IN THE SUPREME COURT OF ALABAMA

Case No. SC-2024-0263

James E. Underwood, Braden Miles
***Petitioners*,**

v.

John Long,
***Respondent*.**

On Petition for Writ of Mandamus to the Circuit Court of Walker County (CV-2019-900131)
(The Honorable Doug Farris, Circuit Judge, Presiding)

BRIEF OF *AMICUS CURIAE*, ALABAMA ASSOCIATION FOR JUSTICE

Leila H. Watson
Julianne Z. Boydstun
CORY WATSON ATTORNEYS
2131 Magnolia Ave S
Birmingham, Alabama 35205
205-328-2200 Telephone
(205) 324-786 Facsimile
lwatson@corywatson.com
jboydstun@corywatson.com

R. Edwin Lamberth
GILMORE LAW FIRM
1706 Dauphin Street
Mobile, Alabama 36604
(251) 202-4116 Telephone
(251) 275-3847 Facsimile
rel@gilmorelawfirm.com

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SUMMARY OF THE ARGUMENT

The unambiguous text of Article I, § 14, Alabama Constitution of 1901 makes clear that only the "State of Alabama," and not its officials, employees or agents, are entitled to absolute civil immunity. That is, no State official is entitled to absolute immunity simply by virtue of their office.

For decades, this Court has construed § 14 according to its plain text in a manner which restricted this immunity for State officials to (1) "official capacity" suits, i.e., when the person was sued in her official capacity and (2) when the suit was in an official's "individual capacity" but the "real party in interest" rule identified the lawsuit as involving a contract, property rights, or funds of Alabama.

Then, according to this Court's most recent case on the issue, Ex parte Pinkard, this Court corrected a series of "mistakes" wherein this Court expanded § 14 immunity beyond the two above-stated categories. Thus, in Pinkard, this Court returned to plain text of § 14 and its restriction to "official capacity" suits and "real party in interest" suits.

Petitioners ignore this fundamental shift in Alabama law in Pinkard. Instead, they claim "super immunity" simply because of their

status as "constitutional officers," created by Article V, section 112 of the Alabama Constitution.

Such super immunity has no basis in the text of the Alabama Constitution and is inconsistent with this Court's prior holdings. To the extent that some of this Court prior "mistakes," as indicted in Pinkard, may indicate that super immunity is available for § 112 sheriffs, those mistakes are clearly inconsistent with Pinkard, and less recently, Birmingham Broadcasting and Gaines v. Smith. Thus, this Court should make clear that they are no longer good law, and overrule them.[1] In short, ALAJ asks this Court to return to the constitutionally supported "official capacity" and "real party in interest" rules for section 14 State immunity. This Court has always recognized the right of citizens to recover monetary damages against officials who commit torts.

ARGUMENT

I. The Alabama Constitution does not provide officers with "super immunity."

Petitioners contend Article V, § 112 provides them with a form of State immunity that differs from all other State officers, agents, or

[1] These cases include Parker v. Amerson, 19 So. 2d 442 (Ala. 1987), Ex parte Davis, 930 So. 2d 497 (Ala. 2005), and Ex parte Purvis, 689 So. 2d 795 (Ala. 1997).

employees. This purported "super immunity" would provide absolute immunity even for individual-capacity claims that are not against the State as a "real party in interest," and for intentional wrongdoing committed during the scope of employment. According to Petitioners, a sheriff could, while on duty, intentionally shoot or stab someone with no justification, and be immune from such acts. Petitioners also incorrectly believe that as § 112 officers, they are exempt from the sixth "exception" of State immunity laid out in Ex parte Moulton,[2] even despite this Court's recent decisions in Birmingham Broadcasting (WVTM-TV) LLC v. Hill,[3] and Gaines v. Smith.[4] Both of these arguments are wrong for the reasons discussed below.

A. Article V, § 112 does not provide super immunity.

Article V, § 112 has no provisions related to immunity. It originates the executive department, listing a sheriff and others as constitutional officers, and nothing else.

Petitioners do not allege otherwise. Instead, according to Petitioners, the mere title of a § 112 officer (e.g., sheriff, governor,

[2] 116 So. 3d 1119, 1141 (Ala. 2013).
[3] 303 So. 3d 1148, 1160 (Ala. 2020)
[4] 379 So. 3d 411 (Ala. 2022).

attorney general, etc.) triggers a "super immunity" that applies to individual capacity suits, even for intentional wrongdoing. This is incorrect.

"No State officer, [including a § 112 officer], can avoid tort liability simply by claiming that his mere status as a State official cloaks him with the State's constitutional immunity."[5] Further, "nothing on the face of Article I, § 14 distinguishe[s] between constitutional officers and other state agents, officers, and employees," and "nothing in the text of Article V, § 112 . . . suggests or carries with it some 'super' immunity to which other state officials are not entitled."[6]

In textual interpretation, the judiciary does not "add or delete provisions" to the Constitution when the meaning is plain[7] – or in Petitioners' case, reading new words into § 14 and § 112 that simply do not exist.

"In addition to the lack of textual support, the concept of a separate immunity analysis for 'constitutional officers' runs afoul of the long-

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[5] Ex parte Haralson, 853 So. 2d 928, 933 (Ala. 2003).
[6] King v. Moon, 2023 WL 9419674, at *8 (N.D. Ala. 2023).
[7] Ex parte Melof, 735 So. 2d 1172, 1189 (Ala. 1999) (Houston, J. concurring specially).

established precedent that State immunity does not depend on 'the character of the office of the person against whom the suit is brought.'"[8] If it were, it would violate the long-established precedent holding "the acts of officials that are not legally authorized or that exceed or abuse the authority of discretion conferred upon them are not acts of the State."[9]

In short, Petitioners' interpretation of § 112 requires an incredibly expansive and imaginative reading that does not follow this Court's policy of textual interpretation. The drafters of the Alabama Constitution of 1901 did not intend a "super immunity" to be read into the mere listing of offices in Article V, § 112. This Court should reject Petitioners attempts to insert text into § 112, and instead focus on Article 1, § 14, which also does not provide super immunity.

B. Article I, § 14 does not provide super immunity.

Article I, § 14 of our Constitution states that "the State of Alabama shall never be made a defendant in any court of law or equity." This codifies the longstanding legal principle that sovereign States are immune from suit.

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[8] King, 2023 WL 9419674, at *10.
[9] Id. (quoting Curry v. Woodstock Slag Corp., 6 So. 2d 479, 480 (Ala. 1942)).

For at least 80 years, the Alabama Supreme Court has held that individual capacity claims, such as the ones presented here, may fall within § 14 immunity if they are effectively "against the State." In making that determination, this Court has examined "the nature of the action and the relief sought" and "not the character of the office of the person whom the suit is brought."[10]

Also, known as the "real party in interest" rule, it provides that "an action is one against the State when a favorable result for the plaintiff would directly affect a contract or property right of the State, or would result in the plaintiff's recovery of money from the State."[11] Thus, § 14's grant of sovereign immunity to the State of Alabama prohibits, at most, (1) individual capacity claims in which the State is the real party in interest and (2) claims that name the State as a defendant – such as naming a State agency or a State officer in his "official capacity."[12]

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[10] Ex parte Pinkard, 373 So. 3d 192, 204-205 (Ala. 2022) (Parker, C.J. concurring specially) (quoting Glass v. Prudential Insurance Co. of Am., 22 So. 2 13, 19 (Ala. 1945)).
[11] Ex parte Cooper, 390 So. 3d 1030, 1037 (Ala. 2023).
[12] Pinkard, 373 So. 3d at 214, 209-214 (Mitchell, J., concurring specially).

Official capacity suits are impermissible because they "attempt to reach 'the public coffers.'"[13]

"The historical record reveals that § 14's grant of sovereign immunity . . . does not bar claims that name and seek relief from individual officers in their personal capacity."[14] Such claims are not against the State "even if those claims relate to the officer's performance of his official duties." Id.

This rule has been reiterated as recently as January 2025.[15] "[N]othing in the text of § 14 prohibits courts from hearing a claim against an individual State employee if the claim does not name or seek relief from the State."[16] This has been Alabama precedent for "over a century." Id. Under this bright-line rule, "Alabama courts . . . long recognized the right of tort victims to recover damages from State employees who injure them while acting in the scope of their official

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[13] Pinkard, 373 So. 3d at 199.
[14] Id. at 214 (Mitchell, J., concurring specially).
[15] Ex parte Scott, 2025 WL 63936 at *5-6 (Ala. 2025) (citing Pinkard, 373 So. 3d 192 (Ala. 2022)); Zinn v. Till, 380 So. 3d 1026, 1030 (Ala. 2023) (Mitchell, J., concurring); Ex parte Cooper, 390 So. 3d 1030, 1037 (Ala. 2023).
[16] Pinkard, 373 So. 3d at 200 (quoting Ex parte Bronner, 171 So. 3d 614, 622 n.7 (Ala. 2014); Elmore v. Fields, 45 So. 66 (Ala. 1990)).

duties."[17] This is true for all state offices regardless of their origin by statute or the Alabama Constitution.

Article I, § 14 simply states that "the State of Alabama shall never be made a defendant in any court of law or equity." "The goal of constitutional interpretation is to discern . . . 'the meaning the people understood a provision to have at the time they enacted it.'"[18] Here, the "weight of the historical evidence indicates that the [real party in interest] approach predominated at the time of § 14's ratification in 1901."[19] This approach does not support the notion that § 14 bars individual-capacity claims that seek damages only from personal assets. In fact, this Court has gone "out of its way to emphasize" that any action against a State official that seeks only to recover monetary damages against the official in an "individual capacity is, of course, not an action against that person in his or her official capacity and, therefore, would of

[17] Id. at 201.
[18] LePage v. Ctr. for Reprod. Med., P.C., 2024 WL 656591, at *9 (Ala. 2024) (Parker, C.J., concurring specially).
[19] Pinkard, 373 So. 3d at 207–08 (Mitchell, J., concurring specially).

necessity fail to qualify as an action against the State' for purposes of § 14."[20]

C. Petitioners' authorities on super immunity are either wrong or overruled by Pinkard.

If the plain language of the Alabama Constitution is so clear that no official, regardless of title, is wholly immune, why are we are here? The answer lies in a single decision from this Court: Parker vs. Amerson.[21] According to Petitioners, it was this case in 1987, which began "super immunity" for sheriffs. It did no such thing, or if it did, it is wrong in light of Pinkard.

Judge Axon of the Northern District of Alabama probably best exposed the flaws of Petitioners' misinterpretation of Parker through her opinions in King v. Moon.[22] As explained, by Judge Axon, Parker did not involve a claim of blanket, absolute immunity by sheriffs.[23] Instead, in

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[20] Pinkard, 373 So. 3d at 200 (quoting Ex parte Bronner, 171 So. 3d 614, 622 n.7 (Ala. 2014); Elmore v. Fields, 45 So. 66 (Ala. 1990) (internal citations omitted).

[21] 519 So. 2d 442, 445 (1987).

[22] *See* King v. Moon, 2023 WL 9419674, at *5-13 (N.D. Ala. 2023) (certifying these very issues to the Alabama Supreme Court); King v. Moon, 697 Supp. 3d 1273, 1276-80 (N.D. Ala. 2023) (ruling on defendants' motion to dismiss after parties settled and had notified the Alabama Supreme Court, but failed to file a dismissal).

[23] King v. Moon, 2023 WL 9419674, at *7.

Parker, this Court answered a certified question regarding whether a county could be liable for a sheriff's actions. In Parker, "there is no suggestion that the underlying claim was outside the sheriff's official capacity."[24] That is, no one even argued that the sheriff was wholly immune simply as a § 112 officer.

Judge Axon's opinion is supported by the text of Parker itself. In holding that the sheriff was immune there, this Court stated:

> **From the facts furnished to us by the Court of Appeals,** it appears that the case at bar is analogous to the situation in *Gill*. The plaintiff, Ms. Lolita Parker, alleges that a state official, Sheriff Amerson, committed negligent and wanton acts that caused her to suffer harm, while executing his discretionary duties of hiring a jailer. **From the facts furnished us**, it appears that none of the exceptions enumerated in *Gill* applies.[25]

If, it is true, as Petitioners now argue, that Parker provides super immunity to sheriffs, why would this Court care what "the facts" or the allegations were? That is, if it is true, as Petitioners claim, sheriffs are 100% immune, no matter the facts, why did this Court analyze the facts in Parker?

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[24] Id.

[25] Parker, 519 So. 2d at 446.

The answer is obvious. Parker did not intend to provide absolute immunity to sheriffs. Otherwise, the "facts" would not matter. This explains why Judge Axon held that the Petitioners' reading of Parker is "'unmoored from the text and history of § 14.'"[26]

Further, "Parker rested its analysis of the sheriff's immunity primarily on two cases: Montiel v. Holcombe, 199 So. 245 (1940) and v. Sewell, 356 So. 2d 1196 (Ala. 1978). Neither case involved an individual capacity claim for money damages."[27]

Even more important, though, is the fact that the Parker court referenced the "exceptions" to § 14 immunity in Gill. In Gill, this Court noted that all, except one of the State employee defendants had been sued in their official capacities. 356 So. 2d at 1198. This Court then noted that for suits against a State employee in their official capacities, there are six categories of immunity exceptions. Id. This Court stated that originally there were five such categories, but that it had added a sixth. Id. It also stated that the six categories were not meant to be final. Id.

[26] King v. Moon, 2023 WL 9419674, at *8
[27] King v. Moon, 697 F. Supp. 3d 1273, 1278 (N.D. Ala. 2023).

With respect to the "individual capacity" claim, this Court noted that State employees are not immune from such suits. It correctly held that "Section 14 does not necessarily immunize State officers and agents from individual civil liability." Id.

This Court then went on to examine whether any of the allegations fell within the six categories or whether the individual capacity claim involved allegations that the individual acted outside his authority. Importantly, one of the six categories is whether the allegations involve "acts allegedly committed fraudulently, in bad faith, beyond their authority, or under a mistaken interpretation of the law." Id, Finding no such allegation, the Court held that the State employees were entitled to immunity in their official capacity. Also, finding no allegation that would defeat discretionary immunity for the individual capacity claim, the Court found that individual entitled to immunity also. Id.

In other words, Gill set out State immunity "exceptions" applicable to all state officials – not just a "special" immunity for § 112 officers.[28] But as Judge Axon pointed out, "[a]t no point in Parker did the Court

[28] Neither are members of the executive department established by ALA. CONST., art. V, § 112.

hold that, where a plaintiff files suit against a sheriff in his individual capacity, seeking damages that will not affect the State's property or contract right and will not be drawn from the State's treasury, that a sheriff is nevertheless entitled to state immunity."[29]

So what happened? "After Parker, the Alabama Supreme Court's holding that a sheriff is an executive officer entitled to State immunity somehow morphed into the designation of a sheriff either as a 'constitutional officer' or an 'executive officer.'"[30] With this new specific reference to the offices created by Article I, § 112, some post-Parker cases simply tied a sheriff's label of "constitutional officer" directly to his entitlement to State immunity.[31]

Naturally, Petitioners cite to Parker and this string of errant cases – which includes Ex parte Purvis.[32] Purvis and its sibling cases

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[29] King, 697 F. Supp. 3d at 1278.
[30] King, 2023 WL 9419674, at *7 (pointing to Ex parte Purvis, 689 So. 2d 795, 795-96 (Ala. 1997)).
[31] King, 697 F. Supp. at 1278; *see* Boshell v. Walker Cnty. Sheriff, 598 So. 2d 843 (Ala. 1992) and Ex parte Donaldson, 80 So. 3d 895, 899 (Ala. 2011).
[32] 689 So. 2d 795, 795-96 (Ala. 1997)); Ex parte Davis, 930 So. 2d 497, 500–01 (Ala. 2005); Ex parte Donaldson, 80 So. 3d 895, 899 (Ala. 2011); Ex parte Hale, 6 So. 3d 452, 457 (Ala. 2008); Ex parte Burnell, 90 So. 3d 708, 710-11, 715 (Ala. 2012); Ex parte Tirey, 977 So. 2d 469, 470 (Ala. 2007); Ex parte Sumter Cnty., 953 So. 2d 1235, 1239 (Ala. 2006);

"extended State immunity to all claims for money damages against 'constitutional officers' for the acts they performed within the line and scope of their employment without any reference or attention to the capacity in which the sheriff and deputy were sued."[33] Therefore, these cases replaced the real party in interest rule for a "character of their office" trigger.

But this is not the rule and "the doctrine of stare decisis does not authorize judges to 'elevate[ ] demonstrably erroneous decisions . . . over the text of the Constitution.'"[34] "Art. I, § 14 is, by its terms, restricted to prohibiting lawsuits against the State" – not against individuals that hold specific offices.[35]

Respectfully, this Court self-corrected in 2022 in Ex parte Pinkard. There, it held that a suit seeking monetary recovery from a deputy fire marshall for malicious prosecution and defamation in his individual

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Alexander v. Hatfield, 652 So. 2d 1142, 1143–44 (Ala. 1994); King v. Colbert Cnty., 620 So. 2d 623, 626 (Ala. 1993); Boshell v. Walker Cnty. Sheriff, 598 So. 2d 843, 844 (Ala. 1992).

[33] King, 2023 WL 9419674, at *7.

[34] Pinkard, 373 So. 3d at 214 (Mitchell, J., concurring specially) (quoting Gamble v. United States, 139 S. Ct. 1960, 1981 (2019) (Thomas, J., concurring)).

[35] Ex parte Cranman, 792 So. 2d 392, 401 (Ala. 2000).

capacity "cannot trigger" State immunity because such claims are not against the State. This is true "even if those claims relate to the officer's performance of his official duties."[36] Pinkard specifically overruled Barnhart v. Ingalls,[37] finding that Barnhart wrongly bestowed immunity for individual-capacity suits that arose from acts within an official's line and scope of employment, even if the State was not a real party in interest.[38] Despite this, it is the reasoning in Barnhart on which Petitioners wrongly rely.

Pinkard also recognized that an immunity tied to a "character of the office" was "unmoored from the text and history of § 14 and [was] at odds with [the] Court's more carefully reasoned precedents."[39]

> [F]or the past half century, this Court has haphazardly held that § 14 applies to certain individual-capacity claims. While Barnhart and its progeny are the latest iteration of this error, they are not the first instance of it. And if this Court is not vigilant about policing the original public meaning of § 14, they may not be the last.[40]

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[36] Pinkard, 373 So. 3d at 214 (Mitchell, J., concurring specially).
[37] 275 So. 3d 1112, 1127 (Ala. 2018).
[38] Barnhart, 275 So. 3d at 1127.
[39] Pinkard, 373 So. 3d at 201.
[40] Id. at 208 (Mitchell, J., concurring specially).

Pinkard intentionally returned Alabama law to the "ancient rule" of whether the relief sought would affect a contract or property right of the State, which has existed "for over a century."[41] While Petitioners attempt to narrow Pinkard's holding only to "statutorily created officers," this reading is incorrect. "Nothing in Pinkard indicates a carve-out for sheriffs and their deputies, or for any other 'constitutional officer.'"[42]

In short, the original "morphing" of Parker v. Amerson was wrong. In fact, Parker never stood for the proposition that super immunity applied to sheriffs. Pinkard is the most recent explanation of § 14 from this Court. It effectively overrules the wrong interpretation of Parker and its progeny. ALAJ requests that this Court say so. In light of Pinkard, there is simply no way that Petitioners' interpretation of Parker is valid. No constitutional basis for super immunity for sheriffs exists.

D. Even if this Court declined to overrule any precedent, an exception to immunity applies to this case.

As explained above, Parker is based on Gill v. Sewell and its six exceptions to State officer immunity. One of those exceptions involved cases in which it was alleged that the State official acted fraudulently,

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[41] Pinkard, 373 So. 3d at 201, 214.
[42] King, 697 F. Supp. 3d at 1279.

in bad faith, beyond their authority, or in a mistaken interpretation of law. Gill, 356 So. 2d at 1198

In Ex parte Moulton,[43] this Court reiterated the examples "for which State immunity generally does not apply because the action is – both in form and in substance – against an individual person rather than 'the State].]"'[44] The sixth example is for

> (6)(a) . . . (b) actions for damages brought against State officials in their individual capacity where it is alleged that they had acted fraudulently, in bad faith, beyond their authority, or in a mistaken interpretation of law, subject to the limitation that the action not be, in effect, one against the State.[45]

The "sixth exception" for money damages "does not bar claims against a State official alleging that the official acted in an ultra vires, fraudulent, or bad-faith fashion because such claims almost always seek to control only the unlawful conduct of the official; they do not seek to control the rights or property of the State itself." Id. at 1036.

Petitioners wrongly argue that the sixth "exception" to § 14 immunity does not apply to executive officers. This Court has applied

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[43] 116 So. 3d 1119, 1141 (Ala. 2013).
[44] Ex parte Cooper, 390 So. 3d 1030, 1036 (Ala. 2023).
[45] Ex parte Moulton, 116 So. 3d at 1141.

the sixth exception to § 112 officers since 1980,[46] and ALAJ has located at least three cases applying the sixth exception (or its equivalent) to § 112 officers.[47]

Despite this, Petitioners next argue that Poiroux v. Rich[48] excluded the sixth Moulton "exception" from applying to sheriffs. However, in Poiroux, the plaintiff sued district attorneys, circuit court clerks, and other officials including sheriffs in their official capacities; therefore, money damages were not available because it would impact the State treasury.[49] Further, the plaintiffs did not raise the sixth exception.[50]

Further, Poiroux demonstrates that § 112 officers receive no super immunity compared to other categories of government officials. This Court applied the same State immunity analysis to all the defendants,

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[46] *See, e.g.,* Ex parte Carter, 395 So. 2d 65, 68 (Ala. 1980) (reciting six exceptions in case against Commissioner of the Department of Conservation)."

[47] *See* Ex parte Bessemer Bd. of Educ., 68 So. 3d 782, 789-91 (Ala. 2011) (Alabama Superintendent of Education); White v. Birchfield, 582 So. 2d 1085, 1086 (Ala. 1991) (sheriff's deputy); Gunter v. Beasley, 414 So. 2d 41, 48 (Ala. 1982) (Attorney General).

[48] 150 So. 3d 1027 (Ala. 2014).

[49] Poiroux, 150 So. 3d at 1037-38; *See* Complaint, Poiroux v. Rich, 2012 WL 12860058, at *1 (July 6, 2012).

[50] *See* Appellant's Brief, Poiroux v. Rich, 2013 WL 3857012, at *66 (June 19, 2013).

regardless of whether they were statutory or § 112 officers."[51] Thus, Petitioners reliance on Poiroux is misplaced.

Petitioners also claim that Haywood v. Alexander[52] held that the sixth exception was not applicable to § 112 officers. But, the Haywood plaintiffs did not raise the sixth exception, and in fact "cited [no] authority to support their argument that [the sheriff was] not entitled to immunity on the state-law claims against her."[53]

This Court's opinion in Birmingham Broadcasting ends debate on this issue. It examined the merits of whether the sheriff defendants' conduct fell outside Article I, § 14 under the sixth Moulton "exception."[54] The Court evaluated whether the plaintiff met her burden that the sheriff defendants met the criteria of the sixth Moulton "exception." Id. at 1160. Therefore, Birmingham Broadcasting's rejection of the sufficiency of the allegations of bad faith and in a mistaken interpretation of the law demonstrate that the exception is in fact available against § 112 officers.[55]

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[51] King, 2023 WL 9419674, at *11.
[52] 121 So. 3d 972 (Ala. 2013).
[53] Haywood, 121 So. 3d at 977-78.
[54] 303 So. 3d 1148, 1159-1160.
[55] *See* id.

This holding is consistent with the older precedent that "[a]n individual cannot justify a tort on a contention that it is for the State."[56] "[T]hat a [§ 112 officer] could be immune from all individual capacity claims for damages except for the types of actions identified in Parker is at odds with the Alabama Constitution and existing Alabama Supreme Court precedent."[57]

Petitioners contend that the "sixth exception was never raised" in Birmingham Broadcasting, but Petitioners ignore that Sheriff Hale's argument in Birmingham Broadcasting mirrors their argument here: that the sixth Moulton exception to State immunity does not apply to sheriffs.[58] If Sheriff Hale was correct, that should have been the end of it. But the Court deliberately analyzed the plaintiff's argument that the sixth exception applied.

Further, in Gaines v. Smith,[59] the plaintiff sought damages from a sheriff and deputy in both their official and individual capacities. As to

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[56] Finnell v. Pitts, 132 So. 2, 4 (Ala. 1930); Elmore v. Fields, 45 So. 66, 67 (1907); Unzicker v. State, 346 So. 2d 931, 933 (Ala. 1977); Donahoo v. State, 479 So. 2d 1188, 1190–91 (Ala. 1985).
[57] King, 2023 WL 9419674, at *12.
[58] *See* Hill v. Hale, Cross-Appellee's Brief, 2019 WL 4750132, at *13-14.
[59] 379 So. 3d 411 (Ala. 2022).

the individual capacity claims, the Court did not hold that the sixth exception to State immunity was unavailable. Instead, it explained that the officers "had neither the obligation nor the authority to schedule a hearing for" the plaintiff because the power was vested in the judicial branch.[60] The assessment of the merits of the allegations and how they fit into the sixth exception would be superfluous if damages were never available against sheriffs in their personal capacities.

II. Petitioners' desired "super immunity" would allow wrongdoing to be committed on behalf of the State.

"[T]he State can do no wrong. Neither can her servants do a wrong for it or in its name, so as to make it a party to a suit against them."[61] This principle does not mean that the State cannot "do wrong in the sense that [it is] incapable of doing a wrong, but that [it is] not privileged to do wrong.[62] In other words, "[the] prerogative of the [State] extends not to do any injury."[63] Further, Article I, § 35, of the Alabama Constitution declares that "the sole object and only legitimate end of government is to

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[60] *See* id. at 417-418.
[61] Elmore, 45 So. at 67.
[62] Health Care Auth. for Baptist Health v. Davis, 158 So. 3d 397, 422, n.21 (Ala. 2013).
[63] Id. (quoting 1 William Blackstone, *Commentaries* at *239).

protect the citizen in the enjoyment of life, liberty, and property," because "when the government assumes other functions it is usurpation and oppression." Therefore, sovereign immunity under § 14 can never be said to exist for any entity [or person] that violates the "sole object and only legitimate end of government".[64] This is why when a government official commits wrongdoing, it cannot be on behalf of the State; the State does not authorize its employees to commit torts against the citizens of Alabama.[65] "Although the doctrine is broad, [§ 14 immunity] serves to protect the State, not the individual."[66]

However, Petitioners' asserted "super immunity" would require the inverse application: any bad faith, fraudulent, or ultra vires wrongdoing by a § 112 officer – no matter how egregious – would thus be considered an action of the State, by way of Petitioners' receipt of State immunity. A sheriff could literally get drunk on a job, decide to drive to execute a warrant, run over and kill a child and be immune. A government official cannot don the cloak of § 14 immunity whenever convenient or in order to escape accountability for wrongdoing. This was not the intent of § 14.

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[64] Davis, 158 So. 3d 397, 423–24 (Ala. 2013).
[65] J.B. McCrary Co. v. Phillips, 130 So. 805, 807 (1930).
[66] Bradley v. Franklin, 786 F. App'x 918, 922 (11th Cir. 2019).

As this Court has pointed out, the interpretation of "justices of this Court who lived, worked, and wrote in an era much closer to the drafting of the Constitution of 1901 than we do" must be given deference.[67] In 1907, this Court wrote in Elmore v. Fields that "no person can commit a wrong upon the property or person of another, and escape liability, upon the theory that he was acting for and in the name of the government[,] which is immune from suit."[68]

In 1930, this Court penned Finnell v. Pitts which held while § 14 protects the State from suit, its immunity does not relieve the officers of the State from their responsibility for "an illegal trespass or tort on the rights of an individual .... [T]he rule is universal that an agent is not excused from personal liability for a tort which he commits for and in the name of his principal, whether the principal is liable to suit or not."[69]

Under Petitioners' interpretation, all a § 112 officer would need to do is use the façade of her "employment" while undertaking malicious activity. As noted by the Eleventh Circuit, this "extraordinarily broad

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[67] Cranman, 792 So. 2d at 401.
[68] Elmore, 45 So. at 67
[69] Finnell v. Pitts, 132 So. 2, 4 (Ala. 1930).

view" would "effectively immunize any conduct when [a] sheriff flashes her badge."[70]

The potential for abuse is not hard to imagine. In King v. Moon, a Blount County judge issued a no-bond arrest order for the plaintiff's husband after multiple threats, violence, and a restraining order violation.[71] However, within 48 hours the sheriff set a bond for the abusive husband, thereby allowing his release despite the judge's order. The following day, the husband murdered the plaintiff. Id. That court correctly declined to provide the sheriff with immunity.

Other examples are Bradley v. Franklin[72] and Mckenzie v. Cleveland.[73] Petitioners' interpretation of § 14 State immunity would find these § 112 officers absolutely immune from personal civil damages, despite the State of Alabama being completely absent from the suit. Fortunately, "Alabama law does not provide such infinite immunity."[74] The sixth Moulton "exception" prevents this from happening.

III. Petitioners' desired "super immunity" would violate Alabamians' rights to a jury trial and to remedy.

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[70] Bradley, 786 F. App'x at 923.
[71] King, 2023 WL 9419674, at *1.
[72] Bradley v. Franklin, 786 F. App'x 918, 923 (11th Cir. 2019).
[73] King, 2023 WL 3312539, at *6-7.
[74] Bradley, 786 F. App'x at 923.

"At the time that America became a nation, the common law provided that, '[o]nce a person was injured, the right to an 'adequate remedy' immediately attached.'"[75] "Alabama adopted a right-to-remedy provision when it became a state, and it remains in the Alabama Constitution to this day."[76] Art. I, § 13 provides "[t]hat all courts shall be open; and that every person, for any injury done him, . . . shall have a remedy by due process of law; and right and justice shall be administered without sale, denial, or delay." § 13 has not been amended since 1819, and thus holds the same meaning it did when it was originally adopted.[77] Thus, "[r]eading § 13 in light of its historical background, the inescapable conclusion is that, when a person is injured, a right to an adequate remedy attaches immediately. Any attempt to deprive a plaintiff of an adequate remedy is unconstitutional." Id.

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[75] Ex parte Jackson Hosp. & Clinic, Inc., 2024 WL 4401995, at *30 (Ala. 2024) (Parker, C.J., dissenting) (quoting Thomas R. Phillips, The Constitutional Right to a Remedy, 78 N.Y.U. L. Rev. 1309, 1322 (2003)).
[76] Id.
[77] Id. (quoting Steele v. County Comm'rs of Madison Cnty., 3 So. 761, 762 (1888)).

Article I, § 11 guarantees the right of trial by jury,[78] and the Constitution forbids the government "the power to violate the right of trial by jury."[79] "In fact, Article I, § 36, prohibits 'the Legislature, the executive, or judicial branch, one or all, from destroying or impairing such reserved rights of the people" and "from ever burdening, disturbing, qualifying, or tampering with, these rights, to the prejudice of the people."[80] Therefore, "neither the judiciary nor the legislature may extend § 14 sovereign immunity so as to destroy the inalienable rights of the people contained in §§ 11 and 13." Id.

"The Constitution is a document of the people. Words or terms used in that document must be given their ordinary meaning common to understanding at the time of its adoption by the people."[81] The text of "[§ 14] speaks only to a prohibition of lawsuits against the State and does not mention lawsuits against individuals. For this reason, the express provisions of § 13 establishing the right to a remedy through a lawsuit

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[78] ALA. CONST. art. I, § 11.
[79] Health Care Auth…, 158 So. 3d at 423 (Moore, C.J. concurring) (quoting Clark v. Container Corp. of America, Inc., 589 So. 2d 184, 196 (Ala.1991)).
[80] Id. (quoting Alford v. State, 54 So. 213, 223 (1910)).
[81] McGee v. Borom, 341 So. 2d 141, 143 (Ala. 1976).

against an individual must . . . stand above the implications from § 14 in the hierarchy within the declaration of rights."[82]

"[C]ompensatory damages are designed to make the plaintiff whole by reimbursing him or her for the loss or harm suffered[,]" and this Court has long held that a wronged citizen is "entitled to full compensation for an injury."[83] Petitioners' insist that Alabamians' recourse is intact because declarative, injunctive, or political actions are available. But this clearly misses the mark. Declaratory and injunctive relief cannot make a citizen "whole." Declaratory or injunctive relief cannot help a citizen pay for the medical treatment necessitated by a deputy's illegal assault. It cannot help a citizen who was wrongly detained and subsequently lost his job and house from being unable to work regain his life after finally being released. Removing compensatory damages from the justice system solely for the sake of § 112 officers is a betrayal to the citizens of Alabama and their rights to a jury trial and remedy.

IV. Petitioners' policy argument is meritless.

[82] Cranman, 792 So. 2d at 401.
[83] Ex parte Goldsen, 783 So. 2d 53, 56 (Ala. 2000).

Lastly, despite the State's insistence, the sixth Moulton "exception" does not jeopardize the "executive discretion" § 112 officers. On the contrary, it seeks only to hold government officials accountable for intentional wrongdoing. Besides, this Court has cautioned that "judicial deference to all conduct in which judgment or discretion is employed would exalt the immunity of § 14 over the right to a remedy preserved by § 13."[84] The Court "cannot give excessive deference to the authority of the legislative [or executive] branch, grounded in the separation-of-powers doctrine [], to eliminate entirely personal liability of State [officers]." Id. at 401.

With their unfounded fearmongering, Petitioners are asking this Court to take on the authority to declare public policy through case law in order to find them immune from the intentional wrongdoing illustrated in the sixth Moulton "exception."[85] But any immunity must be found through the Alabama Constitution. This Court may only "articulate public policy" when backed by the proper constitutional

[84] Cranman, 792 So. 2d at 404.
[85] Ellis v. West, 971 So. 2d 20, 22 (Ala. 2007) ("[t]he authority to declare public policy is reserved to the Legislature, subject to limits imposed by the Constitution.").

support, and not merely by the Petitioners' "personal notions of good government as [its] compass." Id.

CONCLUSION

For the reasons discussed herein, this Court should deny the Petition and refuse to issue a writ.

Respectfully submitted this 18th day of February 2025,

/s/ Julianne Z. Boydstun
Julianne Z. Boydstun
jboydstun@corywatson.com

/s/ Leila H. Watson
Leila H. Watson
lwatson@corywatson.com

CORY WATSON ATTORNEYS
2131 Magnolia Ave S
Birmingham, Alabama 35205
205-328-2200 Telephone
(205) 324-786 Facsimile

/s/ R. Edwin Lamberth
R. Edwin Lamberth
rel@gilmorelawfirm.com
GILMORE LAW FIRM
1706 Dauphin Street
Mobile, Alabama 36604
(251) 202-4116 Telephone
(251) 275-3847 Facsimile
Chairperson, ALAJ Amicus Curiae Committee

Attorneys for *Amicus Curiae*, The Alabama Association For Justice.

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the word limitation set forth in Alabama Rule of Appellate Procedure 21(d). According to the word count function of Microsoft Word, the brief contains 5,910 words. I further certify that the brief complies with the font requirements set forth in Ala. R. App. P. 32(a)(7). The brief was prepared using Century Schoolbook 14-point font. *See* Ala. R. App. P. 32(d).

/s/ R. Edwin Lamberth
R. Edwin Lamberth

CERTIFICATE OF SERVICE

I certify that on February 18, 2025, the foregoing has been filed with the Clerk of the Court using the electronic filing system and a copy served upon the following counsel by email:

Jamie Helen Kidd Frawley
jfrawley@wmwfirm.com
Fred L. Clements, Jr.
fclements@wmwfirm.com
Kendrick E. Webb
kwebb@wmwfirm.com
Attorneys for Petitioners/Defendants

Charles Clyde Tatum, Jr.
Ctatum7@aol.com
Seth L. Diamond
sediamondlaw@gmail.com

Attorneys for Respondent/Plaintiff

Edmund G. LaCour Jr.
Edmund.lacour@alabamaAG.gov
State of Alabama *Amicus Curiae*

Andrew J. Rutens
arutens@gallowayllp.com
Melissa P. Hunter
mhunter@gallowayllp.com
Megan McCarthy
mmccarthy@ball-ball.com
Alabama Defense Lawyers Association *Amicus Curiae*

Hon. Hugh D. Farris, Jr.
Circuit Court of Walker County
Doug.farris@alacourt.gov

Randall Hillman
shelbyda@aol.com
Attorney for Sheriffs' Association

/s/ R. Edwin Lamberth
R. Edwin Lamberth