
Case No. SC-2024-0263
IN THE SUPREME COURT OF ALABAMA

James E. Underwood and 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)**

***AMICUS CURIAE* BRIEF ON BEHALF OF THE ALABAMA
DEFENSE LAWYERS ASSOCIATION IN SUPPORT OF THE
PETITION FOR WRIT OF MANDAMUS**

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STATEMENT REGARDING ORAL ARGUMENT

Oral Argument has already been granted in this case.

STATEMENT OF THE CASE

Amicus Curiae, Alabama Defense Lawyers Association (“ADLA”), hereby adopts and incorporates the Statement of the Case submitted by Petitioners Sheriff James E. Underwood and Deputy Sheriff Braden Miles.

INTEREST OF AMICUS CURIAE

ADLA is a non-profit association of over 900 Alabama lawyers who devote a substantial portion of their practice to the defense of civil lawsuits. ADLA seeks to promote improvement in the civil justice system and in the administration and quality of justice. Consistent with its stated purpose, ADLA, by and through its *Amicus Curiae* committee, often participates in cases that involve important questions of law to assist the Court in its consideration and resolution of those cases. ADLA and its undersigned counsel have no pecuniary interest in this case and no professional relationship with the parties.¹

ADLA was invited to submit this brief and it is submitted in support of Petitioners, Sheriff James E. Underwood and Deputy Sheriff Braden

¹ADLA's policy on *amicus* briefs is:

- “1. The Association will accept NO payment from any applicant for the preparation or argument of briefs *amicus curiae*.
2. Costs of printing and filing the brief shall be borne by the Association. A fee of up to \$5,000 may be paid to the author of the brief, upon approval of the committee chair.”

Miles. It is the position of ADLA that certainty in the law, especially in terms of the protections afforded sheriffs and deputy sheriffs, is of paramount importance to the efficient administration of justice and the protection of the citizens of the State.

STATEMENT OF FACTS

Amicus Curiae, ADLA, hereby adopts and incorporates by reference the Statement of Facts submitted by Petitioners Sheriff James E. Underwood and Deputy Sheriff Braden Miles.

SUMMARY OF ARGUMENT

The Alabama Constitution provides that the State shall never be made a defendant in any court of law or equity. Ala. Const. Art. I, § 14. By adopting this section, the people of this state placed a limitation on their own ability to make their state a defendant in any court. *Deal v. Tannehill Furnace and Foundry Com'n*, 443 So. 2d 1213 (Ala. 1983). The wall of “governmental immunity” is almost invincible, made so by the people through their Constitution as interpreted by this Court. *Hutchinson v. Board of Trustees of University of Ala.*, 256 So. 2d 281 (Ala. 1971). Almost every conceivable type of action is within this constitutional prohibition. *Id.* at 23. This provision is binding upon the executive, legislative and judicial branches alike. *Alabama Dept. of Environmental Management v. Town of Lowndesboro*, 950 So. 2d 1180 (Ala. Civ. App. 2005), *aff'd*, 950 So. 2d 1203 (Ala. 2006).

The protection resulting from this prohibition extends to the State’s executive department, which, as set out in Ala. Const. Art. V, § 112, includes the governor, lieutenant governor, attorney-general, state

auditor, secretary of state, state treasurer, superintendent of education, commissioner of agriculture and industries, and a sheriff for each county. Under Alabama law, a deputy is legally an extension of the sheriff. *Carr v. City of Florence, Alabama*, 916 F. 2d 1521, 1526 (11th Cir. 1990). As the sheriff's alter ego, an act of a deputy sheriff is an act of the sheriff. *Carr*, 916 F. 2d at 1526. Deputy sheriffs, therefore, are immune from suit to the same extent as sheriffs. *Id.* To strip deputies of this immunity would both contravene the intent of our Constitution and jeopardize public safety.

Lastly, to the extent Respondent argues Art. I, § 13 of the Alabama Constitution “takes dominance” over Art. I, § 14, he is simply wrong. The different provisions of the Constitution must be read *in pari materia*. *Jefferson County v. Braswell*, 407 So. 2d 115, 119 (Ala. 1986).

Both Sheriff James E. Underwood and Deputy Sheriff Braden Miles are entitled to State immunity and thus entitled to a writ of mandamus ordering the circuit court to dismiss the Plaintiff's claims.

ARGUMENT

I. An examination of the role of a sheriff and the Alabama Constitution illustrates the people’s desire to protect the executive officers of the State.

English sheriffs (or “shire-reeves”) were the King’s “reeves” (officers or agents) in the “shires” (counties). *McMillian v. Monroe County, Ala.*, 520 U.S. 781, 793 (1997) (citing to C. Wigan & D. Meston, *Mather on Sheriff and Execution Law* 1-2 (1935)). Although chosen locally by the shire’s inhabitants, the sheriff did “all the king’s business in the county,” and was “the keeper of the king’s peace.” 1 W. Blackstone, *Commentaries on the Law of England* 328, 332 (1765). As basic forms of English government were transplanted into the United States, it also became the common understanding that the sheriff, who, though limited in jurisdiction to his county and generally elected by county voters, was in reality an officer of the State, and ultimately represented the State in fulfilling his duty to keep the peace. *McMillian* at 794.

These peace-keeping duties are echoed by Alabama statutory law, which provides that it shall be the duty of the sheriff “to, with the assistance of deputies as necessary, ferret out crime, apprehend and

arrest criminals and, insofar as within their power, secure evidence of crimes in their counties and present a report of the evidence so secured to the district attorney or assistant district attorney for the county.” Ala. Code § 36-22-3(a)(4).

The Alabama Constitution, Art. I, § 14 provides that “[t]he State of Alabama shall never be made a defendant in any court of law or equity.” The State’s immunity cannot be waived by the legislature or by any other state authority. The grant of immunity is a “jurisdictional bar – it strips courts of all power to adjudicate claims against the State, even if the State has not raised immunity as a defense.” *Ex parte Pinkard*, 33 So. 3d 192, 198-99 (Ala. 2022). The state’s sovereign immunity also extends to all state officials and officers. *Ex parte Troy University*, 961 So. 2d 105, 108 (Ala. 2006).

The 1867 Constitution listed only “governor, lieutenant governor, secretary of state, auditor, treasurer, and attorney general” as constituting the “executive department”. Ala. Const. of 1867, Art. V, § 1. This expanded with the 1875 Constitution, when sheriffs and the

superintendent of education were added to the list. Ala. Const. of 1875, Art. V, § 1. As stated in Alabama’s 1901 Constitution, “[t]he executive department shall consist of a governor, lieutenant governor, attorney-general, state auditor, secretary of state, state treasurer, superintendent of education, commissioner of agriculture and industries, and a sheriff for each county.” Ala. Const. of 1901, Art. V § 112.

The framers of the 1901 Constitution took two significant steps to solidify the place of sheriffs in the executive department, and to clarify that sheriffs were acting for the State when exercising their law enforcement functions. First, faced with reports that sheriffs were allowing mobs to abduct and lynch prisoners, the framers made such “neglect” by sheriffs an impeachable offense. *See* Ala. Const. of 1901, Art. V, §138. Second, the framers moved the authority to impeach sheriffs from the county courts to the State Supreme Court, because of the failure of county courts to punish sheriffs for neglect of duty. *Parker v. Amerson*, 519 So. 2d 442, 443-44 (Ala. 1987). The result was that sheriffs now share the same impeachment procedures as state legal officers and lower state court judges, *see* Ala. Const. of 1901, Art. VII, § 174, as contrasted with

County officers who are subject to removal pursuant to Art. VII, § 175 by Courts in the County. This Court has accurately interpreted these provisions and their historical background as evidence of the framers' intent to ensure that sheriffs are considered executive officers of the state. *Parker*, 519 So. 2d at 444. Because a county sheriff is an executive officer of the State of Alabama, he is entitled to “unwaivable, absolute immunity from suit in any court.” *Ex parte Burnell*, 90 So. 2d 708, 710 (Ala. 2012). Absolute immunity extends to actions against a sheriff in his individual capacity for acts performed in the line and scope of his duty. *Suttles v. Roy*, 75 So. 3d 90, 94 (Ala. 2010).

II. A Deputy Sheriff is an alter ego of the Sheriff, and is entitled to the same State immunity.

State sheriff immunity extends to a deputy sheriff because he operates as the sheriff's “alter ego”. *Gaines v. Smith*, 379 So.3d 411, 418 (Ala. 2022). Under Alabama law, a deputy sheriff is the general agent of and empowered to enter into business transactions for the sheriff. Any transaction within the sheriff's duties may be acted upon by his deputy. *Ramsey v. Strobach*, 52 Ala. 513, 515 (1875). This Court has held that

the acts of the deputy sheriff are the acts of the sheriff. *Rogers v. Carroll*, 20 So. 602, 603 (Ala. 1896); *Mosely v. Kennedy*, 17 So.2d 536, 537 (1944). The deputy is thus the alter ego of the sheriff. *Mosley* at 537. Because a deputy is legally an extension of the sheriff, it is logical that any acts undertaken by a deputy should also enjoy the immunity covering the sheriff's own acts. *Carr v. City of Florence, Ala.*, 916 F. 2d 1521, 1526 (11th Cir. 1990); *see also, Wright v. Bailey*, 611 So. 2d 300, 303 (Ala. 1992)(because the sheriff was immune for alleged failure to arrest the deputies were immune as well). A sheriff's deputy is as "one officer with the sheriff", unlike other types of employees of the sheriff, such as a jailer or clerk, whose positions revolve around limited objectives and defined duties. *Ex parte Shelley*, 53 So. 3d 887, 896 (Ala. 2009); *see also, Wheeler v. George*, 39 So. 3d 1061, 1092-93 (Ala. 2009)(a sheriff's deputy is afforded the same State immunity as the sheriff because he acts as the sheriff's alter ego, but the state finance director only serves a portion of the Governor's role and is not the alter ego of the Governor and not entitled to State immunity).

This alter ego status has been applied to deputies beyond the application of immunity, and it has not always worked to the benefit of the deputy. *Baldwin County Comm. v. Sherrell* 77 So. 3d 1196, 1200-01 (Ala. Civ. App. 2010)(since Sheriff was exempt from State merit system, so was the Chief Deputy); *Mack v. Arnold*, 929 So. 2d 480, 483 (Ala. Civ. App. 2005)(as the alter ego of the Sheriff, County personnel board regulations did not apply to deputy); *Whitten v. Lowe*, 667 So. 2d 778, 780 (Ala. Civ. App. 1995)(deputy could not utilize County personnel act to contest termination since deputy was the alter ego of the Sheriff).

State immunity for sheriffs is distinct from State immunity offered to non-constitutional officers sued in their official capacities. Alabama generally grants sovereign immunity to its state executive officers, sheriffs, and deputy sheriffs pursuant to Article I, Section 14 of the Alabama Constitution of 1901. *Ex parte Donaldson*, 80 So. 3d 895, 897 (Ala. 2011). Claims against a constitutional officer in the officer's individual capacity are barred whenever the acts that are the basis of the alleged liability were performed in the course and scope of the officer's employment. *Ex parte Shelley* at 897 (Ala. 2009); *Reynolds v. Calhoun*,

650 F. Supp. 3d 1272, 1278 (11th Cir. 2023) (relying on *Ass'n of Cnty. Comm'ns of Ala. Liab. Self-Insured Fund v. Robinson*, 777 F. App'x 397, 399 (11th Cir. 2019)). State immunity is granted to sheriffs pursuant to Article V, § 112 – even in individual capacity actions – because suits against a constitutional officer “for actions taken in the line and scope of their employment inherently constitute actions against the State, and such actions are prohibited by § 14.” *Reynolds*, 650 F. Supp. 3d at 1278 (citing *Ex parte Donaldson*, 80 So. 3d 895, 898 (Ala. 2011)).

When determining whether a State interest in an action against a state official or employee in his or her individual capacity is sufficient to trigger the immunity granted by § 14, cases distinguish between the standards applied to those state agents or employees whose positions exist by virtue of legislative pronouncement and those who serve as the constitutional officers of this State. *Ex parte Davis*, 930 So. 2d 497, 500 (Ala. 2005). If sued individually, officers created by legislative pronouncement may receive State-agent immunity, and those created by the constitution, such as sheriffs and by extension deputy sheriffs, enjoy

State immunity. *Ex parte Donaldson* at 900; *Reynolds*, 650 F. Supp. 3d at 1278-1279.

The only circumstances in which a sheriff is not protected by state immunity is when an action is brought: (1) to compel state officials to perform their legal duties; (2) to compel state officials to perform ministerial acts; (3) to enjoin state officials from enforcing unconstitutional laws; (4) to enjoin state officials from acting in bad faith, fraudulently, beyond their authority, or under mistaken interpretation of the law; or (5) to seek construction of a statute under the Declaratory Judgment Act. *Parker*, 519 So. 2d at 445. This Court continues to grant State immunity to a sheriff or his deputy against monetary claims for actions taken “within the line and scope of his employment as a ... sheriff,” unless one of the *Parker* exceptions apply. *Ex parte McWhorter*, 880 So. 2d 1116, 1117 (Ala. 2003). None of these exceptions include claims for monetary damages.

Respondent alleges that Deputy Miles was a deputy sheriff assigned to the patrol division and responsible for the performance of law

enforcement duties, and that the acts “complained of” were pursuant to the “customs, policies or practices of the Walker County Sheriff’s Office.” (Doc. 2, ¶¶ 6,9). Plaintiff further alleges that on April 14, 2017, while patrolling rural Walker County, Deputy Miles attempted to stop a suspect riding a motorcycle (believed to be stolen) who committed a traffic violation. (Doc. 2, ¶9). When the suspect refused to stop, Deputy Miles activated his lights and siren and pursued the suspect. (Doc. 2, ¶10). Deputy Miles gave chase for approximately nine (9) miles. (Doc. 2, ¶11). As the suspect passed Bennet’s Road, he failed to negotiate a slight right curve, at a high speed, and crossed the center line, colliding head-on with Respondent’s vehicle. (Doc. 2, ¶15). Respondent alleges that Sheriff Underwood failed to develop and implement adequate policies, procedures, customs or practices to protect the public from the foreseeable result that bystanders would be harmed by deputies engaged in high-speed chases. (Doc. 2, ¶17). Respondent sued Deputy Miles in his individual and official capacities and alleges that he acted intentionally, maliciously, and purposefully to harm the Respondent by initiating the pursuit and continuing to “press the suspect to operate the motorcycle at

speeds in excess of 100 mph.” (Doc. 2, ¶¶ 6, 21). Plaintiff seeks compensatory damages, punitive damages, attorney’s fees, court costs and expenses. (Doc. 2, General Prayer for Relief). Respondent’s claims do not fall within any of the *Parker* exceptions so as to strip Sheriff Underwood or Deputy Miles of their immunity. The allegations of the Complaint may not use the phrase “time and scope of employment” but “this Court has long held that substance trumps form...” in analyzing individual capacity claims and the application of immunity. *Ex parte Pinkard*, 373 So.3d 192, 199 (Ala. 2022). Respondent claims that Deputy Miles was responsible for law enforcement duties and his actions were pursuant to customs, policies and practices of the Department.

III. Respondent’s supplemental brief mistakenly contends that Article I § 13 of the Alabama Constitution takes dominance over Article I § 14. As a result, Deputy Miles is entitled to State immunity.

Respondent argues at page one of its supplemental brief that Article I § 13 of the Alabama Constitution, which provides that Courts are open and that “every person, for any injury done to him, ...shall have a remedy by due process of law...”, “takes dominance” over Article I § 14.

That is simply incorrect. In enforcing and applying the Constitution, this Court “is not at liberty to disregard the clear meaning of the Constitution.” *Parker*, 519 So. 2d at 443 (citing *McGee v. Borom*, 341 So. 2d 141 (Ala.1976)); *See also, Ex parte Shelley* at 895, fn 9 (“We have, of course previously rejected the notion that the immunity provided the State in Art. I, § 14, infringes upon the right to legal remedies provided in Art. I, § 13.”). It is the primary function of the Supreme Court to ascertain and effectuate the framers’ intent. *Id.* “Each section of the Constitution must necessarily be considered in *pari materia* with all other sections.” *Jefferson County vs. Braswell*, 407 So. 2d 115, 119 (1981) (citing *Opinion of the Justices*, 333 So. 2d 125 (Ala. 1976)).

Indeed, the proposition that Article I § 14 is subordinate to Article I § 13 has been previously considered, and rejected, by this Court. In *Deal vs. Tannehill Furnace and Foundry Commission*, 443 So. 2d 1213 (Ala. 1983), a State Park visitor dove into a creek and was injured after striking a hidden object submerged in the creek. The plaintiff sued the Tannehill Furnace and Foundry Commission as well as sixteen members of the Commission, and the park superintendent. This Court quickly

dismissed the argument that § 13 takes dominance over § 14. The Court stated: “[i]t would be incongruous for this Court to hold that this particular Section of the Constitution of 1901 may not be in force because it might appear to be in conflict with another.” *Deal*, 443 So. 2d at 1219. Indeed, when there is an apparent conflict between different sections of the Constitution, “the more specific will prevail as against a more general statement pertaining to the same subject matter.” *Jefferson County* at 119. Art. I § 14 specifically addresses the ability of anyone to sue the state and thus coexists with Art. I § 13. Any argument of “dominance” is incorrect.

CONCLUSION

For the reasons set forth, *Amicus Curiae*, Alabama Defense Lawyers Association (“ADLA”) respectfully submits this Court to enter a Writ of Mandamus ordering that the Circuit Court of Walker County enter an order dismissing former Sheriff James E. Underwood and Deputy Sheriff Braden Miles.

Respectfully submitted this 18th day of February, 2025.

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CERTIFICATE OF COMPLIANCE

In accordance with Ala. R. App. Procedure 29(c) 28(j) (1), the font used in this petition is set in Century Schoolbook 14 with justified margins and is within the word limit of 14,000 words. The word count beginning at the section entitled Statement of the Case through the end of the section entitled Conclusion contains 4025 words.

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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:

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