Pursuant to Court order

SUPREME COURT OF KENTUCKY
CASE NOs. 2014-SC-000373, 000389, 000394
COURT OF APPEALS NO. 2012-CA-001961

GARY MARTIN, BOBBY MOTLEY, AND
MIKE SAPP — APPELLANTS

v. ON DISCRETIONARY REVIEW FROM THE COURT OF APPEALS
2012-CA-001961
APPEAL FROM THE FRANKLIN CIRCUIT COURT
SUMMARY JUDGMENT
HONORABLE SHEILA R. ISAAC, SPECIAL JUDGE
NO. 07-CI-00820

STEPHEN O'DANIEL — APPELLEE

BRIEF OF *AMICI CURIAE*
KENTUCKY ASSOCIATION OF COUNTIES, INC.
AND KENTUCKY SHERIFFS' ASSOCIATION, INC.

COUNSEL FOR *AMICI CURIAE* ON REVERSE

CERTIFICATE OF SERVICE

I hereby certify that on June 4 2015, a true and correct copy of the *Amici Curie'* Motion for leave to file Amicus Brief was served via first-class mail, postage prepaid, on the following: Hon. Shelia Isaac, Special Judge, Franklin Circuit Court, P.O. Box 678, Frankfort, KY, 40602-0678, Thomas E. Clay, 462 South 4th Street, Suite 101, Louisville, KY 40202, L. Scott Miller, 919 Versailles Rd, Frankfort, Kentucky 40601, William E. Johnson, 326 W. Main Street, Frankfort, Kentucky 40601. Charles E. Johnson, Heidi Engel, 43 S. Main Street, Winchester, Kentucky 40391.

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STATEMENT OF POINTS AND AUTHORITIES

PURPOSE AND INTEREST OF THE *AMICI CURIAE*

The Movant Kentucky Association of Counties, Inc., (KACo), is a trade association established in 1974, which collectively represents and serves the interests of all 120 counties within the Commonwealth. KACo has provided numerous *amicus curiae* briefs to Kentucky courts in the past 40 years. Movant Kentucky Sheriffs' Association, Inc. is a trade association which is comprised of elected Sheriffs within the Commonwealth.

The Movants are vitally interested in the determination of the points of law involved in this appeal and the magnitude of the possible effects on law enforcement which in turn may compromise the efforts of Kentucky counties to provide safety and property protection to citizens and property owners. Public policy favors exposure of crimes, yet the threat of vexatious and spurious civil claims untested, unfiltered at the initial stages of such litigation, particularly common-law malicious prosecution claims filed by resentful acquitted criminal defendants turned plaintiffs, will inhibit Sheriffs and all Kentucky peace officers from the vigorous performance of their sworn duties to protect, serve and preserve the law and order within the Commonwealth. The following provides in summary the reasons and basis for those concerns.

The Court of Appeals' decision does not adhere to the long standing admonition that malicious prosecutions are not favored in Kentucky. That judicially created narrow door was further opened by the decision ignoring or marginalizing some underlying legal presumptions, applicable law, historical policy considerations, as well as basic defenses available to unfounded claims. More particularly: that ordinary rules of tort law apply to the elements of tort claims under Kentucky common law; that a grand jury indictment

establishes probable cause, that an indictment cannot be challenged by parsing a law enforcement officer's grand jury testimony; that there is entitlement to qualified immunity, which cannot be defeated because a law enforcement officer's vigorous exercise of duty is framed as an intentional tort, malicious prosecution, by a criminally accused turned civil plaintiff; that a claim cannot succeed by merely reframing the immunized prosecutor's litigating decisions into a malicious prosecution claim against the subordinate unimmunized investigator and/or by subjecting a common law tort claim to the scrutiny of an incompatible and unworkable federal constitutional standard for review for a 42 U.S.C. §1983 action. Without the foregoing, malicious prosecution claims go unimpeded and untested at initial stages of litigation and consequently offer considerable opportunities for a plaintiff to proceed to trial.[1] In sum, Movants' purpose is to also place these misconceptions of law into a larger legal landscape in which the issues before this Court belongs.

Moreover, counties are responsible for representing county employees, including sheriffs and county police officers, when they are sued for action taken within the scope of their employment. Counties many times pay legal costs, as such bear the financial burden of defending Kentucky Sheriffs and county police. In addition, the counties' indemnification of defense costs, when there is uselessly prolonged litigation, is eventually paid by innocent third parties, the county taxpayers.

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[1] Historical statistics generated by the Administrative Office of the Courts, the Department of Court Services Research and Statistics generated statistics for cases similar to the factual situation before this court -- investigation, no arrest or summons, an indictment by an independent grand jury, a not guilty verdict after a speedy and fair trial or dismissals (obviously, the numbers would increase if arrests followed by not guilty/dismissals were included). In 2013 there were 23,150 cases indicted and in 2014 the number was 23,694. For those same years (of course, not necessarily the same indictments): 2013, 116 acquitted/not guilty, 135 dismissals by motion of prosecutor or otherwise dismissed; 2014, 129 acquitted/not guilty, 105 dismissals by motion of prosecutor or otherwise dismissed.

Kentucky Association of Counties, Inc. and Kentucky Sheriffs' Association, Inc., therefore, respectfully submits this brief of *Amici Curiae* in support of Appellees' position in this appeal and urges this Court to reverse the decision of the Court of Appeals and in so doing reinstate the Summary Judgment and Opinion of the Franklin Circuit Court.

STATEMENT OF FACTS

Four Kentucky State Troopers, Det. Martin, Sgt. Motley, supervisor Lt. Col. Sapp, and Det. Riley[2], involved in various degrees and ways, investigated allegations of wrongdoing by the Appellant O'Daniel. There being no arrest, the Troopers met and handed over their investigation materials to a special prosecutor, the local prosecutor having made a written recusal to the Attorney General. The special prosecutor presented testimony to the Franklin County Grand Jury which found probable cause to indict and returned a true bill. A jury found the Appellant not guilty.

Thereafter, Appellant sued the Troopers for damages under a common-law tort claim of malicious prosecution alleging, as later delineated by the Court of Appeals: all three Troopers conspired to maliciously prosecute Appellant and that conspiracy included alleged machinations leading to the appointment of the special prosecutor; Trooper Sapp ignored orders from Justice and Safety Cabinet personnel[3] and that Sapp failed to timely produce investigative information to Appellant's criminal defense attorney; Trooper Martin was alleged to have twice lied to the grand jury and did not timely turn over

[2] Trooper Riley was dismissed from the action by Summary Judgment.

[3] The Kentucky State Police is a department within the Justice and Safety Cabinet.

investigative files prior to trial; Trooper Motley was alleged to have withheld the first of a witness' several statements.[4]

The Troopers sought a summary judgment for qualified immunity and failure to prove the causation element of a malicious prosecution claim. The trial court denied the motion without any finding of facts or conclusions of law. On appeal, the Court of Appeals affirmed. Thereafter, additional discovery was taken of the special prosecutor and his assistant and the trial court granted a motion for Summary Judgment under *Raine v. Drasin*, 621 S.W.2d 895 (Ky. 1981) concluding Appellant failed to meet the first element necessary to prove malicious prosecution, the institution or continuation of original judicial proceeding, and that the all defendants were entitled to immunity under *Rehberg v. Paulk*, ___ U.S. ___, 132 S.Ct. 1497,182 L. Ed.2d 593 (2012).

A second appeal followed at which the Appellant additionally asserted the Troopers did not have to make the decision to prosecute and that they had influenced the decision to prosecute by providing inaccurate, false and misleading information to the prosecutors.[5] The Court of Appeals overruled the lower court saying again that qualified immunity was not available when the claim was for one sounding in intentional tort, *Yanero v. Davis*, 65 S.W.3d 510 (Ky. 2001); that the recent United States Supreme Court case of *Rehberg* was inapplicable and immunity under *Rehberg* applied only to Trooper Martin who had testified at the grand jury and only for his grand jury testimony, not for his actions prior to the indictment. The Court of Appeals remanded directing the trial court to review the common-law tort claim of malicious prosecution using a standard of review for violation of constitutional rights claims under 42 U.S.C. §1983.

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[4] Court of Appeals Opinion, RA2, Vol. V, pp.717-21.

[5] Court of Appeals Opinion, RA2, Vol. V, pp.717-21.

ARGUMENT

A. The Court of Appeals erroneously determined the trial court should review Appellant's common-law tort claim of malicious prosecution using a standard of review for 42 U.S.C. §1983 actions, deprivation of Constitutional rights under the color of law, a federal law cause of action not asserted by Appellant.

Analogies between §1983 and common-laws tort claims can be pernicious. As the Supreme Court has said, §1983 "ha(s) no precise counterpart in state law. (I)t is the purest coincidence when state statutes or the common law provide for equivalent remedies; any analogies to those causes of action are bound to be imperfect." *Wilson v. Garcia*, 471 U.S. 261, 272 (1985) (internal quotations and citation omitted).[6] Notwithstanding this admonition, the Court of Appeals directed the trial court on remand to follow the instruction of a 6th Circuit Court of Appeals case and review the common law claim using a review proposed for §1983 claims (although Appellant made no such claim). *Sykes v. Anderson*, 625 F.3d 294 (6th Cir. 2010) provides:

> First, the plaintiff must show that a criminal prosecution was initiated against the plaintiff and that the defendant made, influenced or participated in the decision to prosecute. Second, *because a §1983 claim is premised on the violation of a constitutional right, the plaintiff must show that there is a lack of probable cause for the criminal prosecution.* Third, the plaintiff must show that, as a consequence of a legal proceeding, *the plaintiff suffered a deprivation of liberty, as understood in our Fourth Amendment jurisprudence, apart from the initial seizure.* Fourth, the criminal proceeding must have been resolved in the plaintiff's favor. *Sykes at* 308-09. (internal citations and quotations omitted) (emphasis added).

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[6] §1983. Civil action for deprivation of rights
Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

1. **There are fundamental differences between a common-law claim for malicious prosecution and a 42 U.S.C. §1983 claim, deprivation of any rights, privileges or immunities secured by the Constitution.**

First, §1983 "is narrower (than pre-existing common-law torts) in that it applies only to tortfeasors who act under color of state law." *Rehberg v. Paulk*, ___U.S.____, 132 S. Ct. 1497, 1505, 182 L.Ed.2d 593 (2012). Indeed, the Restatement (Second) of Torts §653 (1977) describes the tort of malicious prosecution in terms of a "private person" and makes no provision for the liability of a public official.

Second, a state law malicious prosecution claim does not rest solely on a violation of a constitutional right nor is the plaintiff required to prove the deprivation of liberty as understood in Fourth Amendment jurisprudence. The Fourth Amendment has no application to unwarranted prosecutions.

Third, unlike a malicious prosecution claim, a Fourth Amendment claim is not dependent on the outcome of an antecedent prosecution, whether guilty/not guilty or dismissed. The Supreme Court has explained, "(t)he wrong condemned by the Fourth Amendment is 'fully accomplished' by the unlawful search or seizure itself." *United States v. Leon*, 468 U.S. 897, 906 (1984) (quoting *Stone v. Powell*, 428 U.S. 465, 540 (1976)).

Fourth, *Raine v. Drasin*, 621 S.W.2d 895, 895 (Ky. 1981) requires malice, strictly construed, as one of the elements of common-law malicious prosecution claim. A §1983 action, in contrast, does not require malice. The Sixth Circuit case on which the Court of Appeals relied, makes this conclusion:

> this circuit has never required that a plaintiff demonstrate 'malice' in order to prevail on a Fourth Amendment claim for malicious prosecution, and we join the Fourth Circuit in declining to impose that requirement. The circuits that require malice have imported elements from the common

> law without reflecting on their consistency with the overriding *constitutional* nature of §1983 claim. Common law and §1983 claims have different foundations. As the Supreme Court explained in *Albright v. Oliver*, 'constitutional tort 42 U.S.C. §1983 authorizes stands on its own, influenced by the substance, but not tied to the formal categories and procedures of the common law. *Sykes* at 309, (internal citations omitted, emphasis not added).

Thus, when the Court of Appeals directs the trial court to the *Sykes* proposed review it "imports elements" of §1983 into consideration of a common-law malicious prosecution claim, conflating the two by embracing the constitutional nature of a §1983 cause of action and abandoning a review established under Kentucky case law, *Raine v. Drasin.*

B. The trial court properly ruled on summary judgment that the Appellant's common-law claim for malicious prosecution failed for want of establishing an element required under *Raine v. Drasin,* more particularly the claim fails for want of proximate causation.

As the Court of Appeals decision explained, "Kentucky law is historically antagonistic toward allegations of malicious prosecution, see *Broaddus v. Campbell*, 911 S.W.2d 281, 285 (Ky. Ct. App. 1995) (citing *Reid v. True*, 302 S.W.3d 846 (Ky. 1957), thus elements of malicious prosecution are strictly construed, *Davidson v. Castner-Knott Dry Goods Co.*, Inc., 202 S.W.3d 597, 602 (Ky. Ct. App. 2006) (*Prewitt v. Sexton*, 777 S.W.2d 891, 895 (Ky. 1989)."

Six elements are required in *Raine*, the failure to prove one causes the claim to fail:

> 1) the institution or continuation of original judicial proceedings,...(2) by, or at the instance of the plaintiff (3) the termination of such proceeding in defendant's favor, (4) malice in the institution of such proceeding, and (6) the suffering of damage as a result of the proceeding. Id at 899.

The trial court measured the Troopers' actions within the totality of circumstances and found intervening decisions, actions, and events broke the chain of causation.

The trial court's Summary Judgment opinion is readily understandable and avoids wading through the animus and resentment found in such cases, as well as the additional factors of political intrigue, state government inter-cabinet squabbling and conclusory allegations. Using ordinary tort rules and clear findings of fact, it cuts to the gravamen, the failure to prove causation.[7] First, the conclusion of law: *"This leaves the plaintiff unable to prove the first element of malicious prosecution, the institution or continuation of judicial proceedings by the defendant."* That conclusion was determined from the following findings of facts:

Taking the trial court's last finding first: "*Further, none of the defendants made a prior arrest or filed a criminal complaint against the plaintiff*". As to malicious prosecution claims the element of causation is described in broad terms as "the proximate and efficient cause of maliciously putting the law in motion," *McClarty v. Bickel*, 155 Ky. 254, 159 S.W. 783, 784 (1913); *Chesapeake & O. Ry. Co. v. Favery*, 212 Ky. 140, 278 S.W. 551, 552 (1925). The Sixth Circuit has described Kentucky law as requiring "the initiation or encouragement of the prosecution." *Bryant v. Com. of Ky.*, 490 F.2d 1273, 1274 (6th Cir. 1974).

The Court of Appeals chose to rely on *Sykes* as to the meaning of the term "participated," being akin to "aided" and that to be liable for "participating" in the decision to prosecute the officer must participate in a way that aids in the decision, as opposed to passively or neutrally participating. But *Sykes* elaborates further, "whether an officer influenced or participated in the decision to prosecute hinges on the degree of the officer's involvement and the nature of the officer's actions (against the background of tort liability), *Sykes* at 312.

[7] RA2, Vol. V., pp 717-24.

Unlike *Sykes* and the two other federal cases upon which the Court of Appeals relies, there was no arrest or summons issued. The Troopers investigated the case and turned the materials over to the prosecutor who made the decision to seek an indictment. This is significant in two regards. The Troopers did not *initiate* the prosecution by arrest -- there was no action by them that set a proceeding of the criminal justice system in motion against a named accused. The *Rehberg* decision offers a telling observation that the trial court considered in its Summary Judgment Opinion: "*By testifying before a grand jury, a law enforcement officer does not perform the function of applying for an arrest warrant; nor does such an officer make the critical decision to initiate a prosecution.*" *Rehberg* at 607 (emphasis added).

Initiation of a proceeding is explained in another federal case upon which the Court of Appeals relied, *Phat's Bar & Grill v. Louisville Jefferson County Metro Government,* 918 F. Supp.2d 654, 665 (W.D. Ky. 2013) "under Kentucky law and common law generally… (T)he initiation of a criminal proceeding generally occurs upon either the actual arrest of a person, the return of an indictment, the issuance of an arrest warrant, or a summons to appear and answer criminal charges" (the District cited an unpublished Kentucky Court of Appeals decision).

At the point where the investigation was handed over and pre-indictment meetings held, the Troopers' participation was completed.[8] "(T)he prosecutor's act in seeking an indictment is but the first step in the process of seeking a conviction." *Malley v. Briggs*, 445 U.S. 335, 343 (1986). The decision to pursue an indictment was initiated, commenced by the prosecutor, not the investigators. The prosecutor's independent

[8]The appellant's allegations of pretrial discovery violations are extraneous, matters appropriately addressed by the trial court at trial or pretrial.

judgment and litigation decisions thereafter are historically respected by the judiciary. The Constitution has never been understood to require judicial review of the decision to prosecute. *Albright v. Oliver*, 510 U.S. 266, 282-83 (1994).

Further consider that law enforcement investigators play a highly subordinate role in prosecutorial decision-making. Justice Powell explained in his *Malley* dissent, "Our common law has long recognized a reasonable division of functions in law enforcement: the gathering of information is virtually the exclusive province of the police, and the weighting and judging that information is virtually the exclusive province of the magistrate." Id at 352.

The question follows, did the Troopers mislead or otherwise exercise improper undue influence over the prosecutor's decision to seek the Appellant's indictment? The trial court found "*Both prosecutors testified by deposition that it was Stengel who made the decision to go forward with the prosecution. He determined the crime to charged, presented the case to the grand jury and prosecuted the case at trial after the indictment was returned.*"

There were no actions by the Troopers that influenced the prosecutor to make a decision to prosecute that he would not have otherwise made. The prosecutor was not a mere pawn in the alleged conspiracy. As the trial court found, at deposition the prosecutor swore that the decisions to seek an indictment and proceed to trial were his alone.[9] Even if there were investigators' animus as alleged, that does not necessarily show the investigators induced the prosecutor to pursue a prosecution, *Hartman v. Moore,* 547 U.S. 250, 263 (2006). The Supreme Court further explained in *Hartman*: "Herein lies the distinct problem of causation in cases like this one. Evidence of an

[9] RA2, Vol. III, pp 392-448

inspector's animus does not necessarily show the inspector induced the action of the prosecutor who would not have pressed charges otherwise." The Court continued reiterating a long-standing presumption:

> Moreover, to the factual difficulty of divining the influence of an investigator or other law enforcement officer upon the prosecutor's mind, *there is an additional obstacle in the long-standing presumption of regularity accorded to prosecutorial decision making. And this presumption that a prosecutor has legitimate grounds for the action he takes is one we do not lightly discard, given our position that judicial intrusion into executive discretion of such high order should be minimal.* (internal citations omitted) Id at 263 (emphasis added)

While the Court of Appeals quotes *Sykes* warning that officers cannot hide behind officials who they have defrauded, prosecutors Stengel and Van DeRistyne never said they were defrauded, misled or pressured. The trial court saw nothing to contradict the prosecutors' testimony, when squared with the Appellant's threadbare allegations, insinuations and conspiracy theory. Thus, the chain of causation was broken by the independent prosecutorial litigating decision to seek an indictment. Unfortunately, the Court of Appeals relied upon evidence that is yet to be created and cannot be created later at trial.

The trial court also found: "*The underlying criminal case was initiated by the return of an indictment by the Franklin County Grand Jury, upon submission of the matter by the special prosecutor, R. David Stengel and his assistant, Thomas Van DeRostyne.*" The Appellant's prosecution began with a grand jury indictment -- not an arrest, not a summons. In this instance, the true bill, returned by this independent decision-making body, is also an intervening event that breaks the chain of causation while at the same time is prima facie evidence of probable cause, thus defeating two necessary elements of

the malicious prosecution claim under *Raine*, the absence of probable cause and proximate causation.

Two investigators did not testify at the Grand jury, but certainly the Trooper who did testify is entitled to immunity for that testimony under *Rehberg v. Paulk.* That Trooper, as will be explained later, is also entitled to absolute immunity for any prior acts alleged to be wrongdoings before his grand jury testimony was offered. But most significantly, the Appellant's claim cannot be sustained without consideration of the substance of the Trooper's immunized grand jury testimony to determine whether it supplied probable cause. At this point it should be added that probable cause can properly be determined as a matter of law by a trial court, *Reid v. True*, 302 S.W.2d 846 (Ky. 1957), and the Appellant's inability to parse the grand jury testimony would lead to a simple conclusion that lack of probable cause is absent in Appellant's claim because the indictment established probable cause.

C. The Court of Appeals misread *Rehberg v. Paulk* and incorrectly held the absolute immunity granted thereunder could be defeated by merely pointing to a nonimmunized act that preceded the immunized tort.

The Court of Appeals' decision recognized that Trooper Martin's grand jury testimony was immunized, yet cautioned that the Appellant's claim can somehow be based on Trooper Martin's alleged misconduct prior to his grand jury testimony that played some part in the prosecution. This conflicts with *Rehberg.* The Supreme Court warned:

> this rule may not be circumvented by claiming that a grand jury witness conspired to present false testimony or by using evidence of the witness' testimony to support any other §1983 claim concerning the initiation or maintenance of a prosecution. Were it otherwise, 'a criminal defendant turned civil plaintiff could simply reframe a claim to attack the preparation instead of the absolute immune actions themselves.' ('(J)udges, on mere

> allegations of conspiracy or prior agreement, could be hauled into court and made to defend their judicial acts, the precise result judicial immunity was designed to avoid'). In the vast majority of cases involving a claim against a grand jury witness, the witness and the prosecutor conducting the investigation engage in preparatory activity, such as a preliminary discussion in which the witness relates the substance of his intended testimony. We decline to endorse a rule of absolute immunity that is so easily frustrated. Id at 605-06.

D. **The Court of Appeals was incorrect when it proof texted the case of *Yanero v. Davis*, and concluded Appellees could not be entitled to qualified immunity because the claim against them did not sound in negligence.**

The Court of Appeals, to borrow a term from theologians, was proof texting when it read *Yanero v. Davis*, 65 S.W.3d. 510 (Ky. 2001) saying that qualified immunity is available to law enforcement only when the action against them sounds in negligence. Proof texting is using an out-of-context quotation to establish a proposition, when the quote does not accurately reflect the original intent of the author and the document quoted when read as a whole does not support the proposition for which it was cited. An easy read of *Yanero* makes clear this Court was in no way limiting qualified immunity to negligence claims.

Furthermore, the Court of Appeals exclusion defeats the very purpose of qualified immunity, *e.g.* immunity from suit, halting a suit and thus the costs of going to trial, and is not a defense to a claim that is dependent upon the nature of the cause of action. "Qualified immunity balances two important interests -- the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction and liability when they perform their duties reasonably." *Pearson v. Callahan*, 555 U.S. 223, 231 (2009). The Court of Appeals lack of circumspection devalues the interests and purpose of qualified immunity to the extreme detriment of those who are entitled to its protection.

It needs to be added that prosecutors have absolute immunity from common-law malicious prosecution claims, yet under the Court of Appeals reasoning a law enforcement officer has no immunity from such, solely because the alleged tort does not sound in negligence. This reasoning allows the resentful criminal defendant turned plaintiff to circumvent the prosecutorial immunity by attributing allegedly wrongful prosecutions to unprotected investigators. As the Supreme Court said in *Albright,* "a malicious prosecution theory...against an investigator as responsible for bringing a malicious prosecution theory...is anomalous. The principal player in carrying out a prosecution -- in the formal commencement of a criminal proceeding...is not the police officer but prosecutor." "(T)he star player is exonerated, but the supporting actor is not." Id at 510 (internal citations omitted).

CONCLUSION

There is accordingly no basis to treat the investigators as legally responsible for allegedly malicious prosecution under the common law of Kentucky when such claim is reviewed under appropriate law. Qualified immunity is available to law enforcement officers under *Yanero v. Davis* even when a claim against them does not sound in negligence. The Supreme Court decision of *Rehberg v. Paulk* entitles law enforcement officers who testify at grand jury absolute immunity for that testimony as well as absolute immunity for actions in preparation for that testimony. The Opinion of the trial court is supported by fact and law. The Opinion of the Court of Appeals should be reversed and the Opinion and Judgment of the Franklin Circuit Court should be reinstated.

Respectfully submitted,

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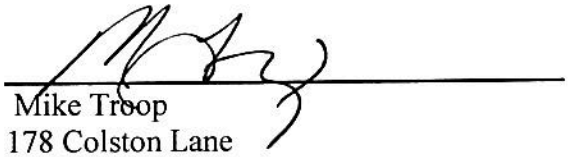

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