

No. SC99626

**In the
Supreme Court of Missouri**

THE STATE OF MISSOURI *ex rel.* MAYELA BARRON,
Relator,

v.

THE HONORABLE JOHN D. BEGER,
Respondent.

Proceeding in prohibition from the Circuit Court of
Howell County, Missouri, No. 20AL-CC00089
The Honorable John D. Beger

RELATOR'S BRIEF

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POINTS RELIED ON

- I. **Mayela Barron is entitled to an order prohibiting the Honorable John D. Beger from taking any further action in the underlying case other than vacating his May 2, 2022 Order and sustaining Barron’s motion for summary judgment, because she is entitled to official immunity, in that the undisputed facts establish that Barron was a law enforcement officer who exercised discretion responding to an emergency.**
 - *State ex rel. Alsup v. Kanatzar*, 588 S.W.3d 187 (Mo. banc 2019)
 - *Southers v. City of Farmington*, 263 S.W.3d 603 (Mo. banc 2008)
 - *Davis v. Lambert-St. Louis Int’l Airport*, 193 S.W.3d 760 (Mo. banc 2006)
 - WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 741 (1993)
- II. **Mayela Barron is entitled to an order prohibiting the Honorable John D. Beger from taking any further action in the underlying case other than vacating his May 2, 2022 Order and sustaining Barron’s motion for summary judgment, because the May 2 Order improperly denied official immunity, in that the Order adopted and relied on arguments and case law expressly rejected by this Court.**
 - *Southers v. City of Farmington*, 263 S.W.3d 603 (Mo. banc 2008)
 - *Davis v. Lambert-St. Louis Int’l Airport*, 193 S.W.3d 760 (Mo. banc 2006)
- III. **Mayela Barron is entitled to an order prohibiting the Honorable John D. Beger from taking any further action in the underlying case other than vacating his May 2, 2022 Order and sustaining Barron’s motion for summary judgment, because she owed no duty to Plaintiff Justin Osborn under the public duty doctrine, in that he failed to plead facts illustrating a duty to him as an individual as Barron responded to an emergency.**
 - *State ex rel. Helms v. Rathert*, 624 S.W.3d 159 (Mo. banc 2021)
 - *Southers v. City of Farmington*, 263 S.W.3d 603 (Mo. banc 2008)

JURISDICTIONAL STATEMENT

This proceeding in prohibition revolves around whether Relator, Mayela Barron, is entitled to the protection of the official immunity and the public duty doctrines in light of the uncontroverted facts that she was a law enforcement officer responding to an emergency. On October 29, 2021, Plaintiff Justin S. Osborn filed his First Amended Petition alleging negligence, negligence *per se*, and punitive damages claims against Barron in her individual capacity. (Ex. 1, R. 1-7.) The parties filed cross-motions for summary judgment regarding the immunity issues. On May 2, 2022, Respondent, the Honorable John D. Beger, entered his order granting Osborn's Renewed Motion for Partial Summary Judgment and denied Barron's motion. (Ex. 18, R. 339.) On May 27, Barron filed for a writ of prohibition. One week later, this Court sustained her petition and issued its Preliminary Writ of Prohibition.

Because this Court may issue and determine original remedial writs, MO. CONST. art. V § 4, and because a prohibitory writ is appropriate where an individual is entitled to dismissal due to official immunity or the public duty doctrine, *State ex rel. Helms v. Rathert*, 624 S.W.3d 159, 163 (Mo. banc 2021), jurisdiction is proper in this proceeding.

INTRODUCTION

Resolving this prohibition proceeding involves a straightforward application of this Court's prior precedent on summary judgment and the immunity protections available to public employees responding to emergencies. There is no genuine issue of material fact that on January 25, 2020, Relator Mayela Barron encountered a vehicle that posed a clear and immediate threat to public safety. As a Highway Patrol Trooper, she was required to make a series of rapid, difficult decisions balancing the risks of her actions against the benefits of apprehension using limited information under rapidly changing circumstances. Official immunity is intended to protect Barron for her actions taken in the course of intercepting the vehicle, including those alleged to have been negligent. Under the public duty doctrine, her duty of care in responding was one owed to the public and not any one individual. She now, however, faces negligence and punitive damage claims after Respondent, the Honorable John D. Beger, granted Plaintiff Justin S. Osborn's Renewed Motion for Partial Summary Judgment and denied her own. Barron's right to immunity is clear as a matter of law, the underlying order is founded on overturned law, and she owed no duty to Osborn. Accordingly, she respectfully asks this Court to enforce her immunity protections based on the uncontested facts and clearly established precedent by issuing a permanent writ of prohibition.

STATEMENT OF FACTS

I. Factual History

On January 25, 2020 at approximately 9:25 p.m., Barron was patrolling eastbound on Highway P in Pomona, Missouri. (Ex. 6 ¶¶ 1, 5, R. 45–46, App. 9–10; Ex. 17 ¶¶ 1, 5, R. 283–284, App. 73–74.) She had previously patrolled and was familiar with that part of the highway, which consists of two narrow lanes that travel over steep hills, through a forest, and has a speed limit of 55 mph. (Ex. 6 ¶¶ 2–3, R. 45, App. 9; Ex. 14 ¶ 5, R. 247, App. 67; Ex. 17 ¶¶ 2–3, R. 283, App. 73.) An officer approximately one mile ahead of Barron detected a white truck traveling westbound at 92 mph that passed him before visually increasing its speed. (Ex. 6 ¶¶ 4–7, R. 46, App. 10; Ex. 17 ¶¶ 4–7, R. 284, App. 74.) The officer warned her that the truck was coming shortly before it passed her vehicle at 99 mph. (Ex. 6 ¶¶ 8–9, R. 46–47, App. 10–11; Ex. 17 ¶¶ 4–7, R. 284, App. 74.) Barron decided to apprehend the vehicle, and was forced to come to a complete stop to turn and pursue it westbound. (Ex. 6 ¶¶ 13–14, R. 48, App. 12; Ex. 17 ¶¶ 10–11, R. 285, App. 75.)

The white truck was headed toward an area that Barron knew contained numerous country and forest service roads that the driver could use to evade and hide. (Ex. 6 ¶ 16, R. 49, App. 13; Ex. 17 ¶ 12, R. 286, App. 76.) She examined the circumstances, including the truck’s increasing speed, the hilly terrain, the time of day, and the upcoming service roads, and decided to close

the distance between her and the white truck before engaging her emergency lights to both ensure that the vehicle knew it was being pulled over and to see its license plate. (Ex. 6 ¶¶ 15–17, R. 48–49, App. 12–13; Ex. 17 ¶¶ 11–14, R. 285–286, App. 75–76.) She also considered her experiences with how other drivers react to emergency lights, often freezing, swerving, or otherwise driving more dangerously, and determined it was also safer to wait until she was closer to the white truck. (Ex. 6 ¶ 18–20, R. 49–50, App. 13–14; Ex. 17 ¶¶ 15–16, R. 286–287, App. 76–77.) As Barron closed the distance, she decided she was close enough and was preparing to engage her emergency lights when the truck crested a hill and could no longer see or be seen by her. (Ex. 6 ¶ 21, R. 50–51, App. 14–15; Ex. 17 ¶ 17, R. 287, App. 77.) She decided to continue her pursuit and wait until she could again see the white truck’s taillights before activating her emergency lights. (Ex. 6 ¶ 22, R. 51, App. 15; Ex. 17 ¶ 18, R. 288, App. 78.)

At approximately 9:27 p.m., Barron crested the same hill and was a short distance from the intersection of Highways P and Z. Plaintiff Justin S. Osborn was traveling south on Highway Z and pulled out into the intersection to make a left turn to travel eastbound on Highway P. Barron applied her brakes to slow down and attempted to swerve past Osborn, but could not avoid his vehicle and they crashed. (Ex. 15, R. 272–276.)

II. Procedural History

On October 29, 2021, Plaintiff Osborn filed his First Amended Petition, asserting negligence, negligence *per se*, and punitive damages claims against Barron in her individual capacity. (Ex. 1, R. 1-7.) On January 25, 2022, Barron filed her Summary Judgment Motion (Ex. 2, R. 8-9), her Memorandum in Support of Summary Judgment (Ex. 3), R. 10-20), and her Statement of Uncontroverted Material Facts (Ex. 4, R. 21-34), arguing that she was entitled to the protections of official immunity and the public duty doctrine. On February 24, Osborn filed his Memorandum of Law in Opposition to Defendant Barron's Motion for Summary Judgment (Ex. 5, R. 35-44), his Response to Defendant's Statement of Uncontroverted Material Facts (Ex. 6, R. 45-108), and his Statement of Additional Material Facts in Opposition to Summary Judgment (Ex. 7, R. 109-149). On March 16, Barron filed her Reply Memorandum in Support of Summary Judgment (Ex. 8, R. 150-159) and her Response to Plaintiff's Statement of Additional Material Facts (Ex. 9, R. 160-190).

On February 18, Osborn also filed his Renewed Motion for Partial Summary Judgment (Ex. 10, R. 191-193), his Memorandum of Law and Suggestions in Support for His Renewed Motion for Partial Summary Judgment (Ex. 11, R. 194-200), and his Statement of Undisputed Material Facts (Ex. 12, R. 201-234), asking the Circuit Court to deny Defendants'

affirmative defenses, including official immunity and the public duty doctrine. On March 21, Barron and Defendant Missouri State Highway Patrol (Highway Patrol) filed their Response to Plaintiff's Renewed Partial Summary Judgment Motion (Ex. 13, R. 235-245), their Response to Plaintiff's Statement of Undisputed Material Facts (Ex. 16, R. 246-252, 257-276), and their Statement of Additional Material Facts in Opposition to Plaintiff's Renewed Summary Judgment Motion (Ex. 15, R. 253-276). Finally, on April 1, Osborn filed his Reply Suggestions in Support for His Renewed Motion for Partial Summary Judgment (Ex. 16, R. 277-282) and his Response to Defendants' Additional Material Facts in Opposition to Plaintiff's Renewed Motion for Partial Summary Judgment (Ex. 17, R. 283-338).

In the parties' cross-motions for summary judgment, the following relevant facts were expressly admitted:

1. On January 25, 2020, Trooper Barron was a law enforcement officer employed by the Highway Patrol. (Ex. 14 ¶ 1, R. 246, App. 66.)
2. Trooper Barron was patrolling eastbound on Highway P in Pomona, Missouri. (Ex. 6 ¶ 1, R. 45, App. 9; Ex. 17 ¶ 1, R. 283, App. 73.)
3. Barron had previously patrolled and was familiar with that portion of Highway P. (Ex. 6 ¶ 2, R. 45, App. 9; Ex. 17 ¶ 2, R. 283, App. 73.)

4. The relevant portion of Highway P is a narrow, two-lane rural highway that travels over steep hills and through a forest and has a 55 mph speed limit. (Ex. 6 ¶ 3, R. 45, App. 9; Ex. 14 ¶ 5, R. 247, App. 67; Ex. 17 ¶ 3, R. 283, App. 73.)
5. At approximately 9:25 p.m., an officer one mile ahead of Barron was passed by a white truck traveling 92 mph, which then visually increased its speed. (Ex. 6 ¶¶ 4–7, R. 46, App. 10; Ex. 17 ¶¶ 4–7, R. 284, App. 74.)
6. The officer notified Barron of the white truck, which then passed her vehicle at 99 mph. (Ex. 6 ¶¶ 8–9, R. 46–47, App. 10–11; Ex. 17 ¶¶ 4–7, R. 284, App. 74.)
7. Barron decided to chase the still speeding white truck and to close the distance before engaging her emergency lights to ensure the vehicle knew it was being pulled over and to see its license plate. (Ex. 6 ¶ 14, R. 48, App. 12; Ex. 17 ¶ 14, R. 286, App. 76.)
8. Barron had decided to engage her emergency lights when the white truck crested a hill and could no longer see or be seen by her. (Ex. 6 ¶ 21, R. 50–51, App. 14–15; Ex. 17 ¶ 17, R. 287, App. 77.)¹

¹ While facts 8–11 were controverted in the parties’ underlying cross-motions, Barron has included them here as Osborn subsequently admitted these facts in his Answer to Relator’s Petition for Writ of Prohibition. (Prohib. Answer ¶¶ 12iv–12vii, App. 131–132.)

9. Barron again decided to wait until she could again see the white truck's taillights before engaging her emergency lights. (Ex. 6 ¶ 22, R. 51, App. 15; Ex. 17 ¶ 18, R. 288, App. 78.)
10. At approximately 9:27 p.m., Barron crested the same hill a short distance from the intersection of Highways P and Z. (Ex. 15, R. 272, 276.)
11. Osborn was traveling south on Highway Z and turned left into the intersection to travel eastbound on Highway P. (Ex. 15, R. 272–274, 276.)

On May 2, 2022, Respondent, the Honorable John D. Beger, entered an order granting Osborn's Renewed Motion for Partial Summary Judgment "[f]or the reasons stated therein" and denied Barron's motion. The Circuit Court noted that "[t]he Official Immunity Doctrine and Public Duty Doctrine are to be applied on a case by case basis," and that it was "left firmly convinced" the doctrine did not shield Barron from liability in this case. (Ex. 18, R. 339.)

On May 23, Barron filed a Petition for Writ of Prohibition and supporting documents in the Missouri Court of Appeals for the Southern District, which was denied two days later. (Ex. 19, R. 340.) On May 27, Barron filed her petition for a writ of prohibition before this Court, which it granted on June 3.

ARGUMENT

- I. Mayela Barron is entitled to an order prohibiting the Honorable John D. Beger from taking any further action in the underlying case other than vacating his May 2, 2022 Order and sustaining Barron’s motion for summary judgment, because she is entitled to official immunity, in that the undisputed facts establish that Barron was a law enforcement officer who exercised discretion responding to an emergency.**

Standard of Review: Prohibition is a discretionary writ that is only issued to prevent an abuse of judicial discretion, to avoid irreparable harm to a party, or to prevent the exercise of extrajurisdictional power. *Rathert*, 624 S.W.3d at 163 (citing *State ex rel. Schwarz Pharma, Inc. v. Dowd*, 432 S.W.3d 764, 768 (Mo. banc 2014)). It is appropriate where an individual was entitled to judgment either due to official immunity or to the public duty doctrine. *Id.* (citing *State ex rel. Barthelette v. Sanders*, 756 S.W.2d 536, 539 (Mo. banc 1988)). “Importantly, immunity protects an official from suit altogether, not merely judgment.” *Id.* (citing *State ex rel. Alsup v. Kanatzar*, 588 S.W.3d 187, 190 (Mo. banc 2019)).

This Court reviews the grant or denial of summary judgment *de novo* and need not defer to the trial court’s determination, making its decision on the pleadings, record submitted, and the law. *Green v. Fotoohighiam*, 606 S.W.3d 113, 115–16 (Mo. banc 2020), *reh’g denied* (Sept. 29, 2020) (citing *Goerlitz v. City of Maryville*, 333 S.W.3d 450, 452 (Mo. banc 2011)). Summary judgment is only proper where the moving party establishes that there is no

genuine issue as to the material facts and that she is entitled to judgment as a matter of law. *Id.* A material fact “is one from which the right to summary judgment flows,” and only genuine disputes as to material facts preclude summary judgment. *Id.* (quoting another source). The Court reviews the record in the light most favorable to the party whom summary judgment was entered against, “and that party is entitled to the benefit of all reasonable inferences from the record.” *Id.* (quoting another source). The facts contained in affidavits or otherwise offered in support of the motion “are accepted as true unless” the nonmoving party’s response contradicts them. *Id.* “[T]he non-movant must support denials with specific references to discovery, exhibits, or affidavits demonstrating a genuine issue for trial. Facts not properly supported under Rule 74.04(c)(2) or (c)(4) are deemed admitted.” *Id.* at 116 (internal citations omitted) (citing *Cent. Tr. & Inv. Co. v. Signalpoint Asset Mgmt., LLC*, 422 S.W.3d 312, 320 (Mo. banc 2014)).

A. There is no genuine issue of material fact that Barron exercised her discretion responding to an emergency such that she is entitled to official immunity as a matter of law.

A permanent prohibitory writ is appropriate as there is no genuine issue of material fact that Barron exercised her discretion in responding to an emergency such that she is entitled to official immunity as a matter of law. *Kanatzar*, 588 S.W.3d at 190; *cf. Rathert*, 624 S.W.3d at 163.

In the parties' cross-motions, Osborn has admitted, asserted, or is deemed admitted by failing to specifically controvert the facts cited in Barron's writ petition and her suggestions in support. Those facts include the expressly admitted facts detailed above, as well as the following facts:

1. After deciding to pursue, Barron was forced to come to a complete stop to travel westbound on Highway P. (Ex. 6 ¶ 13, R. 48, App. 12; Ex. 17 ¶¶ 10–11, R. 285, App. 75.)
2. Barron knew that the area ahead contained numerous country and forest service roads and considered the white truck's ability to pull off the road, its increasing speed, the time of day, and the hilly terrain to determine that she should get closer to the white truck before engaging her emergency lights. (Ex. 6 ¶¶ 15–17, 19–20, R. 48–50, App. 12–14; Ex. 17 ¶¶ 11–14, R. 285–286, App. 75–76.)
3. Barron further considered how other drivers would react to emergency lights under these conditions and decided it was safer to wait until she was closer to the white truck. (Ex. 6 ¶ 18–20, R. 49–50, App. 13–14; Ex. 17 ¶¶ 15–16, R. 286–287, App. 76–77.)
4. Barron applied her brakes and attempted to swerve past Osborn, but could not avoid his vehicle and they crashed. (Ex. 15, R. 274–276.)

Osborn's responses, relying on admissions or other evidence of policies, training, or the purpose of equipment, do not controvert Barron's sworn statements as to the conditions present, the factors she considered, or the decisions she made. *See Fotoohigham*, 606 S.W.3d at 116 (nonmovant must support denials with specific references demonstrating genuine factual issue for trial; facts not properly supported are deemed admitted). This principle notably extends to Paragraphs 10–18 of Plaintiff's Response to Defendants' Additional Material Facts in Opposition to Plaintiff's Renewed Motion for Partial Summary Judgment (Ex. 17, R. 285–288, App. 75–78) which are nonresponsive to Barron's stated facts and so Barron's facts are accordingly admitted. *Id.*

This Court has repeatedly recognized that law enforcement officers must exercise their judgment and discretion when responding to emergencies and are thus entitled to official immunity. *See, e.g., Southers v. City of Farmington*, 263 S.W.3d 603, 618–19 (Mo. banc 2008); *Davis v. Lambert-St. Louis Int'l Airport*, 193 S.W.3d 760, 763–64 (Mo. banc 2006); *see also Kanatzar*, 588 S.W.3d at 190 (official immunity protects public officials that act within course of official duties without malice). Attempts to diminish the situation Barron faced as a mundane traffic offense is disingenuous in light of the undisputed facts. The white truck was traveling almost double the speed limit at night on a narrow, two-lane highway that travels over steep hills and through a forest,

presenting a clear, present, and immediate threat to anyone on or near that section of Highway P. It cannot reasonably be questioned that the situation Barron responded to was an emergency—*i.e.*, “an unforeseen combination of circumstances or the resulting state that calls for immediate action,” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 741 (3d ed. 1993); or “a sudden and serious event or an unforeseen change in circumstances that calls for immediate action to avert, control, or remedy harm,” BLACK’S LAW DICTIONARY 660 (11th ed. 2019). While this Court has not defined an emergency in this context, it is common sense that such situations are not confined to an exhaustive list, but are determined by the totality of the circumstances presented. A vehicle going 5 mph over the speed limit may not, in and of itself, be an emergency, but it certainly is when it’s driving into a parade. This Court has been consistently clear that officers are protected when they use their discretion in situations calling for them to take immediate action to address the possibility of serious harm. *See Lambert*, 193 S.W.3d at 763–64; *cf. Kanatzar*, 588 S.W.3d at 194 (discussing *Green v. Denison*, 738 S.W.2d 861 (Mo. banc 1987) *overruled in part on other grounds by Lambert*, 193 S.W.3d at 766 n.8, and noting that confronting a person who recently flourished a gun necessitated quick judgment calls and involved decisions official immunity protects); *Southers*, 263 S.W.3d at 607–08, 619 (engaging in high-speed chase and going twice the speed limit down a two-lane road to respond to fleeing

armed robbery suspect was “the kind of discretionary decisions that require professional expertise and judgment that the official immunity doctrine is intended to protect.”). An assertion or finding that a particular situation categorically cannot constitute an emergency runs contrary not only to the realities of life, but this Court’s own instructions. *See Kanatzar*, 588 S.W.3d at 191 (“Courts applying the doctrine of official immunity must be cautious not to construe it ‘too narrowly lest they frustrate the need for relieving public servants of the threat of burdensome litigation.’” (quoting *Kanagawa v. State By & Through Freeman*, 685 S.W.2d 831, 836 (Mo. banc 1985))).

In responding to the immediate and serious public danger, there is no dispute that Barron was required to—and did—make difficult decisions balancing the threat posed to the public by the white truck and her own pursuit² (Ex. 6 ¶¶ 4–9, R. 46–47, App. 10–11; Ex. 17 ¶¶ 4–9, R. 284–285, App.

² Unless otherwise noted, Barron uses pursuit in its plain meaning as “a following to overtake . . . a chasing with haste (as to kill or capture)[.]” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1848; *see also pursue*, *id.* (“to follow usu. determinedly in order to overtake, capture, kill, or defeat”). This is in contrast to a vehicular pursuit as defined in Highway Patrol General Order 41, which is “[a]n active attempt by a law enforcement officer in an emergency vehicle to apprehend an occupant of a moving motor vehicle when the driver of such vehicle is aware of the officer’s intent and actively tries to avoid apprehension through evasive tactics or by ignoring the lawful signal of the officer to stop.” Barron has consistently noted and maintained this distinction in the underlying cross-motions (Ex. 3, R. 15; Ex. 9 ¶ 1, R. 160–161; Ex. 14 ¶ 6, R. 247, App. 67), and maintains it here as it aptly describes her actions, reflects the word’s plain usage in prior case law, and because whether she was pursuing, overtaking, chasing, intercepting, etc. the white truck is

74–75), against the benefits of apprehending the truck, including whether to chase, how to chase, and whether and how to continue the chase based on the circumstances presented and her own knowledge and experience (Ex. 6 ¶¶ 13–22, R. 48–51, App. 12–15; Ex. 17 ¶¶ 10–18, R. 285–288, App. 75–78). *See Lambert*, 193 S.W.3d at 763 (officer responding to emergency exercised judgment determining route to take based on traffic and emergency location and the speed they could safely travel); *see also, Kanatzar*, 588 S.W.3d at 191 (compelling societal interest in vigorous and effective administration of public affairs requires law to protect individuals who daily conduct the public’s business using their best judgment in face of imperfect information and limited resources).

Finally, neither the availability of official immunity nor the existence of an emergency are defined or limited by statute, *Southers*, 263 S.W.3d at 615–17 (citing *Lambert*, 193 S.W.3d at 763–64), or by departmental policy, *id.* at 617. Any argument regarding the availability of immunity founded upon or rooted in compliance with applicable statutes or policies that do not indicate an intent to modify or supersede common law immunities is contrary to this Court’s precedent. *Id.* Osborn’s reliance on testimony or other evidence

ultimately irrelevant as there is no question that she was operating a motor vehicle in response to a police emergency at the time of the crash, *cf. Southers*, 263 S.W.3d at 618.

regarding whether Barron was engaged in a vehicular pursuit, had her lights and sirens on, or otherwise acted contrary to legal and procedural requirements is accordingly misplaced. The facts and circumstances presented in this case fall squarely within those recognized by *Lambert*: an officer who determines that a particular emergency requires a less conspicuous or silent approach exercises their discretion by not activating their lights and sirens. 193 S.W.3d at 764.

Assertions that Barron's summary judgment motion was properly denied because she did not aver ultimate facts regarding the exercise of or entitlement to discretion, emergency vehicle operation, the existence of a pursuit, etc. are misguided for two reasons. First, ultimate facts are a pleading standard and constitute what a jury must find to return a verdict for a plaintiff, *see R.M.A. by Appleberry v. Blue Springs R-IV Sch. Dist.*, 568 S.W.3d 420, 425 (Mo. banc 2019), while summary judgment motions are instead premised on material facts from which the right to judgment flows, *Fotoohigham*, 606 S.W.3d at 115. Second, rather than declaring unsupported factual and legal conclusions, Barron established the emergency, her exercise of discretion, and her actions being taken in the course of her official duties, *see Southers*, 263 S.W.3d at 618–19 (Mo. 2008), through uncontroverted constituent facts in the parties' cross motions. (Ex. 6 ¶¶ 1–9, 13–22, R. 45–51, App. 9–15; Ex. 14 ¶ 5, R. 247, App. 67; Ex. 17 ¶¶ 1–7, 10–18, R. 283–288, App. 73–78.)

There is no dispute that Barron is a public official (Ex. 14 ¶ 1, R. 246, App. 66; Prohib. Answer ¶ 11(i); App. 128) or that it is within the scope of her duties to respond to emergencies and apprehend public threats. She acted to preserve public safety and had no actual intent to cause injury. *Kanatzar*, 588 S.W.3d at 191 n.7 (“A defendant acts with malice when he wantonly does that which a man of reasonable intelligence would know to be contrary to his duty and which he *intends* to be prejudicial or injurious to another.” (emphasis added) (quoting *State ex rel. Twiehaus v. Adolf*, 706 S.W.2d 443, 447 (Mo. banc 1986))); *Twiehaus*, 706 S.W.2d at 447 (“The relevant definition of bad faith or malice in this context ordinarily contains a requirement of actual intent to cause injury.”). The ministerial exception does not apply because Barron was not performing a ministerial duty at the time of the accident; she was responding to an emergency and had the discretion to decide how and when to activate her emergency lights based on the circumstances. *See Kanatzar*, 588 S.W.3d at 191 n.8 (citing *Southers*, 263 S.W.3d at 619-20, as recognizing that “statutes and department policies regarding a police officer’s conduct during a vehicular pursuit did not impose a ministerial duty upon a police officer during a high-speed vehicle chase”); *Lambert*, 193 S.W.3d at 763–64. Barron is entitled to official immunity.

II. Mayela Barron is entitled to an order prohibiting the Honorable John D. Beger from taking any further action in the underlying case other than vacating his May 2, 2022 Order and sustaining

Barron’s motion for summary judgment, because the May 2 Order improperly denied immunity, in that the Order adopted and relied on arguments and case law expressly rejected by this Court.

Standard of Review: Prohibition is a discretionary writ that is only issued to prevent an abuse of judicial discretion, to avoid irreparable harm to a party, or to prevent the exercise of extrajurisdictional power. *Rathert*, 624 S.W.3d at 163. It is appropriate where an individual was entitled to judgment either due to official immunity or to the public duty doctrine. *Id.* “Importantly, immunity protects an official from suit altogether, not merely judgment.” *Id.*

This Court reviews the grant or denial of summary judgment *de novo* and need not defer to the trial court’s determination, making its decision on the pleadings, record submitted and the law. *Fotoohigham*, 606 S.W.3d at 115–16. Summary judgment is only proper where the moving party establishes that there is no genuine issue as to the material facts and that they are entitled to judgment as a matter of law. *Id.* A material fact “is one from which the right to summary judgment flows,” and only genuine disputes as to material facts preclude summary judgment. *Id.* (quoting another source). The Court reviews the record in the light most favorable to the party whom summary judgment was entered against, “and that party is entitled to the benefit of all reasonable inferences from the record.” *Id.* (quoting another source). The facts contained in affidavits or otherwise offered in support of the motion “are accepted as true

unless” the nonmoving party’s response contradicts them. *Id.* “[T]he non-movant must support denials with specific references to discovery, exhibits, or affidavits demonstrating a genuine issue for trial. Facts not properly supported under Rule 74.04(c)(2) or (c)(4) are deemed admitted.” *Id.* at 116 (internal citations omitted).

A. The Circuit Court improperly denied immunity by adopting rejected arguments and case law expressly rejected by this Court.

Prohibition is warranted in this action as the underlying May 2, 2022 Order was founded on arguments rejected and case law expressly overturned by this Court. By granting Plaintiff’s Renewed Motion for Partial Summary Judgment “[f]or the reasons stated therein,” the Circuit Court adopted the reasoning it contained. Osborn’s core argument is founded on *McGuckin v. City of St. Louis*, 910 S.W.2d 842 (Mo. App. 1995), which held that compliance with the emergency vehicle statute, Section 304.022, RSMo,³ is a prerequisite for officers to be protected by official immunity. Osborn argues that Barron was not responding to an emergency because she did not have her lights and siren on, she was not in a vehicular “pursuit” as defined by the Highway Patrol, and she did not notify her Troop in accordance with policy. (Ex. 11, R. 197.)

³ Citations are to the 2022 version of the revised statutes unless otherwise noted.

Official immunity, however, is a common law doctrine that is not abolished, abrogated, or in any way modified by § 304.022—“[s]ection 304.022, by its terms, does not provide official immunity.” *Lambert*, 193 S.W.3d 764; *Southers*, 263 S.W.3d at 620. *Lambert* went on to overturn *McGuckin*. 193 S.W.3d 764 n.3; see *Southers*, 263 S.W.3d at 616 n.19. Similarly, an officer’s failure to comply with applicable departmental policies does not except their conduct from immunity protections. *Southers*, 263 S.W.3d at 620. The question of whether an officer is responding to an emergency is distinct from whether the officer turned on her emergency lights and sirens, and immunity protects her decision that it was better not to use those systems on approach. *Lambert*, 193 S.W.3d 764. As the May 2 Order rests on principles contrary to binding case law, this Court should make the writ permanent to correct this deviation.

III. Mayela Barron is entitled to an order prohibiting the Honorable John D. Beger from taking any further action in the underlying case other than vacating his May 2, 2022 Order and sustaining Barron’s motion for summary judgment, because she owed no duty to Plaintiff Justin Osborn under the public duty doctrine, in that he failed to plead facts illustrating a duty to him as an individual as Barron responded to an emergency.

Standard of Review: Prohibition is a discretionary writ that is only issued to prevent an abuse of judicial discretion, to avoid irreparable harm to a party, or to prevent the exercise of extrajurisdictional power. *Rathert*, 624 S.W.3d at 163. It is appropriate where an individual was entitled to judgment

either due to official immunity or to the public duty doctrine. *Id.* “Importantly, immunity protects an official from suit altogether, not merely judgment.” *Id.*

This Court reviews the grant or denial of summary judgment *de novo* and need not defer to the trial court’s determination, making its decision on the pleadings, record submitted and the law. *Fotoohigham*, 606 S.W.3d at 115–16. Summary judgment is only proper where the moving party establishes that there is no genuine issue as to the material facts and that they are entitled to judgment as a matter of law. *Id.* A material fact “is one from which the right to summary judgment flows,” and only genuine disputes as to material facts preclude summary judgment. *Id.* (quoting another source). The Court reviews the record in the light most favorable to the party whom summary judgment was entered against, “and that party is entitled to the benefit of all reasonable inferences from the record.” *Id.* (quoting another source). The facts contained in affidavits or otherwise offered in support of the motion “are accepted as true unless” the nonmoving party’s response contradicts them. *Id.* “[T]he non-movant must support denials with specific references to discovery, exhibits, or affidavits demonstrating a genuine issue for trial. Facts not properly supported under Rule 74.04(c)(2) or (c)(4) are deemed admitted.” *Id.* at 116 (internal citations omitted).

A. Barron’s emergency operation of a vehicle involved a duty owed to the public generally and not Osborn individually.

Prohibition is appropriate because Osborn failed to plead facts that he suffered a reasonably foreseeable injury as a particular, identifiable individual such that Barron owed a duty to him. *See Southers*, 263 S.W.3d at 612 (“because public duty doctrine is not affirmative defense, the plaintiff bears burden of pleading facts in the petition that support existence of legal duty that establishes tort liability” (citing *Green v. Missouri Dept. of Transp.*, 151 S.W.3d 877, 883 (Mo. App. S.D. 2004), *abrogated in part on other grounds by Southers*, 263 S.W.3d at 614 n.13); *cf. Rathert*, 624 S.W.3d at 163 (prohibition appropriate where official immunity or public duty doctrine entitled individual to dismissal). This Court recognized in *Southers* that, in contrast to non-emergencies, no prior Missouri case had considered the public duty doctrine’s application to an officer’s emergency operation of a motor vehicle. 263 S.W.3d at 619. It was ultimately held that the ministerial-duty exception to the doctrine did not apply in the discretion-laden emergency situation the officer responded to, as his police pursuit conduct arose from his duties owed to the public generally. *Id.* at 619–20. “Missouri courts recognize a duty owed to an individual that escapes the protections of the public duty doctrine where a plaintiff suffers injuries arising from circumstances peculiar to him as an

individual, not merely as part of a certain ‘class’ of individuals who are foreseeable plaintiffs.” *Id.* at 620 n.23.

The only allegations regarding a duty to Osborn or injuries caused by an alleged breach are found in his First Amended Petition, where he alleges that Barron’s actions stood “a reasonable likelihood of serious physical injury or death to other motorists,” (Ex. 1 ¶ 20, R. 3), and that she violated statutes “intended to protect the motoring public, of which [Osborn] is a class member of the protected category of persons which the statute is designed to protect,” (Ex. 1 ¶¶ 27-35, R 4–5). While being part of the motoring public class may establish a duty in other situations, the underlying record contains no facts showing circumstances particular to him as an individual that led to reasonably foreseeable injury while Barron responded to the emergency. *See Cox v. Dep’t of Nat. Res.*, 699 S.W.2d 443, 449 (Mo. App. W.D. 1985) (noting distinction between cases where plaintiff pleaded personal duty owed particularly to them and cases where the duty was owed to the general public). Arguments that the public duty doctrine did not apply because sovereign immunity had been waived (Ex. 11, R. 198);⁴ that Barron was not responding

⁴ This argument is a misreading of *Southers*, which found that the waiver of statutory sovereign tort immunity for motor vehicle operations precluded immunity for government *employers* under the public duty doctrine. *Southers*, 263 S.W.3d at 613–14. The Court, however, was explicit that the doctrine still protects public *employees*. *Id.*

to an emergency or engaged in a vehicular “pursuit” as defined by the Highway Patrol (Ex. 11, R. 198); or that she was required to obey all traffic laws and operate with the highest degree of care “[u]ntil a pursuit or emergency is initiated” (Ex. 16, R. 279) all fall short in light of binding precedent and the uncontroverted facts demonstrating that an emergency existed (Ex. 6 ¶¶ 3–9, R. 45–47, App. 9–11; Ex. 17 ¶¶ 3–9, R. 283–285, App. 73–75). *See Southers*, 263 S.W.3d at 620 (officer’s failure to comply with applicable departmental policies or provisions of § 304.022 did not except their conduct from the public duty doctrine). As she was responding to an emergency and no applicable exception was pleaded, Barron owed no duty to Osborn and this Court should protect her from suit.

CONCLUSION

For those reasons, Relator Mayela Baron is entitled to a writ of prohibition. There is no genuine issue of material fact that she was a law enforcement officer who exercised her discretion responding to an emergency such that she is entitled to official immunity as a matter of law. By granting Plaintiff’s Renewed Motion for Partial Summary Judgment “[f]or the reasons stated therein,” the Circuit Court adopted and relied upon arguments and case law contrary to binding precedent. Finally, as Barron was operating her vehicle in response to an emergency, the duties arising from her conduct were owed to the public generally, and Plaintiff Justin S. Osborn failed to plead facts

illustrating that he suffered a reasonably foreseeable injury as a particular, identifiable individual. Protection under the official immunity and public duty doctrines is accordingly appropriate.

Mayela Barron therefore respectfully requests that this Court enter a permanent writ of prohibition ordering the Honorable John D. Beger to vacate the May 2, 2022 Order and enter an order sustaining her motion for summary judgment as to all three claims against her in the underlying proceeding.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was electronically filed on August 19, 2022, with the Clerk of the Court using the CM/ECF system and was additionally emailed to:

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CERTIFICATE OF COMPLIANCE

I hereby certify that on August 19, 2022, pursuant to Rule 84.06(c), Appellants' Brief complies with the limitations contained in Rule 84.06(b), was prepared using Microsoft Word in 13-point Century Schoolbook font, contains 6,947 words, as determined by Microsoft Word, and was electronically served on all counsel of record through Case.net.

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