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SUPREME COURT
STATE OF ARIZONA

JACQUELIN JAMILEX LOPEZ SANCHEZ, an individual; MARLIN LOPEZ SANCHEZ, an individual; ROSARIO LOPEZ SANCHEZ, an individual; ILIANA OFELIA SANCHEZ, individually and as parent/next of kin to minor ORLANDO LOPEZ,

Plaintiffs/Appellants,

v.

MARICOPA COUNTY,

Defendant/Appellee.

Case No. _____

Arizona Court of Appeals
Case No. 1 CA-CV 22-0572

Maricopa County Superior Court
No. CV 2022-092441
Hon Rodrick Coffey

PETITION FOR REVIEW

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Why this Court Should Grant Review

1. Introduction.

The Court should grant review because it has never explained the nature of the relationship between an Arizona county and the public employees that work for the managers that the county's voters elect to manage its various departments. Under the Arizona Constitution, those elected managers are "a sheriff, a county attorney, a recorder, a treasurer, an assessor, a superintendent of schools and at least three supervisors." Ariz. Const. art. 12, § 3. Almost all county employees work in departments that elected county public employees manage.

This case epitomizes the problem. Here, a deputy county sheriff's negligent on-the-job driving injured several people. The lawyer representing the injured persons knew he could file a notice of claim: (1) against the public employee, (2) or against the public entity liable for the public employee's acts and omissions, or (3) against both the public employee and the public entity. A.R.S. § 12-821.01(A).

The claimants' lawyer decided not to file a notice of claim with the deputy county sheriff because some jurors might feel sorry for him if there was large judgment. Thus, the jurors might refuse to agree to a verdict against the deputy county sheriff or might reduce the damages that should be awarded against him.

Parenthetically, any such juror concern would be misplaced, because, under the Arizona Claims Act, any judgment against a public employee is only paid by

the public entity that is liable for the public employee's acts and omissions. *See* A.R.S. § 12-823. Thus, a claimant could get a multi-million-dollar judgment against a negligent public employee, and the public employee would pay mothing.

There are several possibilities for a notice of claim's proper recipient:

2. Notice of claim against the county sheriff's office?

Plaintiffs' lawyer considered filing the notice of claim with the obvious office, namely the county sheriff's office. But *Braillard v. Maricopa County*, 224 Ariz. 481, 487 ¶ 12 (App. 2010) held that county departments are *not* legal entities that can sue or be sued absent specific statutory authority. Because a county sheriff's office is just a department, and there is no specific statute authorizing it to sue or be sued, the county sheriff's office is a nonjural entity. *Braillard*, 224 Ariz. at 487 ¶ 13. There is no point in filing a notice of claim with a nonjural entity.

3. Notice of claim against the county?

For several reasons, Plaintiffs' lawyer filed the notice of claim with Maricopa County. First, there is a specific statute providing that an Arizona county "has the power to: 1. Sue and be sued." A.R.S. § 11-201(A)(1). Maricopa County is, unlike its departments, a jural entity. Second, Maricopa County is a political subdivision of the State. *Grosvenor Holdings, L.C. v. Figueroa*, 222 Ariz, 588, 595 ¶ 15 (App. 2009). Since Maricopa County is a political subdivision of the State, it is a "public entity" upon which a notice of claim can be served. A.R.S. § 12-820(7)

("'Public entity' includes this state and any political subdivision of this state."). Third, the deputy county sheriff is a county "public employee" because he is an employee of a county department—undeniably a "public entity." A "public employee" is a public entity's employee. A.R.S. § 12-820(6).

But the trial court granted summary judgment for Maricopa County and dismissed the lawsuit because Maricopa County was supposedly the wrong party to sue. The Court of Appeals then erroneously affirmed. That led us here.

4. Notice of claim against the county sheriff?

Filing the notice of claim with the county sheriff would have accomplished nothing. A county sheriff is, after all, an elected county "public employee"—and nothing more. Under A.R.S. § 12-823, a judgment against a county sheriff would be as non-collectable as a judgment against a deputy county sheriff.

Here is where the Opinion in *Sanchez* went astray. The Court of Appeals apparently realized that rejecting the Maricopa County Sheriff's Office and Maricopa County as public entities liable for a deputy county sheriff's acts and omissions left no "public entity" to pay any judgment arising from a deputy county sheriff's acts and omissions. *See* A.R.S. § 12-823.

So, the Court of Appeals did what, as far as Appellants' counsel can tell, no other court in America has ever done. The Court of Appeals decided that an elected county sheriff is not a "public employee." Instead of being a "public employee"

that the county's voters elected to manage a county department for a few years, the Court of Appeals decreed that the elected human county sheriff had transformed into a nonhuman "public entity."

And, Voilà! A human "public employee" has miraculously metamorphosed into a nonhuman "public entity." The Opinion held that, "under appropriate circumstances plaintiffs can sue sheriffs, who qualify as 'public entities' within the meaning of A.R.S. § 12-820(7)." *Opinion* ¶ 2. The Opinion also found that "no other statute creates the right to sue the County on this record." *Opinion* ¶ 2. But that statement overlooked A.R.S. § 11-201(A)(1), which provides that an Arizona county has the power to sue and be sued.

The notion that a person somehow becomes a "public entity" by virtue of being elected to serve a few years as a public officer is wrong. As support for its argument that mere election to the office of county sheriff transmutes or transforms a person from a human being into a nonhuman "public entity," the Opinion quotes A.R.S. § 12-820(7), which states: "'Public entity' includes this state and any political subdivision of this state."

Focusing on "includes" in the definition of "public entity," the Opinion relied on a case explaining that "when the legislature does not define a term, but states that the term 'includes' specified items, we construe the term to also include other items that fall within the term's ordinary meaning." *Opinion* ¶ 26 (quoting

State ex rel. Dept. of Econ. Sec. v. Torres, 245 Ariz. 554, 558 ¶ 14 (App. 2018)).

But a case actually on point holds that "includes" in A.R.S. § 12-820(7) "suggests that other organizational forms could be considered public entities for notice of claim purposes." *Pivotal Colorado II. L.L.C. v. Ariz. Pub. Safety Personnel Retirement Sys*., 234 Ariz. 369, 370 ¶ 6 n.3 (App. 2014). That suggestion makes sense because A.R.S. § 12-820(7) never hints a "public entity" could be anything other than a government or organization.

A county sheriff could never "fall within" the "ordinary meaning" of "public entity." After all, "public entity" is a technical phrase with a peculiar meaning in the law. That matters because A.R.S. § 1-213 requires that words and phrases that are technical or "have acquired a peculiar and appropriate meaning in the law *shall* be construed according to such peculiar and appropriate meaning." (Emphasis added.) The verb "shall" in A.R.S. § 1-213 means "must." *Insurance Co. of North Am. v. Superior Court*, 166 Ariz. 82, 85 (1990).

Keeping in mind that "public entity" is a phrase that is both technical and has acquired a peculiar and appropriate meaning in the law, the latest edition of the world's most respected, authoritative legal dictionary defines the terms "entity," "corporate entity," and "public entity" in this coordinated way:

> **entity.** An organization (such as a business or a governmental unit) that has a legal identity apart from its members or owners.
> ► **corporate entity.** (1862) A corporation's status as an organization existing independently of its shareholders • As a separate entity, a

> corporation can, in its own name, sue and be sued, lend and borrow money, and buy, sell, lease, and mortgage property.
> ► **public entity.** (1926) A governmental entity, such as a state government or one of its political subdivisions.

Black's Law Dictionary 673 (11th ed. 2019).

At law, in summary, the technical and "peculiar and appropriate" meaning of "public entity" is an organizational or governmental unit—not a human being. An elected county official, such as a county sheriff, could never be regarded as a non-human "public entity" under any rational, accepted usage of the English language.

The world's best English collegiate dictionary has a similar definition of "entity" as "an organization (as a business or governmental unit) that has an identity separate from those of its members." *Merrian-Webster's Collegiate Dictionary* 417 (11th ed. 2020).

Unfazed by accepted, authoritative definitions of the technical and "peculiar and appropriate" meaning of "public entity" in 21st century dictionaries, the Opinion relied on generalized definitions of "entity"—not "public entity"—that appeared in the 9th edition of *Merriam Webster's Collegiate Dictionary* (1984), because A.R.S. § 12-820 became effective in 1984. *Opinion* ¶ 28.

The Opinion argued the "additional" and supposedly "newer understanding of 'entity' as including organizations is not exclusive of the other accepted meanings of the word, which are applicable to natural persons." *Opinion* ¶ 29. "Thus," the Opinion adds, "even if a more current definition is used, our analysis

remains the same." *Id*. But there is no "additional, newer" understanding of "public entity." No era's dictionary defines "public entity" in a way that would mean a human being. The meaning of "public entity" as a non-human has remained unaltered since at least 1926. *See Black's Law Dictionary* 673 (11th ed. 2019).

The Opinion's dictionary juggling won't work. In 1979, the fifth edition of *Black's Law Dictionary* was published. It explained that the meaning of "public entity" was:

> **Public entity.** Public entity includes a nation, state, city and county, city, district, public authority, public agency, or any other political subdivision or public corporation, whether foreign or domestic.

Black's Law Dictionary 1106 (5th ed. 1979). That approach has altered in no relevant aspect through the 2019 publication of the 11th edition of that dictionary.

In short, modern, old, and 1984-vintage dictionaries have the same definition for the technical, peculiar, appropriate meaning of "public entity." In the present context, a "public entity" is the state or a political subdivision of the state—***never*** a human being. That is, an elected county sheriff does not by any imaginative transmutation, metamorphosis, or apotheosis change from a human "public employee" into a non-human "public entity."

The Court of Appeals incorrectly ignored the authoritative definitions of "public entity" in its quixotic quest to transform a county officer from a human "public employee" into a non-human "public entity." But the English Language

cannot tolerate that sort of abuse.

In addition, the insupportable notion that an elected county sheriff becomes a non-human "public entity" robs A.R.S. § 12-820(1) of any meaning. The Opinion correctly acknowledges the county sheriff "is an elected constitutional ***officer***." *Op.* ¶ 9 (emphasis added) (citing Ariz. Const. art. 12, § 3: "There are hereby created in and for each organized county of the state the following officers who shall be elected by the qualified electors thereof: a sheriff," etc.). By statute as well, the county sheriff is an "officer[] of the county." A.R.S. § 11-401(A)(1).

Since the county sheriff is a constitutional and statutory "officer," by statute, the Arizona Claims Act defines the county sheriff as an "employee": **"'*Employee' includes an officer*.**" A.R.S. § 12-820(1) (emphasis added). Under the Arizona Claims Act, the county sheriff, as a statutory and constitutional "officer," is undeniably an "employee."

The county sheriff cannot be both a human "employee" and a non-human "public entity" simultaneously. Metaphysics will only go so far. A "public entity," after all, includes Arizona (which the county sheriff is not) and any political subdivision of Arizona (which the county sheriff is not). A "public entity" under A.R.S. § 12-820(6) does not include an A.R.S. § 12-820(1) human "employee."

The Opinion concluded that county sheriffs as "duly elected" constitutional officers who act in official, public capacities, become "public entities." *Opinion* ¶

28. That means the vicariously-liable duly-elected county sheriff must pay all of the judgments for deputy county sheriffs who negligently injure or kill civilians in motor-vehicle accidents. How does the county sheriff manage to do that?

Moreover, what happens if the duty-elected "public entity" county sheriff dies in office? Whoever temporarily manages the county sheriff's office would *not* be duly elected—and thus would not be magically transformed into a "public entity." So in that interval between death and the due election of a new "public entity" county sheriff, deputy county sheriffs can negligently kill and injure people, with no one vicariously liable to pay the damages which, under the Arizona Claims Act, *only* a public entity pays. A.R.S. § 12-823.

Before December 7, 2023, the date the Opinion was filed, no Arizona case had ever held that an elected constitutional and statutory county officer is an "employee" and a "public entity" simultaneously.

To recap, the claimant has the option of filing a claim with and then suing (if needed) the public entity, or the public employee, or both. A.R.S. § 12-821.01(A). The Opinion assumes the county cannot possibly be liable for a deputy county sheriff's negligent driving because, for an employee to be liable for an employee's negligence, the employer must have had control over, or the right to control or supervise, the employee's conduct at the time the employee actually commits the negligent acts or omissions. *Opinion* ¶¶ 9, 15, 20.

But we all know that is not how any real public entity operates. The public entity has department managers (such as an elected county sheriff) who in turn have sub-managers and supervisors who ultimately control the details of the work of the lower-level employees (such as deputy county sheriffs). It would be a wondrously strange situation where any "public entity" is in the front seat controlling and supervising a "public employee" when he or she is driving within the scope and course of employment.

Vicarious liability exists and a public employee's conduct falls within the public employment's scope if it is the kind of conduct that the public employee was hired to perform, if it occurs within the public employment's authorized time and space limits, and if the public employee's acts further the public employer's business. *McCloud v. State, Arizona DPS*, 217 Ariz. 82, 91 ¶ 29 (App. 2007). The actual controllers and supervisors are persons that the public entity has directly or indirectly hired to handle the nuts and bolts of the public entity's work.

"Under Arizona law, an employee is acting within the scope of his employment while he is doing any reasonable thing which his employment expressly or impliedly authorizes him to do or which may reasonably be said to have been contemplated by that employment as necessarily or probably incidental to the employment." *Ray Korte Chev. v. Simmons*, 117 Ariz. 202, 207 (App. 1977).

A deputy county sheriff driving a county car on official business is doing a

reasonable thing the county employment expressly or impliedly authorized and which may reasonably be said to have been contemplated by the deputy county sheriff's employment as a thing necessarily or probably incidental to the deputy county sheriff's employment. That is all that is needed for vicarious liability.

Indeed, whether the tort that an employee has committed "is within the course and scope of employment is generally a question of fact, and only becomes a question of law if the undisputed facts indicate that the conduct was clearly outside the scope of employment." *Higginbotham v. AN Motors of Scottsdale*, 228 Ariz. 550, 552 ¶ 5 (App. 2012).

The theory that vicarious liability only exists when the *head* of a department—even one as large as a sheriff's office—has direct and immediate right or ability to control a low-level employee's driving is out of touch with reality and makes no sense in the context of modern organizations employing department heads, managers, supervisors, and the like to manage the people doing the actual work (such as deputy county sheriffs).

In summary, there is no need to prove an employer directly supervised and controlled an employee's driving for vicarious liability to exist. *Restatement (Third) of the Law of Agency* § 7.07 (2006); *Carnes v. Phoenix Newspapers, Inc.*, 227 Ariz. 32, 35 ¶ 9 (App. 2011). Supervision and control over employees, such as deputy county sheriffs, will come, as it always does, through such intermediaries as

supervisors, managers, officers, directors, and sergeants—or their equivalent.

The Issue Presented for Review

Under the Arizona Claims Act, is a county the "public entity" that employs a "public employee" deputy county sheriff who has negligently caused a motor-collision? Are the injured motorists entitled to file a notice of claim with the county as the "public entity" that employs the deputy county sheriff as a "public employee" in one of its departments, namely, in the office of the county sheriff?

The Standard of Review

The petition requires interpreting and applying A.R.S. §§ 12-820(6), 12-820(7), 12-821.01(A), and 12-823. This Court reviews statutes de novo and will "effectuate any clear and unambiguous text without resort to secondary interpretive principles." *Lattin v. Shamrock Materials, LLC*, 252 Ariz. 352, 354 ¶ 9 (2022). In addition, this Court reviews "a grant of summary judgment de novo, viewing the evidence in the light most favorable to the party against whom summary judgment was entered." *Dabush v. Seacret Direct LLC*, 250 Ariz. 264, 267 ¶ 10 (2021).

Brief Review of Why the Court Should Grant the Petition

First, review should be granted under Ariz. R. Civ. App. Proc. 23(d)(3) because the Court of Appeals incorrectly decided important issues of law. It appears that no American court has ever held that a human public employee can transform into a nonhuman "public entity." There may be some public

employees—even former Presidents—who believe they are special beings existing somewhere above the law. They are wrong. *Trump v. Vance*, 140 S. Ct. 2412, 2433 (2020) (Kavanaugh, J., concurring) ("In our system of government, as this Court has often stated, no one is above the law."). They are mere humans. It appears no court has ever before transformed a human being into a nonhuman "public entity."

Second, review should be granted because, under the Court of Appeals' reasoning, every elected county official is now a "public entity." As a result, notice of claim should be served on them and they can be sued for the acts and omissions of the public employees working in their respective county departments. And, if there is an adverse judgment against those public entities, the various "public entity" elected heads of the departments will be responsible to pay those judgments out of their own pockets because, after all, their respective departments are nonjural entities and, according to Sanchez, their counties also cannot be sued.

By transforming mere human public employee heads of county departments into nonhuman public entities, the Court of Appeals had immunized all public employees who work in departments managed by elected county public employees and has immunized the counties as well. *Sanchez* is not just a train wreck waiting to happen—it has happened. In its transfiguration of human public employees into nonhuman public entities, *Sanchez* is perhaps the strangest Opinion the Court of Appeals has ever crafted. It will cause confusion and injustice in many cases—just

as it has already done in the present case.

Third, the petition presents novel issues and questions of law on how to sue a county for wrongs committed by its public employees, on the legal status of county public employees as employees of county departments, on county liability for the acts and omissions of its employees, and on the legal status of the elected managers of county departments.

The explication and resolution of those novel issues and questions support granting the petition. *Matter of Appeal in Maricopa County, Juvenile Action No. JS-8490*, 179 Ariz. 102, 104 (1994).

Fourth, the subject matter of the petition is "one of continuing interest affecting a great number of cases statewide." *Mongan v. Pima County Superior Court*, 148 Ariz. 486, 486 (1986).

Fifth, the petition identifies statutes whose meaning requires this Court's clarification. *Alma S. v. Department of Child Safety*, 245 Ariz. 146, 149 ¶ 7 (2018).

Sixth, the petition describes issues capable of repetition but evading review. *State v. Valenzuela*, 144 Ariz. 43, 44 (1985); *Rasmussen by Mitchell v. Fleming*, 154 Ariz. 207, 213 (1987).

Seventh, the petition presents issues of statewide importance, significance, and interest. *Specialty Companies Group, LLC v. Meritage Homes of Arizona, Inc.*, 251 Ariz. 365, 367 ¶ 7 (2021).

Conclusion

"No man is above the law and no man is below it; nor do we ask any man's permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor." Annual Message of President Theodore Roosevelt, *To the Senate and House of Representatives*, 38 Cong. Rec. 3 (Dec. 7, 1903). The Court of Appeals cannot violate that precept by giving counties a de facto grant of immunity. When "negligence is the proximate cause of injury, the rule is liability and immunity is the exception." *Stone v. Arizona Highway Comm'n*, 93 Ariz. 384, 392 (1963).

The Court of Appeals' Opinion violates that precept and wrongly immunizes counties. Plaintiffs thus ask the Court to grant the petition for review.

DATED this 18th day of January, 2024.

AHWATUKEE LEGAL OFFICE, P.C.

/s/ David L. Abney, Esq.
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Certificate of Compliance

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