

**Supreme Judicial Court**

FOR THE COMMONWEALTH OF MASSACHUSETTS  
SJC-13110

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KELLIE PEARSON AND THE LAW OFFICES OF MARK BOOKER  
PLAINTIFFS

V.

THOMAS M. HODGSON, IN HIS OFFICIAL CAPACITY AS SHERIFF OF  
BRISTOL COUNTY, AND SECURUS TECHNOLOGIES, INC.  
DEFENDANTS

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ON CERTIFICATION FROM THE FEDERAL DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
C.A. NO. 18-CV-11130-IT

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**BRIEF FOR DEFENDANT SECURUS TECHNOLOGIES, LLC**

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June 22, 2021

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**CORPORATE DISCLOSURE STATEMENT**

Defendant Securus Technologies, LLC (f/k/a Securus Technologies, Inc.) states, pursuant to Supreme Judicial Court Rule 1:21, that it is wholly owned by SCRS Holding Corporation ("SCRS") whose principal investor is Platinum Equity Capital Partners IV, L.P. ("Platinum"). Neither SCRS nor Platinum has stock that is publicly traded. No entity having publicly traded stock owns 10% or more of either entity.

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**STATEMENT OF THE ISSUE PRESENTED FOR REVIEW**

The issue certified to this Court by the United States District Court for the District of Massachusetts is: Did the Massachusetts Legislature, through the provisions of 2009 Mass. Legis. Serv. Ch. 61 (S.B. 2119) §§ 12(a), 12(c), 15, or M. G. L. ch. 127, § 3, taken separately or together, authorize the Bristol County Sheriff's Office ("BCSO") to raise revenues for the Office of the Sheriff through inmate calling service contracts?

**STATEMENT OF THE CASE**

Securus joins and incorporates by reference the Statement of the Case set forth in the brief submitted by Sheriff Thomas M. Hodgson (the "Sheriff's Brief"), filed contemporaneously herewith. In his motion for judgment on the pleadings granted by the U.S. District Court, Sheriff Hodgson directly addressed the issue that has been certified to this Court. That is, Sheriff Hodgson argued that the claims against him should be dismissed because the Massachusetts Legislature authorized the BCSO to raise revenues for the Office of the Sheriff through inmate calling service contracts.

In its motion for judgment on the pleadings which was granted by the U.S. District Court, Securus argued that the Chapter 93A claim against it should be also dismissed because, among other reasons, the Legislature granted the BCSO the authority to raise revenues for the Office of the Sheriff through inmate calling service contracts. A Chapter 93A claim cannot be based on transactions or actions permitted by law, as administered by any officer acting under statutory authority. Courts have sought to honor this legislative intent by rejecting Chapter 93A claims where Massachusetts statutes and regulations expressly permit the conduct that is challenged.

**STATEMENT OF THE FACTS**

Securus joins and incorporates by reference the Statement of the Facts set forth in the Sheriff's Brief, filed contemporaneously herewith.

**SUMMARY OF THE ARGUMENT**

The U.S. District Court certified to this Court a single narrow question pertaining to whether the BCSO had authority to raise revenues for the Office of the Sheriff through inmate calling service ("ICS") contracts like the one BCSO entered with Securus. For the

convenience of the Court and in the interest of avoiding duplication, Securus relies upon and incorporates by reference the arguments made in the Sheriff's Brief which demonstrate that the BCSO did have the requisite authority.

Securus also presents an additional reason that this Court should answer the certified question in the affirmative. That is, Plaintiffs' alleged Chapter 93A claim against Securus only underscores the unfairness and impropriety of the Plaintiffs' attempt to effect legislative change to ICS contracts through the court system. Plaintiffs' Chapter 93A claim alleges that Securus knowingly entered into an illegal contract in 2011. But at the time Securus executed its contract with the BCSO in 2011, neither contracting party had any reason to question the BCSO's authority to raise revenues from its contract with Securus for ICS. Between the plain language of the applicable law and the detailed procurement regulations governing the bidding and contracting process, neither Sheriff Hodgson nor Securus could reasonably have anticipated that their agreement could be retroactively rendered unlawful by a court.

**ARGUMENT**

**I. THE 2009 ACT AUTHORIZES THE SHERIFF TO RAISE REVENUE FROM INMATE TELEPHONE SERVICES.**

The arguments made in the Sheriff's Brief, incorporated here, establish that Sheriff Hodgson is authorized to raise revenues for the Office of the Sheriff through inmate calling service contracts because: (1) the plain language of the 2009 Act Transferring County Sheriffs to the Commonwealth ("the 2009 Act") authorizes BCSO and other covered Sheriffs to execute contracts for ICS and to retain funds from those contracts (Sheriff's Br. at 14-19); (2) the legislative history of the Act is entirely consistent with the plain language interpretation that the Act authorizes the BCSO to execute contracts for ICS and to retain the revenue generated from such contracts (Sheriff's Br. at 19-27); and (3) consistent with the plain language of the statute and its legislative history, state governmental bodies have consistently interpreted the Act to authorize the BCSO to contract for ICC and retain revenue from such contracts since the Act became effective. (Sheriff's Br., at 27-30).

As Sheriff Hodgson argues, the authority conferred by the 2009 Act confirmed and extended existing



authority to retain revenue from ICS in a manner consistent with the overall legislative purpose and framework. (Sheriff's Br., at 30-32). Regardless of whether such authority existed prior to 2009, there can be no doubt that the express authority conveyed through the plain language of the Act was effective at the time the Agreement between the BSCO and Securus was executed in 2011 and at all relevant times since.

**II. PLAINTIFFS' 93A CLAIM AGAINST SECURUS UNDERSCORES THE UNFAIRNESS OF PLAINTIFFS' ATTEMPT TO EFFECT LEGISLATIVE CHANGE BY MEANS OF JUDICIAL FIAT.**

Plaintiffs' efforts to create policy change can only properly be addressed through the legislative process. In addition to bringing claims against Sheriff Hodgson, Plaintiffs asserted a Chapter 93A claim against Securus, alleging that by entering into a contract with the BCSO that provided for allegedly illegal site commission revenue, Securus engaged in an "unfair" act. J.A. 59-60 (Compl. ¶ 97). Rather than highlighting the unfairness of any conduct by Securus, Plaintiffs' Chapter 93A claim actually serves to underscore the unfairness of Plaintiffs seeking to effect a legislative policy goal by means of judicial fiat.

The BCSO contract was the result of a public bidding process, which Plaintiffs have not alleged violated any of the regulations or rules that govern such processes. (Sheriff's Br., at 9-10). Pursuant to that process, the BCSO publicly solicited bids, including a requirement that bidders identify the percentage of ICS revenue that the bidder would pay to the BCSO. (Sheriff's Br., at 11-12. Any objective, reasonable person would have had reason to believe that the BCSO had the authority to raise revenue through site commissions, given the public bidding process and the express language of the 2009 Act. (Sheriff's Br., at 27-30). Indeed, the Massachusetts Department of Corrections was subject to a similar regulation, authorizing it likewise to raise revenue from ICS site commissions. (Sheriff's Br., at 37). Further, other contracts with other Massachusetts sheriffs' offices involved similar site commissions, and even similar—and sometimes greater—charges for inmate calling services. Nonetheless, Plaintiffs ask the court to not only hold Securus liable for entering into this contract with BCSO, pursuant to a public bidding process, but also to impose double or treble damages pursuant to Chapter 93A. J.A., 61 (Complaint).

At the time Securus executed the Agreement with the BCSO in 2011, neither contracting party had any reason to question the BCSO's authority to raise revenues from its contract with Securus for ICS. Between the plain language of the 2009 Act and the detailed procurement regulations governing the bidding and contracting process, neither Sheriff Hodgson nor Securus could reasonably have anticipated that their contract would be retroactively rendered unlawful by a court.

That Judge Indira Talwani, a U.S. District Court judge, concluded that Sheriff Hodgson's conduct was lawful further highlights the unfairness of resolving this inherently political issue by means of the judiciary. Following over two years of litigation, hundreds of pages of briefing, oral argument, and the preparation of a detailed, written Memorandum and Order, Judge Talwani held that Sheriff Hodgson's conduct was legal and thus Securus's actions could not violate Chapter 93A. J.A., 1155. While she ultimately vacated her decision in view of the fact that the parties had not fully briefed one of the grounds on which it rested, Judge Talwani's decision illustrates the true weakness of Plaintiffs' Chapter 93A claim. Yet for the purposes

of the issue before this Court, it serves to underscore the need for the legislative process to play out, rather than the judiciary to impose its will.

Legislative policies cannot and should not be enacted by courts for many reasons. For Securus, here, such an approach would be inconsistent with the legislative intent expressed in Section 3 of Chapter 93A, in which the Legislature sought to insulate businesses from 93A liability by exempting "transactions or actions permitted by law, as administered by any officer acting under statutory authority." G.L. c. 93A, § 3. Courts have sought to honor this legislative intent by rejecting Chapter 93A claims where Massachusetts statutes and regulations expressly permit the conduct that is challenged. See *e.g.*, *O'Hara v. Diageo-Guinness, USA, Inc.*, 306 F. Supp. 3d 441, 463 (D. Mass. 2018), on reconsideration, 370 F. Supp. 3d 204 (D. Mass. 2019) (dismissing Chapter 93A claims under § 3 because a regulator with authority reviewed and approved the conduct at issue); *Riccio v. Ford Motor Credit Co.*, 238 F.R.D. 44, 48 (D. Mass. 2006) (dismissing plaintiff's Chapter 93A claim for failure to state a claim because "[t]he Department of Revenue regulations affirmatively

permit [defendant] to include the excise tax in the amount on which sales tax is assessed." ).

There are cases where the power of the judiciary can and should be exercised to punish wrongdoers for violations of law, including violations of Chapter 93A. This is no such case. Here, Plaintiffs may continue to pursue their ongoing legislative efforts to obtain prison policy reforms, rather than improperly attempt to force policy victories through the court system.

#### **CONCLUSION**

For the reasons stated above and in the brief filed by Sheriff Hodgson incorporated herein by reference, the Court should answer the certified question in the affirmative.

Respectfully submitted,

**Securus Technologies LLC**

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Date: June 22, 2021

**CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 16(k) of the Massachusetts Rules of Appellate Procedure

I, Jason D. Frank, hereby certify that the foregoing brief complies with the rules of court that pertain to the filing of briefs, including, but not limited to:

Mass. R. A. P. 16 (a)(13) (addendum);

Mass. R. A. P. 16 (e) (references to the record);

Mass. R. A. P. 18 (appendix to the briefs);

Mass. R. A. P. 20 (form and length of briefs, appendices, and other documents); and

Mass. R. A. P. 21 (redaction).

I further certify that the foregoing brief complies with the applicable length limitation in Mass. R. A. P. 20 because it is produced in the monospaced font Courier New at size 12, 10.5 characters per inch, and contains 9, total non-excluded pages.

**CERTIFICATE OF SERVICE**

Pursuant to Mass.R.A.P. 13(d), I hereby certify, under the penalties of perjury, that on June 22, 2021, I have made service of this Brief electronically upon the attorney of record for each party by the Electronic Filing System.

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