IN THE COMMONWEALTH COURT OF PENNSYLVANIA

David N. Hommrich, a Pennsylvania Resident	:	
v.	:	No. 149 C.D. 2024
	:	Argued: September 11, 2024
Senator Lisa M. Boscola, a Member of the Pennsylvania General Assembly, Appellant	:	

BEFORE: **HONORABLE RENÉE COHN JUBELIRER,** President Judge
HONORABLE ANNE E. COVEY, Judge
HONORABLE MICHAEL H. WOJCIK, Judge
HONORABLE CHRISTINE FIZZANO CANNON, Judge
HONORABLE ELLEN CEISLER, Judge
HONORABLE LORI A. DUMAS, Judge
HONORABLE STACY WALLACE, Judge

OPINION BY
PRESIDENT JUDGE COHN JUBELIRER[1] **FILED: January 3, 2025**

The legislative privilege is a cornerstone of our legislative process and essential to free and enlightened debate in our General Assembly. Senator Lisa M. Boscola (Senator Boscola),[2] a member of the Pennsylvania State Senate, appeals from an Order of the Court of Common Pleas of Allegheny County (common pleas) sustaining in part, and overruling in part, Senator Boscola's preliminary objections (POs) to a Complaint filed by David N. Hommrich (Hommrich), asserting a defamation claim and seeking injunctive relief, based on purported defamatory

[1] This matter was reassigned to the author on December 23, 2024.

[2] A member of the Democratic Caucus, Senator Boscola has served in the Pennsylvania State Senate since 1999, representing both Lehigh and Northampton Counties.

language encompassed in a co-sponsorship memorandum prepared and circulated by Senator Boscola to other members of the Pennsylvania State Senate. Precedent holds that orders denying the invocation of privilege and/or immunity are immediately appealable as collateral orders under Rule 313 of the Pennsylvania Rules of Appellate Procedure, Pa.R.A.P. 313.[3] Therefore, we have proper jurisdiction to consider the instant appeal, and, after careful review, we reverse common pleas' Order and hold that the co-sponsorship memorandum falls within the sphere of legitimate legislative activity, thus immunizing Senator Boscola from suit in accordance with the legislative privilege doctrine.

I. BACKGROUND

As a result of our decision in *Hommrich v. Pennsylvania Public Utilities Commission*, 231 A.3d 1027 (Pa. Cmwlth. 2020), where we held that the Pennsylvania Public Utility Commission (PUC)[4] exceeded its statutory authority under the Alternative Energy Portfolio Standards Act (AEPS Act),[5] Senator Boscola sought to introduce legislation to close the so-called "Hommrich loophole,"[6] a

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[3] Pennsylvania Rule of Appellate Procedure 313 provides:

> (a) General Rule. An appeal may be taken as of right from a collateral order of a trial court or other government unit.
>
> (b) Definition. A collateral order is an order separable from and collateral to the main cause of action where the right involved is too important to be denied review and the question presented is such that if review is postponed until final judgment in the case, the claim will be irreparably lost.

Pa.R.A.P. 313.

[4] We note that the proper designation for the PUC is the "Public Utility Commission," not "Utilities" as designated by appellant in *Hommrich*, 231 A.3d 1027. *See* 66 Pa.C.S. § 301.

[5] Act of November 30, 2004, P.L. 1672, *as amended*, 73 P.S. §§ 1648.1-1648.9.

[6] The underlying facts related to the "Hommrich loophole" are not relevant to this appeal and, thus, need not be discussed here.

phrase presumably coined because of the inclusion of Hommrich's name in the case caption.

On October 3, 2023, Senator Boscola prepared and circulated a one-page legislative co-sponsorship memorandum (the Co-Sponsorship Memo), addressed to "All Senate members," seeking co-sponsorship support in advance of the introduction of Senate Bill 1040. (Reproduced Record (R.R.) at 54a.) The Co-Sponsorship Memo stated, in pertinent part, "upon the recommendation of the [PUC], we will close the Hommrich loophole by limiting net metering to customer-generator's system designed to generate no more than 110% of the customer-generator[']s requirements for electricity." (*Id*.) (emphasis in original). The phrase "Hommrich loophole" was underlined and hyperlinked, linking the phrase to our decision in *Hommrich*, 231 A.3d 1027, located on a separate webpage. (R.R. at 54a.) The Co-Sponsorship Memo was also posted on the General Assembly's website. (*Id*.)

On October 26, 2023, Hommrich filed the Complaint in common pleas, asserting a defamation claim based on the inclusion of the phrase "Hommrich loophole" in the Co-Sponsorship Memo. (*Id.* at 60a-67a.) In response, Senator Boscola filed POs in the nature of demurrer, seeking dismissal of the Complaint based on Senator Boscola's privilege under article II, section 15 of the Pennsylvania Constitution (the Speech and Debate Clause), PA. CONST. art. II, § 15,[7] sovereign immunity, and failure to state the elements of a defamation claim. (R.R. at 69a-77a.)

[7] The privilege encompassed in the Speech and Debate Clause is referred to as the "legislative privilege" for the purposes of this decision. The Speech and Debate Clause provides:

> The members of the General Assembly shall in all cases, except treason, felony, violation of their oath of office, and breach or surety of the peace, be privileged from arrest during their attendance at the sessions of their respective Houses and in

By order dated January 16, 2024, common pleas overruled the POs as to the Speech and Debate Clause privilege and sovereign immunity. (R.R. at 89a.) Common pleas reasoned that it was not "free and clear from doubt that the [Co-Sponsorship Memo] is privileged under the [Pennsylvania] Constitution['s] Speech and Debate Clause or protected by sovereign immunity." (*Id*.) In the same order, common pleas sustained the POs as to the demurrer and granted Hommrich leave to file an amended complaint with regard to those averments, which Hommrich did on January 31, 2024. (*See id.* at 89a-102a.) The remainder of the averments remained unchanged.

On February 14, 2024, Senator Boscola initiated the instant appeal seeking review of common pleas' Order only as it relates to overruling Senator Boscola's legislative immunity defense.[8]

II. PARTIES' ARGUMENTS

On appeal, Senator Boscola presents multiple arguments. Senator Boscola first contends that common pleas' Order is immediately appealable as a collateral order because the applicability of legislative privilege and sovereign immunity is separable from the main cause of action (i.e., defamation), the issue of immunity is too important to be denied review, and immunity will be irreparably lost if review is postponed to the summary judgment or final judgment phase. (Senator Boscola's

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> going to and returning from the same; and for any speech or debate in either House they shall not be questioned in any other place.

PA. CONST. art. II, § 15.

[8] "Pennsylvania courts have long recognized a limited exception to th[e] rule [against pleading affirmative defenses in preliminary objections] and have allowed parties to plead the affirmative defense of immunity as a [PO] where the defense is clearly applicable on the face of the complaint." *Feldman v. Hoffman*, 107 A.3d 821, 829 (Pa. Cmwlth. 2014) (citations omitted).

Brief (Br.) at 8.) In support, Senator Boscola relies on *Brooks v. Ewing Cole, Inc.*, 259 A.3d 359 (Pa. 2021), where our Supreme Court recently held that the denial of summary judgment based on sovereign immunity grounds is a collateral order and appealable as of right under Rule 313. (*Id*. at 8, 10-11.) Specifically, Senator Boscola contends "an official's right to assert a privilege under sovereign immunity is irreparably lost if review is postponed until final judgment[] [sic] [and s]imilarly, a legislator's invocation of the Speech and Debate Clause [is] 'irreparably lost' if that legislator was not able to assert the privilege at the outset of litigation." (*Id*. at 8.)

Next, Senator Boscola argues that the Speech and Debate Clause grants legislators "absolute immunity from suit wherever their actions fall within the 'legitimate legislative sphere.'" (*Id*. at 8-9 (quoting *League of Women Voters of Pa. v. Commonwealth*, 177 A.3d 1000 (Pa. Cmwlth. 2017)).) Senator Boscola claims that circulation of the Co-Sponsorship Memo, which was addressed to "All Senate members," and "sought co-sponsors for legislation that [was] ultimately brought to the floor," is an action that "clearly fall[s] within the 'legitimate legislative sphere.'" (*Id*. at 9.) Additionally, relying on our Supreme Court's decision in *Consumers Education and Protective Association v. Nolan*, 368 A.2d 675 (Pa. 1977), Senator Boscola asserts that the Speech and Debate Clause "must be broadly interpreted to protect legislators from judicial interference with their legitimate legislative activities, and that even where the activity questioned is not literally speech or debate, a court must determine whether it falls within the 'legitimate legislative sphere.'" (*Id*. at 15.) Senator Boscola further asserts:

> Co-sponsorship memoranda are an integral part of the legislative process and are considered part of the legislative history of a law . . . [and] [l]egislators use these memoranda to inform colleagues, solicit

> support, and maximize the odds of success for a bill's passage and thus the enactment of their preferred policy outcomes. These are characteristics of a core legislative function, well within the "legitimate legislative sphere."

(*Id*. at 17.)

Finally, Senator Boscola submits that suit is precluded based on sovereign immunity because the General Assembly has not waived sovereign immunity for defamation claims and the Co-Sponsorship Memo was circulated within the scope of employment as a legislator. (*Id*. at 8, 20-23.) Moreover, Senator Boscola contends that based on her status as an elected state senator, under *Does v. Franklin County*, 174 A.3d 593 (Pa. 2017), the so-called "high public official immunity doctrine" further bars liability from suit. (*Id*. at 8-9, 23-25.) Senator Boscola concludes that common pleas erred in overruling the POs on the applicability of legislative privilege and sovereign immunity and, in turn, requests reversal and dismissal of this action. (*Id*. at 25.)

Hommrich first contends that this Court lacks jurisdiction to hear this appeal because common pleas' Order is not collateral in nature. (Hommrich's Br. at 9.) Specifically, Hommrich asserts that "the defenses upon which [Senator Boscola] relies depend upon factual issues which have not yet been resolved in discovery[] [and t]he contours of such defenses require a fact-driven analysis of the defamatory communication and underlying context . . . ." (*Id*.) Alternatively, Hommrich contends that "[i]f the Court is inclined to hear the appeal, it should nonetheless affirm the decision of [common pleas], which noted that it was not 'free and clear from doubt' that the asserted defenses applied to bar the claims as a matter of law." (*Id*.) Hommrich further asserts that "the Speech and Debate Privilege and Sovereign Immunity asserted by [Senator Boscola] herein do not provide an absolute shield as

to any liability, based on the well-pleaded allegations of the operative complaint and binding legal precedent." (*Id*.)

Amicus curiae, the House Democratic and Republican Caucuses and the Senate Republican Caucus (collectively, Caucuses), on May 20, 2024, filed an *amicus curiae* brief in support of Senator Boscola, arguing that legislators are entitled to legislative immunity under the Speech and Debate Clause in connection with the issuance of the Co-Sponsorship Memo because it is within the legislative sphere. The Caucuses also claim that the order is an appealable collateral order because the issue of whether the Co-Sponsorship Memo is a "legislative activity" is an issue that is separable from the merits of Hommrich's underlying defamation claim. Oral argument and briefing are complete, and this matter is ripe for disposition.

III. DISCUSSION[9]

A. Mootness

As a prefatory matter, we first address the unique procedural posture of this appeal. As noted above, common pleas granted Hommrich leave to file an amended complaint, which Hommrich subsequently did. While normally this would moot the preliminary objections to the original complaint, Rule 1028(c)(1) of the

[9] With respect to common pleas' Order, our "review is limited to determining whether that court committed an error of law or abused its discretion." *East Lampeter Township v. County of Lancaster*, 696 A.2d 884, 886 (Pa. Cmwlth. 1997). "[T]o sustain preliminary objections, it must appear with certainty that the law will not permit recovery and, where any doubt exists as to whether the preliminary objections should be sustained, that doubt should be resolved by a refusal to sustain them." *Peerless Publ'ns, Inc. v. County of Montgomery*, 656 A.2d 547, 550 (Pa. Cmwlth. 1995). "The appealability of an order under the Pa.R.A.P. 313 collateral order doctrine presents a question of law, over which our standard of review is de novo, and our scope of review is plenary." *Brooks*, 259 A.3d at 365.

Pennsylvania Rules of Civil Procedure, Pa.R.Civ.P. 1028(c)(1), that rule is inapplicable here. Rule 1028(c)(1) provides:

> A party may file an amended pleading **as of course** within twenty days after service of a copy of preliminary objections. If a party has filed an amended pleading **as of course**, the preliminary objections to the original pleading shall be deemed moot.

Id. (emphasis added). Here, the amended complaint was **not filed** "as of course" after the POs were filed but was filed with **leave of court** after the trial court issued its Order overruling the immunity and privilege POs and directing a new pleading **as to the defamation claim**. *See Holiday Lounge, Inc. v Shaler Enters. Corp.*, 272 A.2d 175, 176 (Pa. 1971) (explaining "the opportunity to amend 'as of course' provided for in Rule 1028(c) is available only when there has been no intervening judicial determination on the validity of the preliminary objections").

Our Supreme Court's decision in *Allegheny Institute Taxpayers Coalition v. Allegheny Regional Asset District*, 727 A.2d 113 (Pa. 1999), is instructive. There, the appellant argued the trial court violated Rule 1028(c)(1) by disposing of preliminary objections to the original complaint after an amended complaint was filed. *Id*. at 119. The appellant claimed the amended complaint rendered the original preliminary objections moot and divested the trial court of jurisdiction to rule on them. *Id*. The Supreme Court concluded "[t]his argument ha[d] no merit," explaining the appellant could have filed either an amended complaint as of course under the rules or it could have filed preliminary objections to the preliminary objections. *Id*. It further explained that the appellant did both and when the appellees' counsel was served with the amended complaint at argument on the original preliminary objections, counsel advised that the original preliminary objections applied to the amended complaint as well. *Id*. The trial court ultimately

found neither complaint stated a claim and dismissed them. *Id*. The Supreme Court determined, "[u]nder these circumstances the [trial] court did not violate the spirit of the procedural rules in proceeding in that fashion." *Id*. It noted that the 1991 amendments to Rule 1028 changed the prior practice by requiring the filing of new preliminary objections, *see* Pa.R.Civ.P. 1028(f), and although common pleas followed the prior practice, its decision promoted judicial economy. *Allegheny Inst. Taxpayers Coal.*, 727 A.2d at 119.

Further, to the extent Rule 1028(f) states that "[o]bjections to any amended pleading shall be made by filing new preliminary objections," Pa.R.Civ.P. 1028(f), the explanatory comment to the 1991 amendments makes clear that this new subdivision "is a logical consequence of the revision to subdivision (c)(1) providing that the filing of an amended pleading as of course causes the preliminary objections to be deemed moot." *Id*., Explanatory Cmt. to 1991 amendment. Thus, it does not control in these circumstances where the amended complaint was not filed "as of course."

Importantly, as a general rule, "[p]reliminary objections to an amended complaint may **not include** matters which appeared in the original." *Dep't of Transp. v. Bethlehem Steel Corp.*, 380 A.2d 1308, 1311 (Pa. Cmwlth. 1977) (emphasis added). Here, common pleas **already overruled** the POs related to **immunity and privilege**, which were based on averments in the original complaint and are **unchanged in the amended complaint**. Requiring Senator Boscola to reassert them again violates well-established precedent.

That this apparent issue of first impression does not fit squarely within the Rules is not surprising. Typically, orders overruling preliminary objections are interlocutory and not immediately appealable. However, as discussed more fully

herein, the Supreme Court's relatively recent decision in *Brooks*, holding an order denying the invocation of privilege or immunity is **immediately appealable**, clarified that legal landscape. 259 A.3d at 373. Senator Boscola was merely asserting a right available, under *Brooks*, to seek immediate appellate review of an adverse ruling pertaining to immunity and privilege. Senator Boscola sought that appellate review in a timely manner and the fact that Hommrich, pursuant to common pleas' Order, filed an amended complaint in the meantime addressing a different issue does not transform the collateral nature of common pleas' Order overruling Senator Boscola's POs on immunity and privilege grounds. Common pleas' Order was first in time and should not be impacted by the subsequent pleading, when that pleading elaborated only on the averments related to the sufficiency of the defamation action, **not** the applicability of either sovereign immunity or legislative privilege. Simply put, nothing that subsequently occurred in common pleas has altered the issue of whether the Order is a collateral order. Thus, we now turn to that issue.

B. Collateral Order Doctrine

"[T]he collateral order doctrine permits an appeal as of right from a non-final collateral order if the order satisfies the three requirements set forth in Rule 313(b)." *K.C. v. L.A.*, 128 A.3d 774, 778 (Pa. 2015). A collateral order is defined as "an order separable from and collateral to the main cause of action where the right involved is too important to be denied review and the question presented is such that if review is postponed until final judgment in the case, the claim will be irreparably lost." Pa.R.A.P. 313(b). "Thus, Rule 313 involves three elements: 1) the order is separable from and collateral to the underlying action; 2) the right involved is too important to

be denied review; and 3) if review is postponed until final judgment, the claim will be lost." *MFW Wine Co., LLC v. Pa. Liquor Control Bd.*, 318 A.3d 100, 112 (Pa. 2024).

Here, the elements of the collateral order doctrine are satisfied. First, the issue of whether Senator Boscola is immune, i.e., whether the legislative Co-Sponsorship Memo was issued as part of the Senator Boscola's official legislative duties, is separate from the underlying defamation claim, where the relevant inquiry is whether the statement is false. Second, immunity is a right too important to be denied review, as our Supreme Court made clear in *Brooks*, 259 A.3d at 373, especially where denial of immunity or privilege may hinder the legislative or policymaking process. And third, denial of the legislative privilege and sovereign immunity does present issues that will be irreparably lost should Senator Boscola be forced to engage in discovery and litigate this case through the judgment phase. Irreparable loss would occur by requiring Senator Boscola to engage in litigation from which she is immune and allowing such litigation to proceed clearly undermines the purpose of immunity, as our Supreme Court stated in *Brooks*: "Subjecting a governmental entity, which claims it is immune, to the legal process undermines the purposes of sovereign immunity." *Id.* (citation omitted). Therefore, immunity here, as it was in *Brooks*, and the legislative privilege, are more than just a shield against damages but, instead, are **protections against suit** in the first place.

As the Supreme Court stated in *Brooks*:

> Because sovereign immunity protects government entities from a lawsuit itself, we conclude that a sovereign immunity defense is irreparably lost if appellate review of an adverse decision on sovereign immunity is postponed until after final judgment. Subjecting a governmental entity, which claims it is immune, to the legal process undermines the purposes of sovereign immunity. *See Sci. Games Int'l,* [*Inc. v. Dep't of Revenue*,] 66 A.3d [740,] 755 [(Pa. 2013)]; *Mullin v.* []

> *Dep't of Transp.*, . . . 870 A.2d 773, 779 ([Pa.] 2005) (stating the purpose of immunity is to protect government revenues from "unnecessary depletion"); *Montgomery* [*v. City of Philadelphia*], 140 A.2d [100,] 104 [(Pa. 1958)] ("[T]he purpose of absolute immunity is to foreclose the possibility of suit[.]"). Engaging in litigation requires a governmental entity to expend taxpayer dollars on its defense and to divert employees' time from conducting government business. **Further, forcing governmental entities to litigate claims from which they may be immune has a chilling effect on government policymaking**. *See Sci. Games Int'l*, 66 A.3d at 755; *see also Dorsey v. Redman*, . . . 96 A.3d 332, 343, 345 ([Pa.] 2014) (stating "[t]he underlying purpose [of official immunity] is to allow those in governmental policy making positions to have the ability to act without fear of litigation and unlimited damages" and concluding official immunity is immunity from suit not merely liability). **These protections of sovereign immunity are irreparably lost if a governmental entity must litigate a case to final judgment before it can obtain appellate review of an adverse ruling on its invocation of sovereign immunity**.

Id. (emphasis added).

The fact that the order in *Brooks* occurred at a different procedural posture than in this case (summary judgment versus preliminary objections) does not compel a different result. Our Supreme Court has found that an order from this Court overruling **preliminary objections** on sovereign **immunity** grounds is an **immediately appealable** collateral order consistent with *Brooks*. *See MFW Wine Co., LLC*, 318 A.3d at 114. This Court has, likewise, previously applied *Brooks* to orders **overruling preliminary objections**. *See West on Behalf of S.W. v. Pittsburgh Pub. Schs.*, __ A.3d __ (Pa. Cmwlth., No. 1264 C.D. 2022, filed Nov. 6, 2024); *Marshall v. Se. Pa. Transp. Auth.*, 300 A.3d 537 (Pa. Cmwlth. 2023).

Therefore, under the recent precedent of the Pennsylvania Supreme Court and this Court, an order overruling preliminary objections on sovereign immunity grounds, such as the one here, is immediately appealable as a collateral order.[10]

C. Legislative Privilege

"The purpose of [legislative] immunity is to [e]nsure that the legislative function may be performed independently without fear of outside interference." *Sup. Ct. of Va. v. Consumers Union of U.S., Inc.*, 446 U.S. 719, 731 (1980) (citation omitted); *see also William Penn Sch. Dist. v. Dep't of Educ.*, 243 A.3d 252, 263-64 (Pa. Cmwlth. 2020) (Cohn Jubelirer, J.) (single-judge op.) ("The purpose behind the provision is to 'protect legislators from judicial interference with their legitimate legislative activities.'"). In this Commonwealth, the legislative privilege is enshrined in our Constitution, through the Speech and Debate Clause, which provides:

> The members of the General Assembly shall in all cases, except treason, felony, violation of their oath of office, and breach or surety of the peace, be privileged from arrest during their attendance at the sessions of their respective Houses and in going to and returning from the same;

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[10] Although we have held some orders overruling preliminary objections on immunity grounds were not collateral orders, those cases are distinguishable. For instance, unlike the unreported opinions in *Melchiorre v. Haileib* (Pa. Cmwlth., No. 741 C.D. 2019, filed March 15, 2021), and *Melchiorre v. Haileib* (Pa. Cmwlth., No. 1186 C.D. 2021, filed February 7, 2023), where there was a **factual** issue as to whether the statements were made in an official capacity, here, the issue is whether, as a matter of law, statements made in a legislative co-sponsorship memorandum are a legislative function, entitling a legislator to immunity. Further, *Sylvan Heights Realty Partners, L.L.C. v LaGrotta*, 940 A.2d 585 (Pa. Cmwlth. 2008), predates the Supreme Court's holding in *Brooks*. Thus, its determination that immunity would not be irreparably lost is of little value in light of *Brooks*. It is also distinguishable because there, the alleged defamatory statements were made to the media, Department of Public Welfare, and Pennsylvania State Police, **not as part of a legislative co-sponsorship memo** as here.

> and for **any speech or debate in either House** they **shall not be questioned in any other place**.

PA. CONST. art. II, § 15 (emphasis added). In *William Penn*, we succinctly outlined the legislative privilege, explaining:

> The purpose behind the provision is to "protect legislators from judicial interference with their legitimate legislative activities." *Consumers Educ. . . . , . . .* 368 A.2d [at] 680-81 []. Accordingly, the privilege is to be broadly interpreted to achieve this end. *Id*.; *see also Smolsky v. Pa. Gen. Assembly*, 34 A.3d 316, 321 (Pa. Cmwlth. 2011). Our Supreme Court has said that "[t]he Speech and Debate Clause prohibits inquiry into those things generally said or done in the House or Senate in the performance of official duties and into the motivation for those acts." *Pa. Sch. Bds. Ass'n, Inc. v. Commonwealth Ass'n of Sch. Adm'rs, Teamsters Local 502*, . . . 805 A.2d 476, 486 ([Pa.] 2002). **The privilege is absolute so long as it falls within "the sphere of legitimate legislative activity."** *League of Women Voters* . . . , 177 A.3d [at] 1003 . . . . To fall within the scope of the Speech and Debate Clause, the Pennsylvania Supreme Court, citing the United States Supreme Court's decision in *Gravel v. United States*, 408 U.S. 606, 625 . . . (1972), held that the acts "[m]ust be an integral part of the deliberative and communicative processes by which Members participate in committee and House proceedings with respect to the consideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either House." *Uniontown Newspapers*[*, Inc. v. Roberts*], 839 A.2d [185,] 195 [(Pa. 2003)] (quoting *Gravel*, 408 U.S. at 625. . .). Furthermore, the privilege extends to "fact-finding, information gathering, and investigative activities, which are essential prerequisites to the drafting of bills and the enlightened debate over proposed legislation." *League of Women Voters*, 177 A.3d at 1003 (citation and internal quotation omitted). The privilege also extends to legislators' "voting, [ ] participation in legislative committee hearings, and [ ] preparation of committee reports." *Dickey v. CBS, Inc.*, 387 F. Supp. 1332, 1334 (E.D. Pa. 1975).[] The motive or purpose of a legislative act is an impermissible area of inquiry. *League of Women Voters*, 177 A.3d at 1003.

243 A.3d at 263-64 (emphasis added; footnote omitted).

Here, there is no doubt as to the applicability of the legislative privilege to the Co-Sponsorship Memo. The Co-Sponsorship Memo was prepared and circulated to gain support for legislation that Senator Boscola ultimately brought to the State Senate floor for consideration. (Senator Boscola's Br. at 9.) Senator Boscola argues:

> Legislators use these memoranda to inform colleagues, solicit support, and maximize the odds of success for a bill's passage and thus the enactment of their preferred policy outcomes. These are characteristics of a **core legislative function**, well within the "legitimate legislative sphere." The sponsor of a bill may seek cosponsors "to demonstrate [the bill's] support among Members and improve its chances for passage."

(*Id.* at 17 (brackets in original) (emphasis added).) *Amici*, the Caucuses, further assert that co-sponsorship memoranda are an **essential fact-finding tool** for legislators, co-sponsorship memoranda are expressly defined in Section 102 of the Right-to-Know Law, 65 P.S. § 67.102,[11] as a legislative record, and legislators routinely rely on co-sponsorship memoranda as evidence of the intent behind proposed legislation. (*See generally Amici* Br. at 5-18.) We are convinced by these arguments that the preparation and circulation of co-sponsorship memoranda are core legislative functions within the legitimate legislative sphere.

While we have not located any analogous case law within this Commonwealth, our federal counterparts have had occasion to consider similar issues as those presented in the instant case. For example, in *Burley v. Bernstine* (3d Cir., No. 21-1956, filed August 23, 2021), 2021 WL 3719224, the United States Court of Appeals for the Third Circuit considered whether the sponsorship and promotion of state legislation, introduced in the Pennsylvania House of Representatives, was protected by legislative immunity. There, an inmate sought an

[11] Act of February 14, 2008, P.L. 6, 65 P.S. § 67.102.

injunction barring the introduction, promotion, and enactment of legislation that was named after a young child that the inmate was charged with murdering. *Id*. at *1. The Third Circuit upheld the district court's application of legislative immunity, reasoning that the subject legislator "is entitled to immunity for [the inmate]'s claims regarding the sponsorship and promotion of [the legislation] because **activities related to 'introducing, debating, [or] passing' legislation 'are properly characterized as legislative' acts for which legislators enjoy absolute immunity**." *Id*. at *2 (quoting *Baraka v. McGreevey*, 481 F.3d 187, 196 (3d Cir. 2007)) (emphasis added). The Third Circuit further reasoned that "a [legislator's] intent and motive are immaterial to whether certain acts are entitled to legislative immunity." *Id*. at *2 n.2 (citation omitted).

Similar to *Burley*, the Co-Sponsorship Memo here is a core legislative function falling within the legitimate legislative sphere of Senator Boscola's role as a member of the State Senate. Enlightened and informed debate are hallmarks of our General Assembly's deliberative legislative process and co-sponsorship memoranda fit squarely within this legitimate legislative sphere. To subject legislators to litigation for actions taken during the legislative process would, in essence, permit the very ills against which the legislative privilege seeks to protect. Accordingly, common pleas erred in overruling Senator Boscola's POs on the applicability of the legislative privilege to bar Hommrich's suit and, therefore, we reverse.[12]

[12] Given our disposition, we need not consider whether the sovereign immunity doctrine further bars Hommrich's suit.

IV. CONCLUSION

For the foregoing reasons, we hold Senator Boscola's appeal of the Order overruling her POs on immunity grounds is not moot based on the filing of the amended complaint. Further, because the protections encompassed in the legislative privilege will be irreparably lost without this Court's immediate review, common pleas' Order overruling Senator Boscola's POs is appealable as a collateral order pursuant to the collateral order doctrine. *See* Pa.R.A.P. 313. Finally, Senator Boscola properly asserted the defense of legislative privilege at the preliminary objection phase, and it was error for common pleas to overrule Senator Boscola's POs related to the application of the legislative privilege. Accordingly, we reverse common pleas' Order and Hommrich's Complaint (and/or amended complaint) is dismissed with prejudice.

RENÉE COHN JUBELIRER, President Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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	:	
v.	:	No. 149 C.D. 2024
	:	
Senator Lisa M. Boscola, a Member of the Pennsylvania General Assembly,	:	
Appellant	:	

ORDER

NOW, January 3, 2025, the Order of the Court of Common Pleas of Allegheny County, entered January 16, 2024, is **REVERSED**.

RENÉE COHN JUBELIRER, President Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

David N. Hommrich, a Pennsylvania Resident	:	
v.	:	No. 149 C.D. 2024
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HONORABLE STACY WALLACE, Judge

DISSENTING OPINION
BY JUDGE WOJCIK FILED: January 3, 2025

I dissent.

As the Pennsylvania Supreme Court has recently explained:

> Similar to canons of statutory construction, "[t]he object of all interpretation and construction of rules is to ascertain and effectuate the intention of the Supreme Court." To this end, we construe every rule, if possible, "to give effect to all of its provisions." "When the words of a rule are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." It is only when the words of a rule are not explicit that we may ascertain the intent by reference to other matters. In ascertaining the intent of a rule, we are guided by a non-exhaustive set of presumptions.
>
> As we have explained in the context of statutory construction, ambiguity occurs "when there are at least

> two reasonable interpretations of the text." When we are construing and giving effect to the text, "we should not interpret statutory words in isolation, but must read them with reference to the context in which they appear."

HTR Restaurants, Inc. v. Erie Insurance Exchange, 307 A.3d 49, 58-59 (Pa. 2023) (footnotes omitted); *see also* Pa.R.J.A. 109(c) ("Ascertaining the Supreme Court's intention in the adoption or amendment of a rule may be ***guided by the following presumption*****[]** among others: . . . ***The Supreme Court intends the entire rule or chapter of rules to be effective and certain***[.]") (emphasis added); Pa.R.A.P. 313(b) ("A collateral order is an order separable from and collateral to the main cause of action where the right involved is too important to be denied review and the question presented is such that ***if review is postponed until final judgment in the case, the claim will be irreparably lost***.") (emphasis added); Pa.R.Civ.P. 1030(a) ("**[*A*]*ll affirmative defenses including . . . immunity from suit . . . shall be pleaded in a responsive pleading under the heading 'New Matter.'*** A party ***may*** set forth as new matter any other material facts which are not merely denials of the averments of the preceding pleading.") (emphasis added); *Sylvan Heights Realty Partners, L.L.C. v. LaGrotta*, 940 A.2d 585, 589 (Pa. Cmwlth. 2008) (*Sylvan Heights*) ("This reasoning is consistent with our previously decided cases holding that a preliminary denial of speech or debate immunity is not immediately appealable as a collateral order.").[1]

[1] The Majority's broad assertion that an order overruling preliminary objections on immunity grounds is automatically appealable as a collateral order under *MFW Wine Company, LLC v. Pennsylvania Liquor Control Board*, 318 A.2d 100 (Pa. 2024) (*MFW Wine*), and *Brooks v. Ewing Coal, Inc.*, 259 A.2d 359 (Pa. 2021), is clearly incorrect. First, as the Supreme Court observed in *Brooks*, 259 A.3d at 375: "Once the government litigates a case to final judgment, 'the bell has been rung, and cannot be unrung by a later appeal.' Immediate appellate review of the adverse decision on sovereign immunity under [Pa.R.A.P.] 313 is the ***only*** means by which the [c]ourt may vindicate its rights in this case." (Citation omitted and emphasis added.)

In addition, as the Supreme Court explained in *MFW Wine*:

(Footnote continued on next page…)

However, the Majority's proposed disposition herein contravenes ***all*** of the foregoing. Stated plainly, if the Supreme Court deigns it appropriate for parties to interpose immunity as a preliminary objection and wishes to make a court's

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> [The a]ppellees downplay that burden by relying on our statement in *Brooks* that "the protections of immunity are irreparably lost when a party goes to trial." *Brooks*, 259 A.3d at 373. They argue that the trial phase has already occurred here . . . but for an assessment of damages. But in *Brooks*, we were applying a broader principle that "the protections of sovereign immunity are irreparably lost if a governmental entity **must litigate a case to final judgment** before it can obtain appellate review of an adverse ruling on its invocation of sovereign immunity." *Id.* (emphasis added). At best, [the a]ppellees make a case that the loss of the benefits of sovereign immunity to [the agency] are less than they were for the [c]ourt in *Brooks*, not that the loss is reparable. Here, there has been no final judgment on damages . . . and [the agency] has invoked sovereign immunity as defense to mandamus damages. Thus, *Brooks* is not distinguishable from the instant matter. [The agency] has demonstrated irreparability.

318 A.2d at 115 (emphasis added).

In contrast, in this case, any loss occasioned by Senator Lisa M. Boscola with respect to the Court of Common Pleas of Allegheny County's ruling on the preliminary objections is simply not irreparable. Indeed, as we noted in *Sylvan Heights*, 940 A.2d at 588: "While we believe that [the defendant's] right to assert immunity to suit is of sufficient importance to satisfy the second element of the collateral order doctrine, we do not believe . . . that [the defendant's] right to appellate review will be irreparably lost if review is denied at this juncture." *See also J.C.D. v. A.L.R.*, 303 A.3d 425, 433 (Pa. 2023) ("A determination of whether appellate review of a claim will be irreparably lost does not turn on the importance of the right allegedly implicated. . . . [T]he collateral order doctrine has three, separate prongs—separability, importance, and irreparability—and each of those prongs must be clearly present before a court can determine that an order is collateral and immediately appealable as of right under [Pa.R.A.P.] 313.") (citations omitted); *Brooks*, 259 A.3d at 374 ("[S]ome intermediate appellate court decisions have concluded that immunity may be raised in preliminary objections. However, '[t]his Court has not expressly stated whether sovereign immunity may be raised in a demurrer,' and that issue is not before us in this case. *Sutton* [*v. Bickell*, 220 A.3d 220 A.3d 1027, 1035 n.4 (Pa.] 2019) (affirming a Commonwealth Court order sustaining preliminary objections based on sovereign immunity).") (citations omitted).

disposition of such a claim immediately appealable, it could simply do so by amending the relevant rules. It is patently beyond the authority of this Court, as an intermediate appellate court with specific and limited original jurisdiction, to make such policy decisions in violation of the express rules as currently promulgated by our Supreme Court.[2]

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[2] Article V, section 1 of the Pennsylvania Constitution states:

> The judicial power of the Commonwealth shall be vested in a unified judicial system consisting of the Supreme Court, the Superior Court, the Commonwealth Court, courts of common pleas, community courts, municipal courts in the City of Philadelphia, such other courts as may be provided by law and justices of the peace. All courts and justices of the peace and their jurisdiction shall be in this unified judicial system.

Pa. Const. art. V, §1.

In addition, article V, section 2(a) and (c) of our Constitution provides, in relevant part: "The Supreme Court (a) shall be the highest court of the Commonwealth and in this court shall be reposed the supreme judicial power of the Commonwealth; . . . and (c) shall have such jurisdiction as shall be provided by law." Pa. Const. art. V, §2(a) and (c); *see also* Section 501 of the Judicial Code, 42 Pa. C.S. §501 ("The [Supreme C]ourt shall be the highest court of this Commonwealth and in it shall be reposed the supreme judicial power of the Commonwealth."); Section 502 of the Judicial Code, 42 Pa. C.S. §502 ("The Supreme Court shall have and exercise the powers vested in it by the Constitution of Pennsylvania, including the power generally to minister justice to all persons and to exercise the powers of the [C]ourt, as fully and amply, to all intents and purposes, as the justices of the Court of King's Bench, Common Pleas and Exchequer, at Westminster, or any of them, could or might do on May 22, 1722. The Supreme Court shall also have and exercise . . . [a]ll powers necessary or appropriate in aid of its original and appellate jurisdiction which are agreeable to the usages and principles of law[, and t]he powers vested in it by statute, including the provisions of this title.").

Finally, and quite importantly, article V, section 10(c) states, in pertinent part:

> (c) The Supreme Court shall have the power to prescribe general rules governing practice, procedure and the conduct of all courts, justices of the peace and all officers serving process or enforcing

(Footnote continued on next page…)

Accordingly, unlike the Majority, I would quash the above-captioned appeal.

MICHAEL H. WOJCIK, Judge

> orders, judgments or decrees of any court or justice of the peace, including the power to provide for assignment and reassignment of classes of actions or classes of appeals among the several courts as the needs of justice shall require, . . . and the administration of all courts and supervision of all officers of the Judicial Branch, if such rules are consistent with this Constitution and neither abridge, enlarge nor modify the substantive rights of any litigant, nor affect the right of the General Assembly to determine the jurisdiction of any court or justice of the peace, nor suspend nor alter any statute of limitation or repose. All laws shall be suspended to the extent that they are inconsistent with rules prescribed under these provisions.

Pa. Const. art. V, §10(c). Thus, the Pennsylvania Constitution has solely and exclusively authorized our Supreme Court to promulgate the rules governing the practice, procedure, and conduct of all of the courts in this Commonwealth. *See also Commonwealth v. McMullen*, 961 A.2d 842, 847 (Pa. 2008) ("T[he] Court retains exclusive rule-making authority to establish rules of procedure.").