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BY ELECTRONIC FILING

Maura A. Looney, Clerk
Supreme Judicial Court
One Pemberton Square, Suite 1400
Boston, MA 02108-1724

Re: *DePina v. Worcester County District Attorney's Office, et al.*, No. FAR-30219

Dear Ms. Looney:

This Office represents defendants-appellees the Worcester County District Attorney's Office, Rachael Rollins, Joseph Early, Jr., and Anthony Melia (collectively, the "Commonwealth Defendants") in the above-referenced action. The Commonwealth Defendants respectfully submit this letter in opposition to plaintiff-appellant Joao DePina's Application for Further Appellate Review ("Application" or "App."). The Application should be denied for three reasons: (1) the Appeals Court's decision is squarely in line with this Court's decisions regarding the long-standing doctrine of prosecutorial immunity in the Commonwealth, and the Application presents no basis on which to revisit that doctrine, (2) the Application disregards and mischaracterizes the other mechanisms for holding prosecutors accountable for alleged misconduct as an alternative to civil liability, and (3) this case does not provide an opportunity for meaningful review of the doctrine of prosecutorial immunity. Accordingly, Mr. DePina's application is not "founded on substantial reasons affecting the public interest or the interests of justice," Mass. R. App. P. 27.1(a), and the Appeals Court's decision does not warrant further review by this Court.¹

This case concerns whether the claims against prosecutors in the District Attorneys' Offices of Worcester County and Suffolk County—based on allegations that either they caused a criminal complaint to be filed against Mr. DePina or that they then prosecuted that criminal complaint—are barred by the doctrine of prosecutorial immunity. *DePina v. Worcester Cnty. Dist. Attorney's Off.*, 250 N.E.3d 619, 2025 WL 353839 at *1 (Mass. App. Ct. 2025). Mr. DePina alleges that after he heckled then Suffolk County District Attorney Rachael Rollins at a televised press conference, Rollins caused a criminal complaint to be filed against him for unlawful intimidation. *Id.* The Suffolk County District Attorney's Office recused itself, and the Worcester

¹ Mr. DePina's prior Application for Direct Appellate Review was denied by this Court. *See* DAR-29514.

County District Attorney's Office handled the prosecution of the case. *Id.* In 2022, a judge in Boston Municipal Court dismissed the criminal complaint for lack of probable cause, and this civil action ensued. *Id.*

In the decision below, the Appeals Court applied the doctrine of absolute prosecutorial immunity, which protects prosecutors from private suits for actions conducted in the discharge of the prosecutors' official duties. *Id.* at *2, citing *Chicopee Lions Club v. Dist. Atty. for Hampden Dist.*, 396 Mass. 244, 252 (1985). The Appeals Court concluded that under that doctrine, the claims against Rollins were barred because they were based on allegations that she "caused" a criminal complaint to be filed against Mr. DePina, actions that were "sufficiently related to the prosecutorial function to warrant absolute protection." *DePina*, 2025 WL353839, at *2, quoting *Chicopee Lions Club*, 396 Mass. at 252.²

The arguments raised and addressed below do not warrant further appellate review because the Application identifies no reason to revisit the doctrine of prosecutorial immunity. That doctrine, which Mr. DePina asks this Court to "abolish," *see* App. 26, has long been recognized and reaffirmed by this Court, consistent with U.S. Supreme Court precedent. *See, e.g., Dinsdale v. Commonwealth*, 424 Mass. 176, 181 (1997); *Chicopee Lions Club*, 396 Mass. at 251-52; *Andersen v. Bishop*, 304 Mass. 396, 399 (1939); *see also Van de Kamp v. Goldstein*, 555 U.S. 335, 345 (2009); *Imbler v. Pachtman*, 424 U.S. 409, 423-24 (1976). Indeed, this Court and the Appeals Court have consistently applied the doctrine in a variety of circumstances where judicial officers, government attorneys and advocates perform work integral to the judicial process in adversarial settings, including recently. *See Hornibrook v. Richard*, 488 Mass. 74, 84 (2021) (conservator appointed by probate court); *C.M. v. Comm'r of Dep't of Child. & Fams.*, 487 Mass. 639, 652 (2021) (social workers initiating care and protection proceedings); *Dinsdale*, 424 Mass. at 180-82 (government attorneys in civil cases); *Padmanabhan v. City of Cambridge*, 99 Mass. App. Ct. 332, 341, *rev. den'd*, 487 Mass. 1106 (2021) (administrative prosecutors). Most importantly, the public policy concerns underlying the doctrine remain unchanged. The immunity afforded to government officials is not conferred due to "concern for [the official's] personal immunity, but because such immunity tends to [e]nsure zealous and fearless administration of the law." *Chicopee Lions Club*, 396 Mass. at 251 (citations omitted). Immunity prevents "harassment by unfounded litigation [that] would cause a deflection of the prosecutor's energies from his public duties, and the possibility that he would shade his decisions instead of exercising the independence of judgment required by his public trust." *C.M.*, 487 Mass. at 647, quoting *Imbler*, 424 U.S. at 423. The instant Application provides no compelling reason to revisit this longstanding understanding.

Further appellate review is also unwarranted because the Application errs in its representation that prosecutors will not be held accountable for alleged misconduct unless prosecutorial immunity is abolished. App. 18-19. On the contrary, alternative mechanisms to civil liability can and do hold prosecutors accountable for alleged misconduct, including elections and

² As to the Worcester County defendants (District Attorney Early, Assistant District Attorney Melia, and the District Attorney's Office itself), the Appeals Court noted that Mr. DePina's counsel conceded at oral argument that the claims against these defendants were barred. *DePina*, 2025 WL353839, at *1, n.5. Accordingly, the Appeals Court did not address the merits of those claims. *See id.*

the possibility of disciplinary sanctions up to and including disbarment. *See Chicopee Lions Club*, 396 Mass. at 253, citing *Imbler*, 424 U.S. at 429. Contrary to Mr. DePina's suggestion, App. 18-19, prosecutorial misconduct has been and continues to be a basis for disciplinary sanction. *See generally Matter of Foster*, 492 Mass. 724 (2023) (discussing at length cases and Board of Bar Examiners proceedings governing attorney misconduct and disbarment standards).

Even if this Court were inclined to reconsider the continuing application of prosecutorial immunity in the Commonwealth, this case does not present an apt opportunity for meaningful review of the doctrine for at least two reasons. As an initial matter, Mr. DePina argues, for the first time in this litigation, that the legislative history and language of 42 U.S.C. § 1983 bars the imposition of prosecutorial immunity and that *Imbler* was wrongly decided. App. 21-25. Mr. DePina, despite asserting no § 1983 claims in this case, asks this Court to take the extraordinary step of reversing the motion judge's rulings regarding state-law civil rights claims on the basis that the Supreme Court of the United States has wrongly interpreted a federal statute. Furthermore, in essence, Mr. DePina alleges that the Commonwealth Defendants sought a criminal charge that was allegedly unfounded but nevertheless was approved by an independent Clerk-Magistrate as supported by probable cause, and then was later dismissed by a Boston Municipal Court judge. *See Depina*, 2025 WL353839, at *1. This scenario underscores rather than undermines the need for prosecutorial immunity, to protect the administration of justice from the distorting effects that would arise from fear of personal liability based on the subsequent dismissal of a charge that had been previously found to be supported by probable cause.

For the foregoing reasons, the Commonwealth Defendants respectfully request that the Application for Further Appellate Review be denied.

Thank you for your attention to this matter.

Very truly yours,

/s/ Hannah C. Vail

Hannah C. Vail

Assistant Attorney General

CERTIFICATE OF SERVICE

I, Hannah Vail, hereby certify that on this day March 7, 2025, I caused this document to be served by email on counsel of record:

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/s/ Hannah C. Vail
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