Case No. 119349

IN THE
SUPREME COURT OF ILLINOIS

BRIAN McCANN,	)	
	)	**Petition for Leave to Appeal**
Plaintiff-Petitioner,	)	**from the Appellate Court,**
	)	**First Judicial District, Fifth Division**
v.	)	**Case No. 1-14-1291**
	)	
THOMAS J. DART, in	)	**On Appeal from the**
his official capacity as	)	**Circuit Court of Cook County**
Cook County Sheriff	)	**Case No. 13 CH 10583**
	)	**Trial Judge: Jean Prendergast Rooney**
Defendant-Respondent.	)	

PETITION FOR LEAVE TO APPEAL

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ORAL ARGUMENT REQUESTED IF PETITION IS ALLOWED

PRAYER FOR LEAVE TO APPEAL

Pursuant to Illinois Supreme Court Rule 315, Plaintiff Brian McCann respectfully requests that this Court grant him leave to appeal the March 27, 2015 decision of the Illinois Appellate Court, First District, striking Plaintiff's brief and dismissing his appeal.

STATEMENT OF JURISDICTION

Illinois Supreme Court Rule 315 confers jurisdiction upon this Court. The Appellate Court issued its decision on March 27, 2015. Plaintiff subsequently petitioned for rehearing, and, on April 27, 2015, the appellate court denied the petition. The filing of this petition for leave to appeal on June 1, 2015 is timely.

STATEMENT OF POINTS RELIED UPON

Since at least as early as 1903, Illinois courts have recognized the right of citizens to bring suit to compel public officials to carry out their legal duties. Under this long-established principle, Plaintiff Brian McCann, a lifelong citizen of Cook County, sought mandamus and declaratory relief to remedy the refusal of Defendant Cook County Sheriff Thomas J. Dart to carry out clear, non-discretionary legal duties imposed on him by federal and state law. Instead of reaching the merits of Plaintiff's claims and ordering Defendant to comply with these duties, the Circuit Court of Cook County ruled that Plaintiff did not have standing to challenge Defendant's refusal to carry out his legal duties. The court concluded that *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d. 462 (1988) ("*Greer*") impliedly overruled 85 years of precedent holding that Illinois citizens have standing to sue public officials to carry out their legal duties.

Plaintiff appealed this narrow, purely legal issue. The appellate court never decided whether *Greer* impliedly overruled 85 years of precedent, however. It ruled –

erroneously in Plaintiff's view – that Plaintiff's opening brief did not comply with this Court's Rules, and it took the extraordinary and rare step of dismissing the appeal. As he demonstrated in his rehearing petition, Plaintiff presented all of the information both necessary and required for the appellate court to decide the narrow, purely legal issue before it. The appellate court abused its discretion by dismissing the appeal. Consequently, this Court should "exercise [its] supervisory authority" and hear Plaintiff's appeal.

In addition, the underlying issue is of great "general importance." Whether this Court impliedly overruled 85 years of precedent and took away a longstanding right of Illinois citizens to hold public officials accountable is undoubtedly important. At a minimum, this Court – not a circuit court – should have the final say as to the impact of its rulings. The Court should grant this petition to decide whether citizens still have the ability to seek mandamus and declaratory relief to remedy the refusal of public officials to carry out clear, non-discretionary legal duties.

STATEMENT OF FACTS

I. The Circuit Court's Ruling.

Plaintiff, a lifelong citizen of Cook County, sought mandamus and declaratory relief to remedy the refusal of public officials to carry out clear, non-discretionary legal duties imposed on him by federal and state law. Complaint at ¶ 1 (App 121). In response, Defendant moved to dismiss under both 735 ILCS 2-619(a)(9) ("Section 2-619(a)(9)") and 735 ILCS 5/2-615 ("Section 2-615"). Opinion and Order at 1 (App 114). With respect to the Section 2-619(a)(9) motion, Defendant argued "that Plaintiff, as a private individual without an alleged harm, lacks standing to compel [Defendant] to carry

out his legal duties." *Id.* at 2 (App 115). With respect to the Section 2-615 motion, Defendant argued "that Plaintiff's complaint fails to state a cause of action upon which relief can be granted because [Defendant] has no legal duty to enforce the immigration statutes at issue." *Id.* In other words, the circuit court first needed to decide whether "public duty" standing was still available to Plaintiff in light of *Greer*. If it were available, the circuit court next needed to decide whether the complaint stated a claim against Defendant for violation of his legal duties. Defendant's Section 2-619(a)(9) motion raised the first issue. Defendant's Section 2-615 motion raised the second issue.

After briefing and a hearing on the motions, the circuit court addressed Defendant's Section 2-619(a)(9) motion first. *Id.* at 1 (App 114). It concluded that *Greer* impliedly overruled 85 years of precedent holding that Illinois citizens have standing to sue public officials to carry out their legal duties and, as a result, Plaintiff lacked standing. *Id.* It granted Defendant's Section 2-619(a)(9) motion to dismiss, then denied Defendant's Section 2-615 motion for mootness. *Id.* The circuit court did not address in any way the merits of Defendant's argument that he had no legal duty to enforce the federal immigration statutes cited by Plaintiff. Because "public duty" standing was not available to Plaintiff, the circuit court did not need to – nor did it – decide whether Plaintiff satisfied it.

In its ruling, the circuit court succinctly summarized the issue:

> The parties dispute the standing requirements for an action for a *writ of mandamus* in Illinois. The Sheriff argues that the Illinois Supreme Court in *Greer*[] established the threshold for standing in Illinois by requiring that a plaintiff must be affected adversely in fact by the alleged illegal action. *Greer*, 122 Ill. 2d at 488. In contrast, Plaintiff argues that *Greer* did not explicitly overrule prior Illinois case law concerning standing requirements for *writs of mandamus*, and thus the holdings in his four

> cited cases establish that he has standing: *People ex rel. Newdelman v. Swank*, 131 Ill. App. 2d 75 (1st Dist. 1970); *People v. ex rel. Gamber v. Board of Supervisors of the County of Gallatin*, 294 Ill. 579 (1920); *People ex. rel. Faulkner v. Harris*, 203 Ill. 272 (1903); and *Hill v. Butler*, 107 Ill. App. 3d 721 (4th Dist. 1982) (all holding that a resident and citizen has standing to seek mandamus and declaratory relief to remedy the failure and/or refusal of a public official to carry out his/her duties).

Id. at 3 (App 116). In addition, the court noted that it had "reviewed all of the cases cited by the parties" and concluded that "*Greer* controls the issue of standing and requires dismissal of the complaint." *Id.*

The circuit court's ruling was plainly limited to whether *Greer* controls. The issue of whether Defendant had legal duties that he refused to carry out was never addressed in any way.

II. Plaintiff's Appeal.

Plaintiff appealed the circuit court's ruling on Defendant's Section 2-619(a)(9) motion. *See generally* Opening Brief of Plaintiff-Appellant (App 7-46). Specifically, Plaintiff challenged the circuit court's ruling that *Greer* impliedly overruled 85 years of precedent recognizing "public duty" standing. *Id.* at 1 (App 11). Because the circuit court denied Defendant's Section 2-615 motion concerning whether Defendant even had a legal duty, Plaintiff was not – and could not have been – aggrieved by that denial. He also could not have appealed it. *Trompeter Construction Company v. First Federal Savings & Loan Association*, 62 Ill. App. 3d 173, 175 (3d Dist. 1978) (only parties who consider themselves aggrieved by the judgment may appeal). Therefore, when Plaintiff filed his opening brief, he focused solely on the granting of Defendant's Section 2-619(a)(9) motion and whether the circuit court erred in finding that *Greer* controlled. *See* Opening Brief of Plaintiff-Appellant (App 7-46). Plaintiff's opening brief did not

address whether Defendant had the legal duties alleged in the complaint because the circuit court did not reach that issue and denied Defendant's Section 2-615 motion as moot. *Id.*

III. The Appellate Court's Ruling.

Although it recognized that Plaintiff only appealed the circuit court's grant of Defendant's 2-619(a)(9) motion (*McCann v. Dart*, 2015 IL App (1st) 141291 at ¶1 (App 2)), the appellate court nonetheless ruled that Plaintiff failed to provide the court with sufficient facts, law, and argument for it to decide the issue before it. *Id.* The court also struck Plaintiff's opening brief for failing to comply with Supreme Court Rule 341 and dismissed the appeal. *Id.*

Plaintiff timely sought rehearing of the appellate court's ruling. *See* Plaintiff-Appellant Brian McCann's Petition for Rehearing (App 102-113). Plaintiff demonstrated that his appeal focused solely on the ruling at issue: the granting of Defendant's Section 2-619(a)(9) motion on the grounds that *Greer* impliedly overruled "public duty" standing. *See id.* The appellate court denied Plaintiff's petition for rehearing without discussion. *McCann v. Dart*, 2015 IL App (1st) 141291 (App 1).

ARGUMENT

I. The Appellate Court Abused Its Discretion by Dismissing the Appeal.

In focusing on the ruling at issue – the granting of Defendant's Section 2-619(a)(9) motion on the grounds that *Greer* impliedly overruled "public duty" standing – Plaintiff abided by the appellate court's admonition that "[r]eviewing courts are entitled to have the issues clearly defined and to be cited pertinent authorities and are not a depository in which an appellant is to dump the entire matter of pleadings, court action,

argument, and research as it were, upon the court." *Daniel v. Ripoli*, 2015 Ill. App. LEXIS 52, *38 (1st Dist. Jan. 28, 2015). Plaintiff presented all of the pertinent authorities, facts, and arguments necessary for the court to decide the narrow, purely legal issue before it. Plaintiff did not brief all of the other issues raised by his lawsuit because doing so would have "dump[ed] the entire matter of pleadings, court action, argument, and research" on the Court. These additional matters, including those raised by the Section 2-615 motion denied by the Circuit Court, were irrelevant to determining whether "public duty" standing survived *Greer.*

Plaintiff's opening brief also complied with Illinois Supreme Court Rule 341. The rule states that "[i]n a case involving the construction or validity of a statute, constitutional provision, treaty, ordinance, or regulation," the appellant must provide the court with pertinent text of the authority. Ill. Sup. Ct. R. 341(h)(5). The "public duty" standing on which Plaintiff relied is a common law doctrine recognized by Illinois courts since at least as early as 1903. No statute, constitutional provision, treaty, ordinance, or regulation granted Plaintiff standing. Nor was the construction or validity of any such provision necessary to determine whether "public duty" standing survived *Greer.* On appeal, the only relevant authorities were the cases Plaintiff cited in his opening brief.

Rule 341 also requires that an appellant present a "Statement of Facts, which shall contain the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment." Ill. Sup. Ct. 341(h)(6). The only facts necessary to understand the narrow, purely legal issue of whether "public duty" standing survived *Greer* were that Plaintiff is a citizen of Cook County and that Defendant is a public official. Because the circuit court ruled on the merits of Defendant's Section 2-619(a)(9)

motion only and did not reach the merits of Defendant's Section 2-615 motion, facts concerning the federal immigration statutes, the ordinance, and the actions of the Defendant were not necessary to an understanding of this narrow, purely legal issue. This conclusion is supported by the circuit court's decision. The only factual allegation referenced by the circuit court in ruling on Defendant's Section 2-619(a)(9) motion was Paragraph One of the Complaint. Opinion and Order at 5 (App 118) ("Plaintiff alleges that 'as a resident and citizen of Cook County, Plaintiff has standing to seek mandamus and declaratory relief to remedy the failure and/or refusal of Cook County public officials to carry out their legal duties.'" (quoting Complaint ¶ 1 (App 121))).

Rule 341 also requires that an appellant present an argument that "contains the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." Ill. Sup. Ct. R. 341(h)(7). Any argument and information submitted to the appellate court beyond the narrow, purely legal issue of whether *Greer* impliedly overruled "public duty" standing would have been extraneous and burdensome to the court. Plaintiff avoided burdening the appellate court with unnecessary arguments. He did not disregard the requirements of Rule 341.

In short, Plaintiff fully complied with Rule 341 and provided the appellate court with a clear and concise argument demonstrating that the circuit court erred in finding that *Greer* impliedly overruled 85 years of "public duty" standing. Plaintiff's opening brief identified that narrow, purely legal issue, presented the few facts relevant to the issue, and cited all of the pertinent authorities he could find regarding the issue. The appellate court erred in finding otherwise.

To compound its error, the appellate court did not allow Plaintiff to resubmit his opening brief or to correct the record in any way. Instead, without oral argument or seeking clarification, the appellate court dismissed Plaintiff's appeal. In doing so, it abused its discretion. In *People v Johnson*, the appellant made "virtually no attempt to comply with [Rule 341(e)(7)]. Almost every page of [appellant]'s brief contains references to the record with no supporting citations." 192 Ill.2d 202, 205 (2000). At oral argument, this Court sought an explanation from appellant. *Id.* at 206. Although appellant failed to provide a sufficient explanation, the Court did not dismiss the appeal. Instead, it reached the merits. The Court explained:

> Generally, the consequences for failure to comply with Rule 341(e)(7) are that the issues will be deemed waived. More specifically, the appellate court has held that the failure to include record citations when the argument requires an examination of the record results in waiver of the issue on appeal. When the appellate court is faced with briefs that fail to comply with Rule 341(e)(6) or 341(e)(7), but the record is short and the issues are simple, the court ordinarily will admonish the attorney but address the issues anyway.

Id. (internal citations omitted). By contrast, the appellate court here chose the harshest course. It could have asked for clarification, requested re-briefing, or admonished Plaintiff's attorneys. Instead, it dismissed the appeal. This Court should "exercise [its] supervisory authority" by granting the petition and allowing Plaintiff to have his appeal heard.

II. *Greer* Did Not Impliedly Overrule 85 Years of Precedent.

The Court also should grant this petition to decide an issue of great "general importance": whether *Greer* took away the right of Illinois citizens to seek mandamus and declaratory relief to remedy the refusal of public officials to carry out their duties.[1]

In 1903, this Court held:

> In a proceeding for *mandamus* to compel public officers to perform a duty to the public[,] it is not necessary that the entire public join in the complaint, but they may speak or interfere through one of their citizens, the people being the real party. Nor is it necessary, in this kind of proceeding, for a relator to show that he has any legal interest in the result of the suit.

People ex. rel. Faulkner v. Harris, 203 Ill. 272, 277 (1903). In *Harris*, the plaintiff alleged that the mayor of Champaign and other city officials failed to remove an obstruction from a city street, violating both state law and city ordinances. *Id.* The defendants, in response, asserted that the plaintiff did not have standing because defendants did not cause specific injury to the plaintiff. *Id.* The Court disagreed. It held that

> the act to be performed by the defendants in error is a duty in which the people of the whole State are interested, and no doubt is entertained of the right of any citizen of the city to become a relator and institute this proceeding. It is therefore evident that the relator, as a citizen of Champaign, was a proper person to institute this proceeding.

Id. In addition, it reaffirmed:

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[1] Although the appellate court dismissed the appeal on procedural grounds, this Court has the authority to consider the merits of the underlying issues. *See Healy v. Vaupel*, 133 Ill. 2d 295, 302-305 (1990).

> Where the object is the enforcement of a public right[,] the people are regarded as the real party, and a relator need not show that he has any legal interest in the result. It is enough that he is interested, as a citizen, in having the laws executed and the right in question enforced. The object of the suit is not a matter of individual interest, but of public concern. Any citizen of the county, especially of the locality interested in having the improvement prosecuted, could become the relator and obtain the *mandamus*.

Id. (internal citations omitted).

Relying on *Harris*, this Court held in 1920 that a citizen of Illinois had standing to bring a mandamus claim against the board of county supervisors of Gallatin County and its members to command them to repair the courthouse and "to provide and keep in repair suitable fireproof safes or offices for the county clerk, county treasurer, recorder, sheriff and the clerks of the several courts of record in said county." *People v. ex rel. Gamber v. Board of Supervisors of the County of Gallatin*, 294 Ill. 579, 580 (1920). In concluding that the citizen had standing, the Court stated, "[H]e is a citizen and tax-payer and the duty enjoined upon the board of supervisors is a duty to the public, the performance of which may be compelled by any citizen without showing that he has any legal interest in the suit." *Id.* at 581-582.

Relying on those two cases, as well as others, an appellate court held in 1970 that Illinois citizens had standing to seek mandamus to require the Director of the Illinois Department of Public Aid to grant one month rent security deposits to public aid recipients as required by law. *People ex rel. Newdelman v. Swank*, 131 Ill. App. 2d 74, 75 (1st Dist. 1970). In reaching its holding, this court emphasized:

> Even though citizens may not have any legal rights directly affected by the failure of public officials to carry out their legal duties, nevertheless such persons as members of the

> public have the right to insist that public officials carry out their legal duties.

Id. at 75. The *Swank* decision is clear. A showing of a specific injury is not required.

In addition, in 1982, another appellate court held that citizens had standing to compel the board of managers of Chatham Township to hold a referendum required by law. *Hill v. Butler*, 107 Ill. App. 3d 721, 725 (4th Dist. 1982). The court, like other appellate courts and this Court before it, ruled that citizens have standing to seek mandamus "[w]here the object [of the lawsuit] is the enforcement of a public right" because "the people are regarded as the real party, and the relator need not show that he has any legal interest in the result." *Id.* The *Hill* decision can be summarized in one brief sentence: "It is enough that he is interested as a citizen in having the laws properly executed." *Id.*

Importantly, neither Defendant nor the circuit court disputed the existence of this long-established type of standing. In fact, the circuit court found that the cases relied upon by Plaintiff "all hold[] that a resident and citizen has standing to seek mandamus and declaratory relief to remedy the failure and/or refusal of a public official to carry out his/her duties." Opinion and Order at p. 3 (App 116).

Nevertheless, the circuit court dismissed Plaintiff's case. Opinion and Order at pp. 3-5 (App 116-118). It concluded that *Greer* "impliedly overruled" at least 85 years of precedent and ruled that citizens of Illinois do not have standing to sue state and local public officials in Illinois who refuse to carry out their legal duties. *Id.* The circuit court arrived at this conclusion solely because "[t]he cases that Plaintiff cites were all decided before *Greer*." Opinion and Order at p. 5 (App 118). Of course, any precedential scope

of a decision is limited to the facts before the court. *People v. Palmer*, 104 Ill. 2d 340, 345-346 (1984). Not being a "public duty" standing case, the facts of *Greer* were inapposite. *Greer* could not and did not "impliedly overrule" 85 years of precedent.

In *Greer*, homeowners living near the site of a proposed housing project for "very low-income" tenants challenged a decision by the Illinois Housing Development Authority ("IHDA") to provide funding for the project and the agency's approval of a tenant-selection plan. 122 Ill. 2d at 470, 487. The issue before this Court was the "proper test for assessing standing to challenge the illegality of administrative action." *Id.* at 487. The IHDA argued that, in addition to injury in fact, the plaintiffs also needed to show that the interests they asserted in their complaint lay within the "zone of interests" protected by the statute in question, the Illinois Housing Development Act. *Id.* The Court held that a "zone of interests" analysis was not necessary and that the plaintiffs had standing. *Id.* at 491-492.

In the instant matter, Plaintiff does not challenge "the illegality of an administrative action" of an agency. He challenges the refusal of a public official to comply with clear, non-discretionary legal duties. *Greer* simply does not apply.

In addition, the Court in *Greer* did not discuss the various types of standing recognized under Illinois law. It did not purport to change the existing law of standing or establish new rules governing standing in all future cases of any type. It did not address the long-standing right of citizens to seek mandamus and declaratory relief to remedy the refusal of public officials to carry out their legal duties. Nor did it state that it was overruling 85 years of precedent by abolishing all other types of standing, including the one asserted by Plaintiff. The Court only addressed the narrow issue before it: whether

standing to challenge "the illegality of an administrative action" required more than just an injury in fact. The Court held that nothing more was required.

As this Court is well aware, "any departure from stare decisis must be 'specially justified.' Thus, prior decisions should not be overruled absent 'good cause' or 'compelling' reasons." *People v. Colon*, 225 Ill. 2d 125, 146 (2007) (internal citations omitted). There is no "good cause" or "compelling" reason to overrule at least eighty-five years of precedent holding that citizens of Illinois have standing to sue state and local public officials in Illinois who refuse to carry out their legal duties. The circuit court did not find "good cause" or a "compelling" reason to do so. In fact, given Illinois' long history of public corruption, there are compelling reasons for this Court to reverse the lower courts' rulings and reaffirm the right of Illinois citizens to protect themselves from *ultra vires* acts or corrupt practices of government officials. *See Illinois has long legacy of public corruption: At least 79 elected officials have been convicted of wrongdoing since 1972*, NBCNews.com (Dec. 9, 2008) (available at http://www.nbcnews.com/id/28141995/ns/us_news-crime_and_courts/t/illinois-has-long-legacy-public-corruption).

Now more than ever, citizens need the ability to hold public officials accountable, including the ability to remedy the refusal of public officials to carry out their legal duties. The type of standing recognized by this Court in *Harris* long ago and repeatedly reaffirmed until the circuit court's ruling allows for just that. *Greer* did not take that right away from the people. The circuit court was wrong in taking it away from Plaintiff. The Court should grant Plaintiff's petition in order to decide conclusively whether Illinois citizens still have the right to compel public officials to carry out their legal duties.

CONCLUSION

For the foregoing reasons, the petition for leave to appeal should be granted.

Dated: June 1, 2015

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing **PETITION FOR LEAVE TO APPEAL** conforms to the requirements of Rules 315(c) and 341(a) – (e). The length of this petition, excluding the cover, the attached certificates, and the appendix, is 14 pages.

Paul J. Orfanedes