

2. **On April 21, 2014** Following her discharge from the hospital (monitoring for stress-induced coronary event), Plaintiff filed a Petition for Protection From Abuse with the Common Pleas Court

**The Police Chief, In Retaliation On Behalf Of His Fellow Abuser, Filed 2 Criminal Citations ( April 21, 2014 And April 24, 2014) Against Plaintiff (the actual victim) alleging that she was harassing her ABUSER.**

3. Unbeknownst initially to Plaintiff,. on **April 21, 2014** Defendant wrote a **summary citation--charging Plaintiff with *harassment* of her ABUSER-** purportedly pursuant to 18 PA Code §2709. (but did not send it out).

The Citation Report alleged that Plaintiff had harassed the police Chief's Valley Twp Resident (Plaintiff's ABUSER) by sending an EMAIL **Dated April 18, 2014 at 12:08pm to his previous assault victim** ( a registered nurse at her government Medical Center work email address—and where Plaintiff was a cardiac PATIENT.

But because their ABUSER either hacked into the nurse's email account or coerced (under the threat of violence) the nurse into logging him into **her account--**their common ABUSER read Plaintiff's private email and was ANNOYED—and complained to his Twp Police Chief (police in Plaintiff's township and the nurse's township told him that he was not a victim and Plaintiff had committed no crimes).

Defendant Police Chief, although required by State Statute-- did NOT send out the Citation OR the Summons. Instead he and the MDJ apparently held a "hearing" in Plaintiff's absence. Hence the un-sent summons became an ARREST WARRANT.

4. On April 24, 2014 Plaintiffs ABUSER told the Domestic Violence advocate that unless Plaintiff (The Victim) WITHDRAWS her Petition and **"Drops her**

**complaint**", that he and the Police Chief are going to **FILE CRIMINAL CHARGES AGAINST HER**. Plaintiff **REFUSED** to withdraw her Petition for Protection.

**So, the Police Chief and the Abuser filed a criminal complaint at the Magisterial District Court on the same day**—naming Plaintiff (the actual victim) as the perpetrator of the crime; while designating her **ABUSER** as the innocent victim of Plaintiff's alleged criminal harassment.

**The following morning (April 25) her ABUSER traveled to Plaintiff's home at about 4:30 in the morning and CUT her TELEPHONE LINE and attempted to unhinge her back door and discharged his firearm outside Plaintiff's bedroom window.**

5. The Police Chief wrote a **second Criminal Citation** on or around April 23, 2014— and filed it on April 24 with the Magisterial District Court---also pursuant to 18 PA Code §2709 . The Citation charged Plaintiff for **MAILING a copy of her April 21, 2014 Protection From Abuse Petition** and Court Order TO HER ABUSER.

6. **On or April 28, 2014** Plaintiff received the summons for the second Citation (but never received a summons for the first citation). The Police Chief and Bureau **REFUSED** to give Petitioner a copy of the CITATIONS.

Police Chief supported the malicious criminal charges by accusing Petitioner of, *"You Violated Your Own Protection From Abuse Order"* by MAILING a copy of the Court Order to her Abuser. He and chastised the Petitioner exclaiming, *"You can't file a PFA against an abuser and then contact the abuser"*

On June 3, 2014 when Plaintiff appeared at the summary hearing at Magisterial District Court **not knowing what the charges were**, the Magisterial District Judge ALSO told her, ***“YOU VIOLATED YOUR OWN ‘PFA ORDER’ By mailing a copy to your abuser*”**<sup>2</sup>.

Also on June 3, 2014, The MDJ told Petitioner (the actual VICTIM) that “there is a *WARRANT* out for your arrest, so it is *IN YOUR BEST INTEREST TO SIGN* this no-contact *CONTRACT*” (which actually turned out to be an “alternative sentencing agreement—the title of which the MDJ concealed with the sleeves of his judge’s robe while coercing the Victim to sign it).

7. Not only did the Police Bureau and Police Chief have an established practice of **Retaliating against Victims who Filed Protection From Abuse Petitions against their Abusers**, but ALSO the Police Bureau had an apparent established practice of ethnically profiling individuals who reside outside of the Township to fulfill a monthly arrest quota.

For example, the Police Blotter indicates that during the 2 weeks period in April 2014 that Valley Twp Police TWICE cited Plaintiff as a criminal suspect, 90% to 95% of those arrests and citations were of People of Color ( Hispanics, Caribbean, African American)—even though Valley Township’s Hispanic and Black combined population was less than 25%.

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<sup>2</sup> This was strangely similar to a 2015 allegation that the MDJ made during his campaign in a public statement about one of his competitors. The MDJ publicly accused his opponent of “*Violating Her Own PFA*” when she contacted her former Domestic Abuser.

8. In Defendant Police Chief and Valley Township's Response to Discovery Request for "Admissions", Police Chief acknowledged that he had been aware that Plaintiff Has NO Violent or Criminal History.

9. Throughout his harassment campaign, the Police Chief acknowledged the ABUSER'S long history of anger issues, violence, child abuse, abuse of disabled veterans and violence against women.

YET, Defendant initiated and pursued a dangerous retaliatory prosecution campaign against a NON-VIOLENT, NON-CRIMINAL VICTIM OF ABUSE while sympathizing with, supporting, rewarding, protecting a known VIOLENT and CRIMINAL ABUSER—whom he incited to escalated violence against his VICTIMS.

**10. Defendant's Retaliatory Conducted Established State-Created Danger**

Defendant Police Chief Emboldened, Enabled, Encouraged and Endorsed the stalking and life-threatening gun-violence of his fellow abuser When HE:

a. Returned Firearms (against petitioner's express wishes) to a known violent and mentally disturbed Patient Abuser and Domestic Abuser who only 2 months earlier had assaulted and threatened to kill a Registered nurse at the Medical Facility where Petitioner was a CARDIAC PATIENT

b. **Although the Police Bureau's signed Property Log indicates (in Police Chief's handwritten notes) that the abuser/defendant relinquished an EMPTY 22 caliber handgun box,**

and DESPITE the fact that Plaintiff (the victim) reported gunfire during pre-dawn hours outside of her bedroom window (on or around April 25, 2014) AND she heard her stalker cut her telephone line and heard him walking to hide behind a tree and watched him in the parking lot; AND ALTHOUGH she found, a SPENT 22

**CALIBER** bullet shell in the same vicinity and **then hand-delivered** it in early May, 2014 to the Police Chief, Defendants in **NONETHELESS**:

- Refused to Confiscate the Abuser's Firearms in compliance with the State Protection From Abuse Statute (PA Title 23 Ch 61) or
- Report that the Abuser Failed to Relinquish Firearms pursuant to Court Order related to Plaintiff/Petitioner's subsequent Petition for Protection From Abuse

11. Defendant Police Bureau Ignored and refused to document Plaintiff's (the Victim) complaints. but documented the Abuser's complaints that the Victim had "contacted" (made a complaint) with his medical center employer and that he (the Abuser) had found an email that his victim had sent to a to his previous assault victim (Registered Nurse)—in his other domestic violence victims private email.

13. Defendant Police Chief instead, Maliciously Criminally Cited and Prosecuted Petitioner pursuant to 18 Pa Code § 2709 (a)-- under the pretext that Plaintiff had allegedly harassed **her abuser**: Although it was the ABUSER who had grabbed and shook Petitioner while purportedly demonstrating his aggressive actions toward —and which injured his previous assault victim (registered nurse), and sent profane and threatening emails to Petitioner as a traumatized cardiac patient; and attempted to break into her home with a **LOADED FIREARM**.

14. Plaintiff, as well as 2 friends who worked for the county contacted the Police Chief AND the Township Supervisor by phone and email to express concerns and lodge complaints about the Police Chief's targeted harassment of Plaintiff—an **ABUSE VICTIM**. However, the complaints went un-answered and concerns remained un-addressed.

15. The Police Chief assured Plaintiff that he had the situation under control and that he would be monitoring the ABUSER'S emails. But instead he illegally Tapped Plaintiff's phone line and directed the ABUSER to access and deliver parts of Plaintiff's Protected Medical File—**absent court order**.

### **C. Procedural Background**

#### **1. DISTRICT COURT PROCEEDINGS**

Acting Pro Se, Plaintiff/Petitioner filed this civil action on April 4, 2016 under 42 USC 1983 and 1985 alleging that Defendant Police Chief, Police Bureau and Valley Township Board of Supervisors-- acting in their official capacity and in accordance with an unwritten, but accepted policy practice -- Maliciously Prosecuted Plaintiff in Violation of her Constitutional Rights to Report Abuse; and to Seek Protection From Abuse.

She also alleged that by Criminalizing her , while coddling and sympathizing and aligning himself with her abuser and refusing to confiscate his illegal firearms (per court order), Defendant Police Chief established a Sate-Created Danger---placing Plaintiff in heightened danger, as his acquiescence and indulging the ABUSER served to encourage, endorse, empower and emboldened her abuser—putting a target on Plaintiff and declaring open hunting season on her.

#### **a. August 2016 Motion for Injunctive/Equitable Relief From Intimidation**

Within 2 months of having been served with Plaintiff's civil action, Defendant Police Chief CONTACTED Plaintiff's ABUSER and informed him that Plaintiff had

filed suit against him.

The abuser resumed his harassment campaign—by repeatedly texting and phoning Plaintiff's process server and making threatening statements about whether or not Plaintiff has a right to file a civil action against his Police Chief.

Therefore Plaintiff asked the Court to ENJOIN Defendant from INTIMIDATION (directly and indirectly through their proxy abuser).

On November 17, 2016, and Again on August 26, 2019 the District Court DENIED Plaintiff's request to enjoin Defendant from (indirectly) INTIMIDATING Plaintiff.

On September 28, 2018 The Court DENIED Plaintiff's Cross-Motion for Summary Judgment (Doc 97) because Defendant argued that Plaintiff filed it as a Summary Judgment Motion AFTER the deadline date---even though the Court extended the deadline because of Defendant's Discovery Abuses (stonewalling).

On November 5, 2018 Plaintiff AGAIN asked the Court to ENJOIN Defendant from enabling her ABUSER to continue his threats with firearms in light of his threats to 3<sup>rd</sup> parties and his having DISCHARGED HIS FIREARM again near Plaintiff's home in the middle of the night (Plaintiff captured security video of him driving off).

Defendant OPPOSED Plaintiff's Requests for Equitable Relief: ENJOIN her abuser from his subtle (3<sup>rd</sup> party) stalking campaign and to DISARM her illegally armed abuser/stalker.

On August 26, 2019 The Court DENIED Plaintiff's SECOND request for equitable

relief in the SAME ORDER in which it GRANTED DEFENDANT'S Summary judgment motion

**b. April 2017 ORAL ARGUMENTS**

(1). After a great deal of Discovery Abuses, foot-dragging and Stonewalling (obstruction) by Defendant, the Court held Oral Arguments on the Defendant's January 24, 2017 Summary Judgment Motion and gave lip service to addressing Plaintiff's March 1, 2017 Opposition Response and Counter Motion.

(2). **The Recorded Audio Transcript** of the Oral Arguments indicate that the Court lacks impartiality.

That is to say, the Court started out by asking Defense Counsel "*Pointed Questions*"—which were actually LEADING QUESTIONS about "PROBABLE CAUSE"—although Defense Counsel had not previously used the phrase.

Also the April 2017 oral argument recorded audio transcript show that the Court had already pre-determined<sup>3</sup> the outcome of the case.

The Court ARGUED on behalf of Defense Counsel and put words in Defense Counsel's mouth by asking, If Defendant Police Chief File Charges Against Plaintiff "*because HE BELIEVED HE HAD PROBABLE CAUSE*"?

(3). Prior to the court's leading question, Defendant had not vehemently argued

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<sup>3</sup> It came to Plaintiff's attention from a Local Newspaper Article in 2018 that the Article III judge assigned to this case is ALSO a **resident** (and former member of the common pleas court bench) of the same county where the Defendants are located and is a former colleague of the Magisterial District Justice who presided over Plaintiff's criminal summary hearing and former colleague of the Common Pleas jurists who presided over Plaintiff's "Protection From Abuse" matter-and whom Defense counsel identified by name in Defendant's briefs.

“Probable Cause” or any case law related to “Probable Cause”—**but instead** persistently denied that there were “any constitutional violations” and “immunity”.

(4). The District Court also argued on behalf of Defense counsel that Defendant was justified in filing the Criminal Citation in response to Plaintiff's **April 18, 12:08pm EMAIL** that Plaintiff had sent to a NURSE (abuser's previous assault victim) at the medical center where Plaintiff received medical treatment.

(5). The Court, during Oral Arguments **ALSO URGED** Defense Counsel to falsely that:

- Because Plaintiff's ABUSER (who also bullies and threatens the nurse) and “*accesses*” the (NURSE'S) email account (through coercion or hacking)—
- then the medical center workplace email address to where Plaintiff sent the April 18, 3024 12:08pm **email message** (addressed and intended for the nurse)
- served to **HARASS HER ABUSER** , . .
- because her ABUSER was annoyed and distressed over the email sent to the nurse at her medical center work email address **AND**
- because the Court's and Defense Counsel's **ARGUED**, that the ABUSER'S previous **victim's email address** is where he sometimes “*receives emails*”
- \*\*\* even though Plaintiff's **INTENDED RECIPIENT** (hence was emailed to) was the nurse at her Medical center workplace email address and . . .
- although the abuser has a distinct and separate email address from the Nurse's workplace email address where Plaintiff sent her April 18, 2014 email).

The Court gave Plaintiff very little opportunity to speak during the oral arguments and often cut her off.

At the close of Oral Arguments, the Court stated that it will make a decision “*In Short Order*” and if he grants Defendant's Summary Judgment motion, he will give a fair and complete explanation. The Court made **NO** mention of Plaintiff's Opposition Response and Counter Motion

(6). However, it took the court more than 2 years to “DECIDE” and make a final judgment. And the Opinion Memorandum (Dist Ct Doc 143) was rife with procedural, legal (and ethical) errors.

**c. The District Court’s Plagiarized August 26, 2019 Analysis and Opinion Memorandum (Doc 143) Discredits the Adjudication Process and Sabotaged this Case.**

(1). On August 26, 2019 The District Court GRANTED Defendant’s “January 24<sup>th</sup> 2017 Summary Judgment Motion Not only did the Court falsely argue that Defendant had Probable Cause to Criminally Prosecute Plaintiff,

But the Court repeatedly IGNORED the 800 lb Gorilla in the room---that **PARAGRAPH “(e)”** of The criminal statute (18 Pa Code §2709) **ERASES Probable Cause**, because it **EXCEPTS CONSTITUTIONALLY PROTECTED ACTIVITY** from its application.

The Court IGNORED Defendant’s **FIRST AMENDMENT VIOLATIONS** and downplayed the fact that Plaintiff’s Activity was not criminal and was Protected by the **FIRST AMENDMENT**.

That is to say, The Court REFUSED to acknowledge that Plaintiff’s April 18, 2014 12:08pm Email to her medical center’s nurse AND her April 21<sup>st</sup> 2014 Petition for Protection From Abuse are non-criminal ACTIVITIES but were PROTECTED by the **FIRST AMENDMENT** (which ¶ (e) of the Criminal Statute excepts from its application and)—which Plaintiff repeatedly pointed out in her pleadings.

(2). To add extra insult to injury, the Court’s Opinion Memorandum represented **DIRECT COPY & PASTE** from Defendant’s un-researched and

conclusory Summary Judgment Motion

**d. The Court's Opinion Memorandum Analysis Was Flawed In Numerous Other Ways. It Evinced Egregious Fundamental Errors At The Outset.**

(1). Just as Defense counsel did, the District court opened it's opinion memorandum (Dist Court Doc 143) by attempting to diminish the gravity of the Stalking, Gun Violence, Assault and Threats (ABUSE) by mischaracterizing the protracted abuse campaign as merely an "*intra-family dispute between half siblings (as though co-sanguinity somehow diminishes the gravity of and destruction of human lives caused of domestic violence, elder abuse, Patient Abuse and Violence Against women)*"—when in fact the abuser has a long (50 years) history of violence against women and children—about which Defendant was aware because Defendant admittedly has known Plaintiff's abuser longer (27 years in 2014) than Plaintiff has known her abuser.

(2). **The District Court's Opinion and Analysis even INCLUDED** Defendant's **BATES FILE NUMBERING SYSTEM** ( to the Exclusion of ANY reference to Case File Documents identified by the Court's Docket numbering system or Plaintiff's Opposition Response (Dist Court Doc 97) and attached Exhibits).

**FOR EXAMPLE**, on Page 4 of the Court's Dispositive "*Opinion Memorandum (Doc 143)*", the **COURT'S AUTHOR WROTE (Directly From Defendant's Narrative):**

*"Over the course of the next few weeks, Plaintiff repeatedly contacted Friel regarding her fear that James was trying to harm her.*

*See VTWP00027-28 (April 28, 2014, Fax); VTWP00024-26 (April 28, 2014, Email);*

*VTWP00029-30 (April 30, 2014, Email); VTWP00039-40 (May 1, 2014, Email);*

*VTWP00038-39 (second May 1, 2014, Email); VTWP00032 (third May 1, 2014, Email);*

*VTWP00055 (May 2, 2014, Email)"*

**ALSO, For Example,** the District Court, in its August 26, 2019 “Opinion Memorandum” extracted, then **Copied and Pasted from Defendant’s Summary Judgment Motion brief,** the Following utterly astounding declaration:

*“Even if Plaintiff could show that she suffered a deprivation of liberty consistent with the concept of seizure as a result of Friel’s citations the Court would nevertheless grant summary judgment because Plaintiff has failed to produce evidence that Friel acted “maliciously or for a purpose other than bringing [her] to justice.” Estate of Smith v. Marasco, 318 F.3d 497, 521 (3d Cir. 2003).*

e. **That COPY & PASTE Statement (Alternative Narrative)** is but one of the countless and exhausting misstatements and distortions of laws, facts;--- and conflation of case law-- that runs throughout the District Court’s **clearly biased Dispositive “Opinion” memoranda** (Docs 143, 152)-- which **overtly argue on behalf of Defendant**—and in most instances are **COPIED and PASTED DIRECTLY** from Defendant’s false narrative and flawed legal arguments.

f. **On April 10, 2020,** The District Court **DENIED** Plaintiff’s September 15, 2019 Rule 59e and Rule 60(b) *Request for Reconsideration* (Doc 147).

(1) The District Court Erroneously Stated ( Doc # 152 ) in Part:

- *“The Court will deny the motion for reconsideration because the Court did not make any errors of law or fact”.*
- *“For example, Brown argues the Pennsylvania Political Subdivision Tort Claims Act (PSTCA) does not apply to her federal law claims, but the Court applied this act to Brown’s state tort law claims”*
- *“She also argues that the Court improperly interpreted her Monell claims as based on respondeat superior, but the Court denied her Monell claims because she failed to present evidence of any constitutional violations. Id. at 26-27. The Court merely mentioned respondeat superior to note that this was not a basis for liability.”*

(2). The District Court was again covering for Defendant’s flawed arguments. However, it **OVERLOOKED** the overt **REVERSIBLE ERRORS, FUNDAMENTAL ERRORS AND**

PROCEDURAL ERRORS throughout the Court's Opinion Memorandum (final judgment) that Plaintiff asserted arose from the Court's COPYING & PASTING one Party's Dispositive Motion (Defendant's Docs 73 and 100) to the Exclusion of Supporting counter Evidence presented by the non-movant and Opposing Party (Doc 97:Plaintiff's Opposition Response and Counter Motion:

(3) Additionally, The District Court **INCORRECTLY ARGUED That There Were No Constitutional Violations To Support A Claim Under 42 USC 1983**

However, the US Supreme Court, in *Gomez v Toledo*, 446 US 635, 638 (1980), determined that only two elements must be pled to properly assert a cause of action under 42 USC §1983.

- First, the Plaintiff must specifically identify the constitutional right of which he or she was deprived. *Id.* at 640.
- Second, the Plaintiff must assert that "*the person who deprived him of that federal right acted under color of state or territorial law.*" *Id.*

(4). EQUALLY IMPORTANT, The District Court's "rebuttal" response also FAILED TO ADDRESS the GLARING **First Amendment Rights** VIOLATIONS and Defendant's failure to PROVE criminal intent and PROBABLE CAUSE to justify criminally Prosecution of a **PERMANENTLY DISABLED ABUSE VICTIM** for exercising her RIGHT TO PETITION the state for PROTECTION and Right to PETITION the Government Medical Center (nurse) FOR REDRESS OF GRIEVANCE.

(5). **In this case, the District Court did NOT formulate its own INDEPENDENT opinion**—but copied and pasted DEFENDANT'S ARGUMENTS—which is why the Court's "Opinion Memorandum (Doc 143) takes on an ARGUMENTATIVE tone—that echoes Defendant's arguments and attitude.

## 2. APPEALS COURT PANEL DECISION

Plaintiff, acting Pro Se, filed her Notice Of Appeal" on May 7, 2020

and uploaded her Informal Appeals Brief **On July 12, 2020**..

a. Appellees/Defendants submitted a barebones reply brief in which they merely asserted that the Decision of the District Court is correct and again denied that there were any constitutional violations. However, at the coaching from the District court during oral arguments, Defendants added the PHRASE “Probable Cause” to their arguments

b. Throughout her Appeal Brief, Appellant/ Petitioner pointed out the District Court’s Reversible Fundamental Legal Errors and Procedural Errors that sabotaged the case.

(1). Petitioner pointed to the Court’s errors in overlooking the plain language in the state Criminal statute that EXCEPTS Constitutionally Protected Activity from its application; and that Plaintiff’s activities as AN ABUSE VICTIM were constitutionally FIRST AMENDMENT Speech and Petitioning.

(2). Petitioner also pointed to the District court’s conduct during April 2017 ORAL ARGUMENTS—during which the Court COACHED and asked LEADING QUESTIONS of Defense Counsel—as though the court had a vested interest in the outcome of the case.

(3). Also, throughout Petitioner’s Appeals Brief (and Reply Brief), Appellant/Petitioner REPEATEDLY showed the Appeals Court that the District Court’s decision to COPY & PASTE Defendant’s Summary Judgment Motion and Briefs was at odds with 3<sup>rd</sup> Circuit holdings, but also is at odds with SCOTUS Holdings: **For example:**

**The 3rd Circuit Has Defined Deliberate Indifference As:**

Requiring a "*conscious disregard of a substantial risk of serious harm*" See *Vargas v. City of Philadelphia*, 783 F.3d 962, 973-74 (3d Cir. 2015) (quoting *Ziccardi v. City of Philadelphia*, 288 F.3d 57, 66 (3d Cir. 2002))

**The 3rd Circuit Court of Appeals** *In re: Asbestos Products Liability Litigation (No. VI)*, (May 16, 2016)—addressed whether it was PROCEDURAL ERROR TO DISMISS a complaint based on facts that were *NOT in the complaint and that were NOT undisputed*.

(4). In Plaintiff's Appeal brief she stated about the District Court's GRANT (doc 143, 144) of Defendant's summary judgment motion (doc 73) **without considering argument and evidence in plaintiff's opposition response (doc 97):**

*This Court Action is At odds with the US Supreme Court's Caution to District Courts in Tolan v Cotton civil rights case (May 2014) about the common error of crediting the evidence of the party seeking summary judgment While Failing To Properly Acknowledge Key Evidence Offered By the Opposing Party. This court action is also at odds with the US Supreme Court's Holding in Anderson v. Liberty Lobby, Inc (1986) in which the US Supreme Court Stated:*

*““At the summary judgment stage, the trial judge's function is not himself to weigh the evidence [and determine the truth of the matter but to determine whether there is a genuine issue for TRIAL”*

(5). Plaintiff/Petitioner ALSO stated in her Appeals Brief :

Third Circuit cases interpreting *Albright v Oliver* suggest: §1983 *Malicious Prosecution* claims may be predicated on Constitutional Provisions **other than** the 4<sup>th</sup> Amendment—such as *procedural Due Process* or other *Explicit Text Of The Constitution (SEE Torres v McLaughlin 1998)*.

(6). Plaintiff Further stated in her Appeal Brief:

***“THE 800 POUND GORILLA: First Amendment Right Violations***

Paragraph (e) of 18 PA§ 2709 **PROHIBITS** criminalization of Protected activity **HOWEVER**, The Fundamental **FACT** that the District **COURT PERSISTENTLY OVERLOOKS** in each and every Dispositive Memorandum and Order (Docs 143, 152, 69) Is The April 21, 2014 **FIRST AMENDMENT RIGHT VIOLATION** associated with Defendant Police Chief Friel's **RETALIATORY** and **VINDICTIVE Criminal Charges** (18 PA Code 2709: *Harassment*) and **MALICIOUS PROSECUTION** (*SEE Doc 5 CHARGING DOCUMENTS*) of Plaintiff for her having **engaged in Protected Activity— which was** Petitioning Govt' employee—outside of Defendant's jurisdiction-- for Redress of Grievance and to **REPORT PATIENT ABUSE** (*SEE Doc #5 pp 52 and 73-1pp53: April 18, 2014 email to Federally Employed Registered Nurse*)."

(7). Additionally, Plaintiff Wrote in her Appeals brief about the District Court's overlooking Defendant Police Chief's unconstitutional actions the following:

"He **ALSO RETALIATED** on behalf of his friend (of 27 years in 2014. . . For Plaintiff having **SOUGHT PROTECTION FROM ABUSE** (pursuant to Pa Title 23) from Defendant Friel's friend/Proxy and fellow-abuser, . . .

Valley Township (now-former) Police Chief Friel's violations of Ms Brown's constitutional and statutory rights **began with his DISTORTION of 18 Pa §2709 (and associated malicious prosecution)**-- -- in violation of Ms Brown's **1st Amendment right to petition federal employees for redress of grievance.**"

**c. Nonetheless, The Appeals Court 3-Panel Affirmed the District Court's Ruling despite**

The Appeals Court Panel's Jan 28, 2021 **AFFIRMATION** of the District Court's final Judgment is at odds with its own Holdings regarding Judicial Plagiarism and the Requirements of FRCP 56.

**The 3<sup>rd</sup> Circuit Court of Appeals** in *Halsey v Pfeffer* (2014) ruling on reviewing orders entered on motions for summary judgment Fed. R. Civ. P. 56(a)

"When defendants move for summary judgment, they bear the burden to show that the plaintiff has failed to establish an essential element of

his claim. A court must view the evidence in the light most favorable to the non-moving party and give that party the benefit of all reasonable inferences, which must flow directly from admissible evidence.”

**The 3rd Circuit Court of Appeals** *In re: Asbestos Products Liability Litigation (No. VI)*, (May 16, 2016)—addressed whether it was PROCEDURAL ERROR TO DISMISS a complaint based on facts that were *NOT in the complaint and that were NOT undisputed*.

In *Bright v. Westmoreland County*, 380 F.3d 729, 731-32 (3d Cir.2004) the 3<sup>rd</sup> Circuit Appeals Court Stated in part:

The central issue is whether the district court had made an independent judgment.” *Id.* Here, however, we are not dealing with findings of fact.

Instead, we are confronted with a District Court opinion that is essentially a verbatim copy of the appellees’ proposed opinion....

. . . But there is no authority in the federal courts that countenances the preparation of the opinion by the attorney for either side. That practice involves the failure of the trial judge to perform his judicial function.

*Chicopee Mfg. Corp. v. Kendall Co.*, 288 F.2d 719, 725 (4th Cir.1961) (emphasis added).

**The 3<sup>rd</sup> Circuit Further Stated in *Bright v. Westmoreland County*:**

“When a court adopts a party’s proposed opinion as its own, the court vitiates the vital purposes served by judicial opinions. We, therefore, cannot condone the practice used by the District Court in this case”

In this Present case, the Appeals Court panel failed to address the fundamental, but critical issues raised regarding the District Court’s procedural and legal errors—and abuse of Discretion.

The Appeals Court Panel put forth NO honest effort to even address, much less resolve the issues that foreclosed Plaintiff’s right to be heard and that impede justice for Abuse Victims who face retaliatory prosecution and other intimidation

Instead, the Appeals Court dodged the real issues and offered straw arguments

that failed to address the elephant in the room (District Court's abuse of discretion and dereliction of duty; abdication of judicial authority—which should render the District Court's ruling a NULLITY.

The Appeals Court Denied Petitioner's Request for Rehearing En Banc on March 2, 2021 (electronically filed and retrieved March 3)

## REASONS FOR GRANTING THE PETITION

### I. THE LOWER COURTS DECIDED AN IMPORTANT FEDERAL QUESTION THAT HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT

A. This Court has NOT settled the question of **legitimate PROBABLE CAUSE** in the context of **RETALIATORY Criminal Prosecution** of ABUSE VICTIMS who REPORT the abuse and PETITION The State Court for PROTECTION from Abuse -- as an exercise of the victim's First Amendment RIGHT TO PETITION.

Some Federal Courts and a few Appeals Courts have held that making complaints to the police and reporting criminal conduct constitute protected First Amendment Right to Petition government entities (See eg *Gable v Lewis*, 201 F. ed 769, 71 (6<sup>th</sup> Cir. 2000); See also *Estate of Mores Exec v Dapolito* (SDNY 2004). Also see *United States v. Hylton* (SD Tex 1982.

HOWEVER, None of the Circuits have addressed the Question of PROBABLE CAUSE in context of retaliatory prosecution of Abuse Victims who Seek Protection.

Although This court has addressed the issue of PROBABLE CAUSE in context of First Amendment "Search and Seizure" of Books; And while this Court has addressed the issue of DOMESTIC VIOLENCE in Context of inadequate Police

Response; . . . and this Court has addressed the matter of Police negligence in State-Created Danger; and While this Court has also settled questions on Civil (SLAPP) lawsuits brought against victims of crime who report the crimes. . .

. . . This Court however, has NOT YET decided the question of Under what Circumstances or Conditions must a pre-textual PROBABLE CAUSE for otherwise Malicious prosecution NOT automatically DEFEAT an Abuse Victim's (or any other Plaintiff's) MALICIOUS PROSECUTION and related Constitutional Violations claims under 42 USC 1983?

Or put another way, Does STATE CREATED DANGER Caused by Police Retaliatory Criminal Charges and Prosecution of Abuse Victims DEFEAT the assumption of Probable cause

In this case, Defendant's April 18, 2014 and April 23, 2014 Charging Documents (Citations) Speak for themselves and are included in not only Plaintiff's Opposition Response to Defendant's Rule 56 Summary Judgment Motion, but also they are part of Plaintiff's Complaint.

Defendant's April 2014 Criminal Citations provide the Date and Time of the alleged Criminal activity—and DESCRIBE the activity.

Specifically, the April 21, 2014 Citation identifies an April 18, 2014 E-MAIL that Plaintiff sent at 12:08 pm to her PATIENT ABUSER'S previous assault victim (a Registered Nurse) who lives and works outside of Defendant Police Bureau's jurisdiction.

**The Actual April 21, 2014 EMAIL** in question clearly shows that Plaintiff sent

it to the Registered Nurse to whom it was addressed at the Nurse's email address (not her abuser's email address). And the email was sent to the nurse's WORK email address---and NOT to the ABUSER who hacked into the nurse's email.

When considering the Police Charging Document with the alleged "offending email" AND in context of the provision of the PA criminal Harassment statute 18 Pa Code §2709's "EXEMPTION CLAUSE"— Paragraph "{e}" which EXEMPTS *Constitutionally Protected Activity* from the Criminal Statute's Application— any reasonable person would conclude that Plaintiff's (Medical Patient) email to the nurse at her government medical center email address is a Petition of the Government for REDRESS OF GRIEVANCE for PATIENT ABUSE.

The actual Documents that Defendant Police Chief presented as evidence of criminal activity —any reasonable person would know that that the alleged criminal activity is actually Constitutionally Protected Activity.

However, the District Court repeatedly overlooked the glaring inconsistencies and holes in Defendant's arguments denying constitutional violations. Yet the Appeals Court acquiesced and sanctioned the District Court's improper conduct

## **II. THE LOWER COURTS DECIDED IMPORTANT FEDERAL QUESTIONS IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT.**

### **A. Probable Cause and First Amendment Retaliation**

The District Court and Appeals Court's decisions are at odds with this Court's decisions in *Lozman v City of Riviera Beach* (2018) and *Mount Healthy City School District v Doyle* (1977)

In *Lozman v City of Riviera Beach* (2018), this Court concluded that a claim of Probable Cause does not always Defeat a claim of Retaliatory Arrest under the 1<sup>st</sup> Amendment— when it held that The Existence of Probable Cause for Fane Lozman’s arrest for disrupting a city counsel meeting did not bar his FIRST AMENDMENT retaliatory arrest claim under the CIRCUMSTANCES of the case.

In *Mount Healthy City School District v Doyle* this court concluded that the Plaintiff (Doyle’s) call to a radio station was protected by the First Amendment AND that Doyle’s First Amendment activity played a substantial part in the School Districts adverse action toward Doyle—in violation of the Plaintiff’s rights under the 1<sup>st</sup> and 14<sup>th</sup> Amendments.

#### **B. RULE 56 REQUIEMENTS FOR SUMMARY JUDGMENT**

In *Tolan v Cotton* (2014) this court concluded that the District Court credited the evidence of the party seeking summary judgment and failed to properly acknowledge key evidence offered by the party opposing that motion. This court stated in part:

“We intervene here because the opinion below reflects a clear misapprehension of summary judgment standards in light of our precedents

### **III. THE APPEALS COURT SANCTIONED LOWER COURT DEPARTURES FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS, AND CALLS FOR EXERCISE OF THIS COURT’S SUPERVISORY POWER**

A. Both the district court and the appeals court failed to articulate a factual basis regarding the reasonableness of the conduct of the Municipal Police Chief

toward a permanently disabled ABUSE VICTIM whom the Police chief acknowledged did NOT have a history of violence or criminal record.

B. Both Courts erred in failing to acknowledge that Court Protection/Restraining Orders responding to an abuse Victim's Protection from Abuse Peition spells out prohibitions directed at the ABUSER (and not the victim). By failing to acknowledge that fundamental fact and truth, both courts endorsed Defendant Police Chief's retaliatory harassment and malicious prosecution of an Abuse victim who did NOT commit any crime—but who acted in good faith in REPORTING the abuse and SEEKING PROTECTION from abuse.

**1. The Appeals Court's Affirmation of the District Court's Ruling is at Odds with its own Decisions**

**The 3rd Circuit Court of Appeals** *In re: Asbestos Products Liability Litigation (No. VI)*, (May 16, 2016)—addressed whether it was PROCEDURAL ERROR TO DISMISS a complaint based on facts that were *NOT in the complaint and that were NOT undisputed*.

The case record shows that Plaintiff persistently DISPUTED Defendant's and the District Court's empty assertions that (1) Defendant had Probable Cause and (2) that there were no Constitutional Violations; (3) That Defendants were immune under state law (4) Plaintiff did not provide clear and convincing evidence, etc.

2. The Appeals Court sanctioned the lower Court's departure from its Article III duty to serve in the role as a neutral and impartial and competent tribunal during April 27, 2017 ORAL ARGUMENTS

**3. The Court Transcript (ORAL ARGUMENTS File # 04/26/2017)**, of the April 27, 2017 ORAL ARGUMENTS to which Plaintiff directed the Appeals Court Panel

on the Summary Judgment Motions raises questions about Judicial Impartiality as it clearly shows that:

- (a) The Court ARGUED ON BEHALF of Defendant
- (b) The Court Coached Defense Counsel and asked LEADING QUESTIONS of Defense Counsel— and cut Plaintiff off several times

**C. The Appeals Court Sanctioned and Compounded the District Court's Outrageous Conduct regarding its August 26, 2019 Opinion Memorandum and Order (District Court Docs 142 and 143) Granting Defendant's Summary Judgment Motion.**

1. The case record shows that the District Court COPIED AND PASTED nearly word-for-word, Defendant's Summary Judgment narrative instead of conducting its own balanced, Measured, Research Reasoned and **independent** analysis or form its own fully informed opinion. This practice is at odds with the 3<sup>rd</sup> Circuit's own holdings on JUDICIAL PLAGIARISM:

2. That is to say, In *Bright v. Westmoreland County*, 380 F.3d 729 (3d Cir. 2004), the Court of Appeals for the Third Circuit Wrote:

“Judicial opinions are the core work-product of judges. They are much more than findings of fact and conclusions of law; they constitute the logical and analytical explanations of why a judge arrived at a specific decision. They are tangible proof to the litigants that the judge actively wrestled with their claims and arguments and made a scholarly decision based on their own reason and logic.

**The 3rd Circuit Further Asserted, In The *Bright v. Westmoreland County* Case, That**

“The moving party's attorney was essentially clerking for the judge. . . There's something fundamentally misguided here, not unlike *ex parte* communications.”

3. It is also apparent that the Appeals Court overlooked the fact that the District Court did not look or analyze the case any further than copying Defendant's Summary Judgment Motion (Dist Court Doc 73) to the Exclusion of Plaintiff's

Opposition Response (Dist Court Doc 97) and Evidence supporting her claims.

Copying and pasting and then representing Defendant's motion as those of the District Court would seem to render the Rulings a NULLITY—throwing a wrench and fouling up the proper workings of the judicial machinery.

Nonetheless, the Appeals Court sanctioned the conduct of the District Court

4. The Appeals Court Decision to overlook the District Court's decision to flout the requirements of Rule 56 is at odds with the 3<sup>rd</sup> Circuit's own Opinions on "Judicial Plagiarism" as well as the Supreme Court's holdings in *Tolan v Cotton* (2014)

### CONCLUSION

By not calling out and correcting Defendants Dangerous Conduct toward Abuse Victims, both the District Court and Appeals Court set a dangerous precedent, which could subject future abuse survivors to untenable risks when they attempt to Petition the State for Protection or others for redress of grievance associated with the Abuse.

When victims of domestic violence, patient abuse and other abuses become subjected to malicious criminal prosecution simply for reporting the Abuse, Petitioning for Protection from Abuse and Reporting the violations of Restraining Orders, then rogue and apathetic Police will continue to not enforce the Court Protection orders while the victims will be chilled from exercising their FIRST AMENDMENT right to Petition the state for Protection from Abuse.

In this case, Both the District Court AND the Appeals Court, absent any

evidence of Criminal Intent or Probable Cause, argued in defense of Defendant's Malicious Criminal Prosecution against Abuse Victims (at the behest of the abuser). The courts' reckless actions invite rogue police and abusers to abuse the criminal court process with impunity and without consequences or correction.

When the State (through municipal law enforcement practice or policy) not only deters a citizen from exercising that fundamental right, but PUNISHES the citizen FOR exercising her right to Petition, THEN the Practice and Unwritten municipal policy and the defense of PROBABLE CAUSE should be analyzed with the strictest of scrutiny.

For the Foregoing Reasons This Petition for Writ of Certiorari should be Granted  
Respectfully Submitted,

Blanche Brown, Pro Se

A handwritten signature in black ink that reads "Blanche Brown". The script is cursive and fluid, with the first letters of each name being capitalized and prominent.

July 23, 2021