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Honorable Megan B. Rhodebeck
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DOCKET NO. SC-2024-0263

IN THE SUPREME COURT OF ALABAMA

JAMES E. UNDERWOOD, BRADEN MILES,
Petitioners,

v.

John Long,

Respondent.

ON PETITION FOR WRIT OF MANDAMUS
TO THE CIRCUIT COURT
OF WALKER COUNTY, ALABAMA
(Case No. CV-19-900131.00,
Hon. Doug Farris, Presiding)

BRIEF OF AMICUS CURIAE ALABAMA SHERIFF'S ASSOCIATION

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STATEMENT REGARDING ORAL ARGUMENT

Oral Argument has already been granted in this case.

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INTERESTS OF THE *AMICUS CURIAE*

The Alabama Sheriff's Association is a non-profit association representing the 67 sheriffs throughout the State of Alabama. One of the functions of the Alabama Sheriff's Association is to ensure that persons employed by the various sheriffs are provided with educational, legal, and practical support needed to serve the citizens of the State of Alabama. Specifically, sheriffs are concerned with maintaining the immunity to them and their alter-egos, the deputy sheriff. The Alabama Sheriff's Association has been invited to submit this brief of the *amicus curiae*; it is submitted in support of the Petitioners.

STATEMENT OF THE CASE

Amicus Curiae, the Alabama Sheriff's Association, hereby adopts and incorporates the Statement of the Case submitted by the Petitioners Sheriff James E. Underwood and Deputy Sheriff Braden Miles.

STATEMENT OF FACTS

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

STATEMENT OF THE ISSUE PRESENTED

I. **WHETHER SHERIFF UNDERWOOD IS IMMUNE FROM SUIT PURSUANT TO ART. I § 14 OF THE ALABAMA CONSTITUTION, AND AS "ALTER EGO" OF THE SHERIFF, WHETHER DEPUTY BRADEN MILES IS LIKEWISE IMMUNE.**

II. **WHETHER *ALA. CODE* § 36-22-3, CODE OF ALABAMA 1975, IS CONSTITUTIONAL OR IN CONFLICT WITH THIS COURT'S DECISION IN *PARKER V. AMERSON*.**

SUMMARY OF THE ARGUMENT

This Court's decision in *Parker v. Amerson* 519 So. 2d 442, 446 (Ala. 1987) made clear that when a member of the Executive Department (in that instance a Sheriff) is sued in his or her individual capacity for monetary damages concerning actions arising out of the performance of his or her duties, such a suit is, in essence, against the State and barred by State Immunity. And, the facts of this case make it clear why. While not dispositive of the issues before this Court, the Defendants/Petitioners in this action have done **nothing wrong** and most importantly did not injure any person or property. Yet instead, they are sued simply because one is the Sheriff, and the other because he was brave enough to pursue an individual who was committing a crime. While the accident that occurred was tragic, the claim itself is problematic from a policy perspective because it is an attack on a *constitutional* officer performing the duties of his office. *Ala. Code* § 36-22-3 (1975). Legally speaking, the claim is barred because the Sheriff, along with seven other individuals listed in Art V, § 112 of the Alabama Constitution are *constitutional* state officers and their immunity

from damages is guaranteed by Art. I, § 14 of the Alabama Constitution in the performance of their duties.

This raises the following questions, though: why doesn't the Alabama Constitution explicitly enumerate deputies as well? Does their absence from the text mean they do not receive the same immunity as the Governor, Attorney General, and Sheriffs, etc.?

This Court has historically relied upon the historical understanding of the office of the Sheriff to answer this question, and has drawn on English common law principles that recognized a deputy sheriff is the "alter ego" of the Sheriff. *Hereford v. Jefferson County*, 586 So. 2d 209 (Ala. 1991); *Alexander v. Hatfield*, 652 So.2d 1142, 1144 (Ala. 1994). In other words, the Sheriff and his deputies are "one officer, so far as third persons are concerned, as to all questions of civil responsibility." *Rogers v. Carroll*, 111 Ala. 610, 613 (Ala. 1896). Accordingly, the immunity granted to the Sheriff is extended to those officers who fulfil his duties as well, i.e., the deputy sheriff. *Ex parte Shelley*, 53 So. 3d 887 (Ala. 2009).

However, as time has progressed, this history has been forgotten, and this Court is repeatedly asked by plaintiffs to treat

Sheriffs – and in particular deputies – as statutory officers covered only by state agent immunity. A holding from this Court that suits, such as the one filed by Respondents, are not barred by State Immunity would violate the text of Art. I, § 14 outright.

Suits against Constitutional officers in their individual capacities for monetary damages concerning actions performed in the course of their duties, are suits against the State of Alabama, and are barred by State Immunity. *Parker v. Amerson*, 519 So. 2d 442, 446 (Ala. 1987). Neither the Legislature nor this Court may consent to the State of Alabama being made a defendant in a suit for money damages. The only exception to a suit against the state is the five so-called "exceptions" which seeks injunctive relief. The questions which naturally follows are: "Where are the limits? What is the scope of a constitutional officer's duties?" To that end, the Alabama Legislature may provide safe harbors for conduct which is unquestionably within the scope of an official's duties – and that is exactly what it did when it passed *Ala. Code* § 36-22-3 (1975). However, crucially, what the Legislature cannot do is *limit* the immunity afforded to the Sheriff by constitution mandates, because in doing so, it would be consenting

for the state to be a party to a suit which is otherwise barred by the constitution. *See*, *Id.* (recognizing that the Constitution acts as a limitation on legislative power.) Therefore, safe harbor statutes such as *Ala. Code* § 36-22-3 (1975) may only be read as either a declaration of the state of immunity as it currently is, or as a broadening of such immunity.

The Alabama Sheriff's Association submits this *amicus* brief in support of the Petitioner in this case and likewise adopts and incorporates the arguments raised by both the Petitioner and the State of Alabama in its *amicus* brief. This Court should enter a Writ of Mandamus directing the Circuit Court of Walker County to dismiss the actions brought against former Sheriff James Underwood and Deputy Braden Miles.

ARGUMENT

I. SHERIFF UNDERWOOD IS IMMUNE FROM SUIT PURSUANT TO ART. I § 14 OF THE ALABAMA CONSTITUTION, AND AS "ALTER EGO" OF THE SHERIFF, DEPUTY BRADEN MILES IS LIKEWISE IMMUNE.

Article I § 14, *Const. of Ala. 1901* states: "[t]he State of Alabama shall never be made a defendant in any court of law or equity." Suits against any state official, irrespective of the position or office, in his/her "official capacity," are suits against the State of Alabama and are barred by State Immunity. *Parker v. Amerson*, 519 So2d at 446; *Ex parte Pinkard*, 373 So. 3d at 199; *see also*, *Haley v. Barbour County,* 885 So. 2d 783, 788 (Ala. 2004) (noting that "claims against state officers in their official capacity are 'functionally equivalent' to claims against the entity they represent).

A. Individual Capacity Suits, Generally.

With respect to suits against state officials in their individual capacities, however, the threshold question is whether the official is a constitutional executive officer, i.e., one whose position is enumerated in the Alabama Constitution as part of the Executive Branch of government, or a statutory officer, i.e., one whose position

is created by legislative/statutory enactment. *See Ex parte Lawley*, 38 So. 3d 41, 46 (Ala. 2009) (confirming distinction between whether an officer is a statutory officer or a constitutional officer in determining whether an individual capacity claim is "against the State"); *Ex parte Hale*, 6 So. 3d 452, 457 (Ala. 2008), *as modified on denial of reh'g* (Oct. 10, 2008); *see also Ex parte Donaldson,* 80 So. 3d 895, 899–900 (Ala 2011). In analyzing individual capacity claims, this Court has always distinguished between statutory officers and constitutional officers in answering whether the claim is, in essence, against the State. *Id.*

For those officers who are listed in the Alabama Constitution as officers of the Executive Branch of state government, the court asks whether the alleged acts were performed "in the execution of the duties of his office." If this inquiry is answered in the affirmative, then the constitutional executive officer is entitled to State Immunity with respect to claims against an executive officer in his individual capacities. *Parker*, 519 So. 2d at 443; *Reynolds v. Calhoun,* 650 F.Supp.3d 1272, 1275-76 (M.D. Ala. 2023). Therefore, the only actions which may be brought against him are the five types of

actions enumerated in *Parker*, because those actions are categorically not against the State of Alabama. Those five types of actions are: actions brought (1) to compel him to perform his duties, (2) to compel him to perform ministerial acts, (3) to enjoin him from enforcing unconstitutional laws, (4) to enjoin him from acting in bad faith, fraudulently, beyond his authority, or under mistaken interpretation of the law, or (5) to seek construction of a statute under the Declaratory Judgment Act if he is a necessary party for the construction of the statute. *Parker*, 519 So 2d at 442.

The Alabama Sheriff's Association, takes the position that the immunity afforded to the Sheriff differs fundamentally from the immunity pronounced in *Ex parte Pinkard*, 373 So.3d at 192 (Ala. 2022), which dealt exclusively with statutory (not Executive) officers. In cases involving *constitutional* officers performing their duties, the real party in interest is the State of Alabama – period. Accordingly, the Alabama Sheriff's Association adopts and incorporates the arguments from both the Petitioners and the State of Alabama on these topics. As *amicus curae*, in support of the Petitioners, the Sheriff's Association writes specially in support of the inclusion of

deputies as Art. V, § 112 officers. This is fully supported by the historical, statutory and well accepted views of the office of the Sheriff and the "alter-ego" doctrine recognized in this state for at least 120 years.

B. Relevant History of Sheriffs and Their Deputies.

The Supreme Court of Alabama has held that "a state constitution is always interpreted in light of the common law," *City of Mobile v. Stonewall Ins. Co.*, 53 Ala. 570, 577 (Ala. 1875), and therefore the historical treatment of the sheriff-deputy relationship is significant. The term "Sheriff" is derived from two Saxon words meaning "shire" (county) and "reeve" (officers or agents) from at least after the Norman Conquest. See C. Wigan & D. Meston, Mather on Sheriff and Execution Law 1–2 (1935); 1. W. Blackstone, Commentaries on the Laws of England, *339, Tucker Edition (1803).; s*ee also*, *McMillian v. Monroe County, Ala.*, 520 U.S. 781, 793 (1997). Sheriffs performed only the king's business and at first were primarily chosen by the inhabitants of the respective county in which they served. *Id.*

Historically, the Sheriff was given broad power and duties. These duties included, *inter alia*, acting as judge, keeper of the king's peace, as a ministerial officer of the superior courts of justice, and as the king's bailiff. *Id.*, at 343. Many of the duties of the modern day Sheriff can be traced back to the duties of the "shire-reeve." One of these duties which obviously has not transferred to the United States is the Sheriff's judicial capacity to hear all causes of action of forty shillings value and under in the county. *Id.* Concerning the other duties of the Sheriff under English common law, Sir William Blackstone noted:

> As keeper of the king's peace, both by common law and special commission, he is the first man in the county, and superior and ranked to any nobleman therein, during his office. He may apprehend, and commit to prison, all persons who break the peace, or attempt to break it; and may bind anyone in recognizance, to keep the king's peace, *ex officio*, to pursue, and take all traitors, murderers, felons, and other misdoers, and commit them to [jail] for safe custody. … but the sheriff is thus the principal conservator of the peace in his county, yet by the express directions of the great charter, he, together with the constable, coroner, and certain other officers of the king, are forbidden to hold any pleas of the crown, or in other words, to try any criminal offence. For it would be highly unbecoming, that the executioners of justice should also be the judges; should impose, as well as levy, fines and amercements; should one day condemn a man to death, and personally execute him the next.

***

> In his ministerial capacity, the sheriff is bound to execute all process issuing from the king's courts of justice. In the commencement of civil causes, he is to serve the writ, to arrest and to take bail, when the cause comes to trial, he must summon and return the jury; when it is determined he must see the judgment of the court carried into execution. In criminal matters, he also arrests and imprisons, he returns the jury, he has the custody of the delinquent, and he executes the sentence of the court, though it extend to death itself.

***

> As the king's baliff, it is his business to preserve the rights of the king within his bailiwick; … He must [seize] to the king's use all lands devolved to the crown by attainder or escheat; must levy all fines and forfeitures; must [seize] and keep all waifs, wrecks, estrays, and the like, unless they be granted to some subject; and must also collect the king's rents within the bailiwick, if commanded by process from the exchequer.

Id., at 343-344.

Obviously, this wide range of duties, among others, could not be completed by any one person. Therefore, the Sheriff had under him many inferior officers; an under-sheriff, bailiffs, and gaolers (or, jailers). *Id.* The under-sheriff was empowered to perform all duties of the office of the Sheriff, apart from a very few where presence of the Sheriff was required. *Id.*, at 345. Strict restrictions were placed upon

under-sheriffs insofar as their term of duty and other professions that the under-sheriff may be engaged in while serving. *Id.* For all intents and purposes, the under-sheriff *was the sheriff* wherever he went in the performance of his duties. Other bailiffs, or sheriff's officers, were appointed by the Sheriff to collect fines, summon juries, and in some instances, serve writs and make arrests. *Id.* Lastly, Gaolers (or, jailers) were servants of the Sheriff, and their responsibility concerned the commitment of persons by lawful warrant in lands maintained by the Sheriff as jails.

Important to the analysis here, is that historically the sheriff was responsible for and required to answer civilly for the actions of his officers. This is because when these individuals acted, it was as if the Sheriff himself had committed the act. Oliver Wendell Holmes, lecturing on the history and development of agency law, took special note of the unique relationship between Sheriffs and deputies:

> "I have said that although there was a difference in the degree of responsibility, under-officers always have been said to be servants.
>
> Under Charles II, this difference was recognized but it was laid down that "the high sheriff and under-sheriff is one officer," and on that ground the sheriff was held

> chargeable.[1] Lord Holt expressed the same thought: "What is done by the deputy is done by the principal, and it is the act of the principal," or as it is put in the margin of the report, "act of deputy may forfeit office of principal, because it is *quasi* his act.[2]" Later still, Blackstone repeats from the bench the language of Charles's day. "There is a difference between master and servant, but a sheriff and all his officers are considered in cases like this as **one person**." So his associate judge, Gould, "I consider [the under sheriff's clerk] as standing **in the place of and representing the very persons of ... the sheriffs themselves.**"[3] Again, the same idea is state by Lord Mansfield: "**For all civil purposes the act of the sheriff's bailiff is the act of the sheriff.**[4]

Select Essays in Anglo American Legal History, Vol. 3, Ass'n of American Law Schools, 386-87, O. W. Holmes, Jr., The History of Agency, (1882)[5] (emphasis added). This understanding manifested itself in Alabama law and this Court utilized the "alter-ego" theory in 1896 when it decided *Rogers v. Carroll*. 111 Ala. 610 (Ala. 1896). In *Rogers*, this Court explained the nature of the relationship between sheriffs and deputies:

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[1] *Cremer v. Humberston*, 2 Keble, 352 (H. 19 & 20 Car. II.).
[2] *Lane v. Cotton*, 1 Salk. 17, 18; s.c. 1 Ld. Raym. 636, com. 100 (P. 12 W. III.).
[3] *Saunderson v. Baker*, 3 Wilson, 309 s.c. 2 Wm. Bl. 832;(T. 12 G. III. 1772)
[4] *Ackworth v. Kempe*, Douglas, 40, 42 (M. 19 G. III. 1778)
[5] Cited source cites to the first publication in the Harvard Law Review, 1891, vol. IV, pp. 345-364, vol. V, pp. 1-23. Cited source is available in the Alabama Supreme Court Law Library, call number KF 352 A2 A8 v.3.

> On all the evidence, Reeves was a general deputy of Carroll the sheriff. He was a deputy sheriff, as distinguished from a specially deputize agent of the sheriff for a particular purpose. His powers, generally speaking, were those of the sheriff himself, and his acts were those of the sheriff. He had the same power to receive and to execute all ordinary process as had the sheriff and his acts or omissions under or in respect of process were acts or omissions of the sheriff. **In legal contemplation, he and the sheriff were one officer so far as third persons are concerned, as to all questions of civil responsibility.** Standing thus in the stead of the sheriff, and being the sheriff for all practical purposes affecting third persons, the public have a right to assume that he has all the powers incident to the office he holds….

Id., at 613 (emphasis added). This understanding mirrors that which was taught by Oliver Wendell Holmes at Harvard at the same time and certainly reflected the general consensus that the public held concerning the understanding of the nature of the office of the Sheriff.

In the time of the *Rogers* court, Sheriffs were already included within the "Executive Department" of the State of Alabama by their inclusion within Art. V, § 112 of the Alabama Constitution of 1875. However, at this time it was not clear whether the Sheriff was ultimately a "state officer" in large part because he was held responsible to and was impeachable by circuit courts of the

respective counties. Art. VII, § 3, Ala. Const. 1875; *see also*, *Parker*, 519 So. 2d, at 443. This, of course, changed in the drafting of the 1901 Constitution, in large part because of the failure of county courts to punish Sheriffs for neglect of duty and Sheriffs' acquiescence in mob violence. *Id.*; *see also*, *Official Proceedings of the Constitutional Convention of 1901* (Vol. 1) at 897-90. Summarizing these proceedings, the *Parker* Court noted:

> Other legislators argued that because a sheriff is an executive officer, he is ultimately responsible to the Governor. By proposing the amendment to § 30, the framers of the 1901 Constitution not only aspired to protect the political rights of prisoners but also to augment the power of the Governor to more effectively perform his constitutional duty, as set out in Article V, § 120, to ensure that the laws of the state are "faithfully executed." The drafters thought sheriffs to be members of the executive branch who executed the laws of the state in the several counties. By making sheriffs answerable to the Governor, the drafters believed that the words of the constitution mandating that the Governor see that the laws are faithfully executed would not be "an idle set of words" but words behind which stood a chief executive officer who possessed the wherewithal to enforce them, namely, a sheriff in each county.

Parker, 519 So.2d at 444 (internal citations omitted). Clearly, the Sheriff is the county-wide arm of the Executive Branch of State of Alabama and based upon the history and understanding of "alter

ego" status of deputy sheriffs or "under-sheriffs," it would have been superfluous to include deputies within Art. V, § 112 of the Constitution of 1875 or 1901. Put another way, by including "a sheriff for each county" in Art. V, § 112, the framers knew that this would naturally include the sheriff's deputy, his alter ego. Including the deputy in the text was simply not necessary.

Considering the length of the debate on the issue of impeachment of the Sheriff at the 1901 Convention, it is clear that the legislators understood the impact and importance of their decision. Not only are Sheriff's now "state officers" once and for all (and arguably elevated back to the status as an arm of the state or crown under English Common Law) but Sheriffs, along with their deputies, are now brought under the purview of Art. I, § 14 immunity in a way in which they were not before in Alabama. *Compare*, *Rogers v. Carroll*, 111 Ala. at 615 (Before 1901 – holding that a *respondeat superior* claim was allowable against Sheriff's surety bond based upon the actions of his deputy); *Parker*, 519 So. 3d, at 442 (After 1901 – "A sheriff is not an employee of a county for purposes of imposing liability on the county under a theory of *respondeat*

superior. **A sheriff is an executive officer of the State of Alabama**, who is immune from suit under Art. I, § 14, Alabama Constitution of 1901, in the execution of the duties of his office…") (emphasis added).

As members of the Executive Department of State government, suits brought against Sheriffs in their official capacities, or individually, are therefore, in essence suits against the State of Alabama. Put another way, the State is the real party in interest to any such suit, because they *are the State* wherever they go in the performance of their duties. *Ex parte Aull*, 149 So.3d 582, 589 (Ala. 2014) (citing *Ex parte Dickson*, 46 So.3d 468, 474 (Ala. 2010)) ("State officials act for and represent the State" in their official capacities.) Any attempt by this Court or the Legislature to limit the immunity granted by the Alabama Constitution therefore would necessarily violate Art. I, § 14 of the Alabama Constitution.

II. *ALA. CODE* § 36-22-3, IS CONSTITUTIONAL AND MUST BE READ CONSISTENTLY WITH THIS COURT'S DECISION IN *PARKER V. AMERSON*.

Ala. Code § 36-22-3 (1975) sets forth the general duties of the Sheriff and was amended in the wake of the decision from this Court

in *Ex parte Shelley*, *supra*. This Court invited *amicus curiae* to submit briefs and discuss, *inter alia*, a "deputy sheriff's entitlement to immunity under § 36-22-3(b), *Ala. Code* 1975." (Dec. 13, 2024 Order). The Alabama Sheriff's Association, as an initial matter, submits that the immunity granted under this code provision, which was not raised by either party before the Circuit Court, supplements and is complementary to, to the immunity granted to sheriffs (and deputy sheriffs) in Art. I, § 14, Const. of Ala. 1901. Since its passage, attention has focused on the meaning of the phrase "as long as he or she is acting within the line and scope of his or her duties and is acting in compliance with the law." *Ala. Code* § 36-22-3(b). To the extent that it is interpreted as denying the Petitioners in this case State Immunity, then it is misused and misunderstood.

A. The Legislature cannot limit the immunity granted by the Alabama Constitution.

Acts of the legislature are presumed constitutional. *State v. Alabama Mun. Ins. Corp.,* 730 So.2d 107, 110 (Ala.1998); *see also Dobbs v. Shelby County Econ. & Indus. Dev. Auth.*, 749 So.2d 425, 428 (Ala. 1999) ("In reviewing the constitutionality of a legislative act, this Court will sustain the act "unless it is clear beyond

reasonable doubt that it is violative of the fundamental law.") (internal quotations omitted). Therefore, this Court should read the plain language of the statute in a manner consistent with the Constitution because "it is presumed that the legislature does not enact meaningless, vain or futile statutes." *Druid City Hospital Board v. Epperson*, 378 So. 2d 696, 699 (Ala.1979)).

This Court has recognized countless times that a suit against both a Sheriff and a deputy sheriff in their individual capacities for damages arising out the course of their duties is, in essence, against the state and is thus barred by Art. I, § 14. Accordingly, any construction of *Ala. Code* § 36-22-3 that restricts this constitutional immunity for these individuals is unconstitutional. "When the Constitution and a statute are in conflict, the Constitution controls ...." *Ex parte Alabama Med. Cannabis Comm'n, No.* CL-2024-0463, 2024 WL 4401748, at *6 (Ala. Civ. App. Oct. 4, 2024) (citing *Parker v. Amerson*, 519 So. 2d 442, 446 (Ala. 1987)); *see also*, *Kennamer v. City of Guntersville*, 315 So. 3d 1090, 1105 (Ala. 2020) (same*); Opinion of the Justices.*, 303 So. 3d 106, 111 (Ala. 2019) (holding a statutory restriction "must fail in light of the constitutional provision.").

The Court in *Ex parte Shelley*, 53 So. 3d 887 (Ala. 2009), held that jailers employed and under the direction and control of the Sheriff were not entitled to State Immunity. (*Id.* at 896) In so holding, this Court reasoned that, unlike deputies (for many of the reasons mentioned *supra*), jailers were not "alter egos" of the Sheriff because they could not perform all of the functions of the Sheriff. *Id.* As a result, jailers were unable to assert the jurisdictional defense of State Immunity and were required to assert the affirmative defense of state agent immunity instead. (*Id.* at 897).

However, assume the Alabama Legislature had pronounced explicitly that deputies were no longer alter-egos of the Sheriff for immunity purposes. The net effect of such a law would be to abolish a deputy sheriff's entitlement to State Immunity which naturally flows from the Sheriff as a state executive officer. This would be a classic violation of the separation of powers doctrine. *Turner v. Ivey*, 387 So. 3d 1088, 1099 (Ala. 2023) ("[e]ach branch within our tripartite governmental structure has distinct powers and responsibilities, and our Constitution demands that these powers and responsibilities never be shared."). The legislature would be ignoring both this

Court's interpretation of the Constitution and its history while also subjecting members of the Executive Department to monetary liability in their individual capacities. Thankfully, this is not what the legislature did; nonetheless, in interpreting its text, this Court should be wary of interpreting Ala. Code § 36-22-3 in a manner that would lead to an unconstitutional result. In enacting Ala. Code § 36-22-3, the legislature provided a statutory basis for immunity that was already granted by the Constitution, while providing a safe harbor of conduct that, while non-exhaustive, unquestionably qualifies for immunity. In other words, the activities listed in the statute constitute conduct of the State when performed in the line and scope of the sheriff or deputy's employment. This Court should thus interpret Section 36-22-3 in this fashion and in doing so, the Court will be construing the statute *in pari materia* with the Constitution.

B. The Legislature intended to broaden State Immunity, not restrict it; and this Court should construe the statute *in pari materia* with the Constitution and its prior rulings.

The synopsis of the initial draft of the 2011 amendment stated:

> "Under existing law, the sheriff is granted sovereign immunity as a constitutional officer of the state. Generally, the courts have granted deputies and other persons acting as agents of the sheriff the same protection. This bill would specify that persons employed by the sheriff when acting for and under the direction and supervision of the sheriff would have the same sovereign immunity as the sheriff."

S.B. 90, 2011 Leg., Reg. Sess. (Ala. 2011). Based upon this clear intent pronounced by the Legislature itself, the motivation behind this amendment was to *expand* immunity, not limit it. Subsection (a) of Section 36-22-3 provides the following general duties of the sheriff and extends immunity to those listed in subsection (b):

> (1) To execute and return the process and orders of the courts of record of this state and of officers of competent authority with due diligence when delivered to him or her for that purpose, according to law.
>
> (2) To attend upon the circuit courts and district courts held in his or her county when in session and the courts of probate, when required by the judge of probate, and to obey the lawful orders and directions of such courts.
>
> (3) To, three days before each session of the circuit court in his or her county, render to the county treasury or custodian of county funds a statement in writing and on oath of the moneys received by him or her for the county, specifying the amount received in each case, from whom and pay the amount to the county treasurer or custodian of county funds.

(4) 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.

(5) To perform such other duties as are or may be imposed by law.

(b) Any of the duties of the sheriff set out in subsection (a) or as otherwise provided by law may be carried out by deputies, reserve deputies, and persons employed as authorized in Section 14-6-1 as determined appropriate by the sheriff in accordance with state law. Persons undertaking such duties for and under the direction and supervision of the sheriff shall be entitled to the same immunities and legal protections granted to the sheriff under the general laws and the Constitution of Alabama of 1901, as long as he or she is acting within the line and scope of his or her duties and is acting in compliance with the law.

Ala. Code § 36-22-3. As noted above, the Legislature provided clear instances wherein an officer is to be considered "[executing the] duties of his office", *Parker*, 519 So. 2d at 443. In other words, when the Sheriff is executing and returning process and orders of the court, attending upon the circuit and district courts, ferreting out crime, apprehending and arresting criminals, and securing evidence – he and his deputies performing those duties are <u>immune</u> from liability, individually. The dichotomy between "individual" and

"official" capacity claims simply is not possible because the real party in interest is the State of Alabama. This is true even if a "contract or property right" of the state is not implicated on the face of the complaint because the action attacks at the very essence of the State's power to be "the State," This is not to say that individuals do not have a remedy. They may bring claims for injunctive or declaratory relief pronounced in *Parker* against a Sheriff and his deputy, for instance, to compel them to act "in compliance with the law." *Ala. Code* § 36-22-3(b).

This is important because this points to the true meaning of the phrase "acting in compliance with the law" and the proper way to construe the statute so that it is in *pari materia* with the Constitution. To explain, this clause "acting in compliance with the law" can only refer to the situation when a deputy does not act in furtherance of his general duties (such as the ones listed in Section 36-22-3) and thus loses immunity and is amenable to suit, but only for suits seeking injunctive and declaratory relief. This is a reasonable interpretation of the statute, and the only interpretation

that allows the statute and the Constitution (and this Court's well-settled caselaw) to remain intact.

Considering the facts before this Court on appeal, Deputy Miles was alleged to be in pursuit of an individual who had committed a crime, with his lights and sirens on. (Pet. Appx. Ex. 1, p. 4). Unquestionably, this officer was performing a duty of the Sheriff enumerated by the Legislature. Inversely, it is possible to argue that had Deputy Miles not pursued someone who committed a crime, and refused to pursue the suspect, he would then have failed to act in compliance with the law requiring him to ferret out crime. This puts Sheriffs and deputies in a lose-lose situation. We expect deputies to act and investigate crimes. Law enforcement has been one of the essential functions of the Sheriff for nearly 1000 years.

This Court has a duty to interpret the statute in a manner that is consistent with the Constitution. *See*, *Folsom v. Wynn*, 631 So. 2d 890, 893 (Ala. 1993) (recognizing that the courts have a duty to construe statutes so as to uphold and to effectuate the intent of the Legislature, if such a construction is possible). If this Court were to include, for example, run-of-the-mill negligence that occurs when an

officer is in the performance of his duties and hold that because the officer who acted negligently – and therefore not in compliance with the law – was not immune, then the exception would swallow the rule. Consider an officer who, in an attempt to stop a dangerous individual who had committed a crime, violates the rules of the road by running a stop sign in his pursuit – has he waived immunity? If this was the case, then there would effectively be no immunity. Put another way immunity from suit is not the same thing as a lack of liability – it has broader purposes. If a claim of immunity can be defeated by a mere allegation of negligence, it is definitionally not immunity. Forcing an officer to bear the burdens of litigation in order to prove that he was not negligent is not immunity – it's just winning the case. Immunity is meant to shield a constitutional officer from both suit and liability for claims arising out of their duties.

Therefore, the most reasonable construction of the amended version of this statute, and one that considers and respects the history of the office of the Sheriff, is that immunity has limits with respect to Sheriffs and deputy sheriffs but those limits refer only to claims for injunctive and declaratory relief. Put another way, if a

Sheriff or deputy is not "acting in compliance with the law" this means he/she has not performed a general duty of the office, and thus forfeits immunity, but only to the extent that the officer is now amenable to suit for declaratory and injunctive relief.

CONCLUSION

For the reasons set forth hereinabove, *Amicus Curiae* Alabama Sheriff's Association respectfully submits that this Court enter a Writ of Mandamus ordering that the Circuit Court of Walker County enter an order dismissing former Sheriff James Underwood and Deputy Braden Miles.

Respectfully submitted this 4tht 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 5,559 words.

s/Randall Hillman
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CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing has been filed using ACIS and I have served the following via electronic mail on February 4, 2025:

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