



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**TERRY GODDARD, MONICA GODDARD, OFFICE OF THE ATTORNEY GENERAL
v. HON. KENNETH FIELDS; GEORGE H. JOHNSON; JOHNSON INTERNATIONAL,
INC., Real Parties in Interest,
Court of Appeals No. (1 CA-SA 06-0114); Supreme Court Number CV-07-0096-PR**

PARTIES AND COUNSEL:

Petitioners: Terry and Monica Goddard and the Office of the Attorney General (“the Attorney General”), by Assistant Attorneys General Lisa Hudson, Daniel Schaack and Michael K. Goodwin.

Respondents: George H. Johnson and Johnson International, Inc., by Lat J. Celmins, Michael L. Kitchen and Patrick J. VanZanen of Margrave Celmins, P.C.

FACTS:

The Attorney General filed a lawsuit on behalf of five state agencies against real estate developer George Johnson and his related entities (“Johnson Defendants”). The Johnson Defendants acquired title to property bordering state trust lands to develop for residential and business use. Johnson and one of his entities filed a counterclaim against Goddard in his individual capacity and against his wife, alleging the Attorney General personally issued a press release making numerous false and defamatory statements directed at the Johnson Defendants. They alleged the press release, press conference and statements made in them were motivated by malice, ill will and spite. The Attorney General defended his statements as true, but moved to dismiss the defamation counterclaim by asserting “absolute privilege to publish defamatory matter concerning another in communications made in the performance of his official duties.”

The trial court found the Attorney General is entitled only to qualified immunity. The court of appeals majority accepted special action jurisdiction, but denied relief. It wrote that in *Chamberlain v. Mathis*, 151 Ariz. 551, 554 (1986), this Court considered the competing interests of executive performance of duties and injury from that performance, and adopted a general rule of qualified immunity, adding an objective malice requirement for executive government officials. It denied absolute immunity to the Department of Health Services director, saying qualified immunity generally protects state executive officials adequately. *Id.* at 558. For absolute immunity, an executive government official must show it is essential “to avoid a severe hampering of a governmental function or thwarting of established public policy.” *Id.* The court wrote that *Chamberlain* requires a plaintiff filing a defamation claim against a public official to prove objective malice. *Id.* at 559.

Dissent (Hall, J.): *Chamberlain* held qualified immunity applied to the Department of Health Services director, yet recognized “there may be some government offices that require absolute immunity.” 151 Ariz. at 558. All other states that recognize high-level executive officer immunity extend it to their attorneys general. If absolute immunity for such officers is to really apply here, a constitutional executive officer such as the attorney general must be absolutely privileged to make defamatory statements in his official capacity.

Extension of absolute immunity is not to relieve the officer’s personal burden, but to protect the public’s interest in effective government. “The public welfare is so far dependent upon a reasonable latitude of discretion in the exercise of functions of high executive offices that their incumbents may not be hindered by the possibility of a civil action for defamation in connection therewith.” Restatement (Second) Torts § 591 (1977). The public’s interest in encouraging its officials to speak with fearless candor is greatest in a high-level executive official such as the attorney general.

ISSUE:

“Did the court of appeals erroneously conclude that the Arizona Attorney General is not entitled to high-level executive immunity for allegedly defamatory statements made in a press release announcing the filing of a civil-enforcement lawsuit?”

DEFINITIONS:

absolute immunity also known as “absolute privilege,” the state of being free from liability for one’s acts or words.

constitutional executive officer one of five elected Arizona state officers whose positions are established in the Arizona Constitution, including the governor, attorney general, secretary of state, superintendent of public instruction and mine inspector.

individual capacity as a private citizen, not as an office-holder or agent of the state.

objective malice knowing that what one says is untrue, but saying it regardless.

official capacity as the office-holder, not responsible as a private citizen.

qualified immunity the state of being liable for one’s statements, but only if the speaker says things known to be untrue

Restatement (Second) Torts A legal treatise that sets out the generally-accepted state of the law of torts, defining who is responsible for harms to others from the other person’s acts or omissions.

This Summary was prepared by the Arizona Supreme Court Staff Attorney’s Office solely for educational purposes. It should not be considered official commentary by the court or any member thereof or part of any brief, memorandum or other pleading filed in this case.