No. SC-2024-0263

IN THE SUPREME COURT OF ALABAMA

JAMES E. UNDERWOOD, BRADEN MILES, *Petitioners*

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 FOR THE STATE OF ALABAMA AS AMICUS CURIAE

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL
501 Washington Avenue
Montgomery, Alabama 36130
(334) 242-7300
(334) 353-8400 (facsimile)
Edmund.LaCour@AlabamaAG.gov

Steve Marshall
Attorney General

Edmund G. LaCour Jr.
Solicitor General

Robert M. Overing
Deputy Solicitor General

June 28, 2024

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

INTEREST OF AMICUS CURIAE 1

SUMMARY OF ARGUMENT 1

ARGUMENT 3

I. State immunity for constitutional officers preserves the separation of powers and guards against the distortion of executive decision-making 3

II. There is no exception that would permit this suit to proceed. 14

CONCLUSION 20

CERTIFICATE OF COMPLIANCE 21

CERTIFICATE OF SERVICE 22

TABLE OF AUTHORITIES

Cases

Ala. Agr. & Mech. Univ. v. Jones,
895 So. 2d 867 (Ala. 2004) 6

Alexander v Hatfield,
652 So. 2d 1142 (Ala. 1994) 17, 19

Armory Comm'n of Ala. v. Staudt,
388 So. 2d 991 (Ala. 1980) 6

Boshell v Walker County Sheriff,
598 So. 2d 843 (Ala. 1992) 7

Bowsher v. Synar,
478 U.S. 714 (1986) 5

Bozeman v. Cnty. of Elmore,
No. 2:20-CV-640-ECM, 2021 WL 2954004,
(M.D. Ala. July 14, 2021) 19

Bradley v. Fisher,
80 U.S. 335 (1871) 10

Cleavinger v. Saxner,
474 U.S. 193 (1985) 9

Clinton v. Jones,
520 U.S. 681 (1997) 10

Curry v. Woodstock Slag Corp.,
6 So. 2d 479 (1942) 8

DeStafney v. Univ. of Alabama,
413 So. 2d 391 (Ala. 1981) 5

Drain v. Odom,
631 So. 2d 971 (Ala. 1994) 17

Ex parte Blankenship,
893 So. 2d 303 (Ala. 2004) 15

Ex parte Cranman,
792 So. 2d 392 (Ala. 2000) 5, 8

Ex parte Davis,
930 So. 2d 497 (Ala. 2005) 2, 7, 17, 18

Ex parte James,
836 So. 2d 813 (Ala. 2002) 4

Ex parte McWhorter,
880 So. 2d 1116 (Ala. 2003) 15

Ex parte Moulton,
116 So. 3d 1119 (Ala. 2013) 14, 15, 16

Ex parte Pinkard,
373 So. 3d 192 (Ala. 2022) 6, 12, 14

Ex parte Purvis,
689 So. 2d 795 (Ala. 1997) 15, 16

Ex parte Shelley,
53 So. 3d 887 (Ala. 2009) 12

Ex parte Sumter Cnty.,
953 So. 2d 1235 (Ala. 2006) 14

Ex parte Tirey
977 So. 2d 469 (Ala. 2007) 7, 17

Ex parte Tuscaloosa Cnty.,
796 So. 2d 1100 (Ala. 2000) 6

Ex parte Worley,
46 So. 3d 916 (Ala. 2009) 7, 12, 18

Gregoire v. Biddle,
177 F.2d 579 (2d Cir. 1949) 10

Hambric v. Twilley,
No. 6:23-CV-00748-LSC, 2024 WL 289930,
(N.D. Ala. Jan. 25, 2024) 19

Harlow v. Fitzgerald,
457 U.S. 800 (1982) 9

Hight v. Smith,
No. 6:21-CV-01307-LSC, 2022 WL 17178660,
(N.D. Ala. Nov. 23, 2022) 19

Hutchinson v. Bd. of Trustees of Univ. of Ala.,
256 So. 2d 281 (1971) 6

Imbler v. Pachtman,
424 U.S. 409 (1976) 9, 10

Karrick v. Johnson,
659 So. 2d 77 (Ala. 1995) 16-17

King v. Colbert County,
620 So. 2d 623 (Ala. 1993) 17

Loving v. United States,
517 U.S. 748 (1996) 5

Monroe v. Harco, Inc.,
762 So. 2d 828 (Ala. 2000) 4

Montiel v. Holcombe,
199 So. 245 (1940) 14

Nixon v. Fitzgerald,
457 U.S. 731 (1982) 9

Op. of the Justices No. 380,
892 So. 2d 332 (Ala. 2004) 4, 5

Parker v. Amerson,
519 So. 2d 442 (Ala. 1987) 3, 7, 8, 11, 12, 14, 17

Phillips v. Thomas,
555 So. 2d 81 (Ala. 1989) 15

Reynolds v. Calhoun,
650 F. Supp. 3d 1272 (M.D. Ala. 2023) 19

Tinney v. Shores,
77 F.3d 378 (11th Cir. 1996) 19

Town of Loxley v. Coleman,
720 So. 2d 907 (Ala. 1998) 6

United States v. Texas,
599 U.S. 670 (2023) 5

Wallace v. Bd. of Ed. of Montgomery Cnty.,
197 So. 2d 428 (1967) 15

Constitutional Provisions

Ala. Const. Art. I, §14 ..... 1, 5, 6, 12, 14, 16-18

Ala. Const. Art. III, §42 ..... 3, 4

Ala. Const. Art. V, §112 ..... 1, 7

Ala. Const. Art. V §138 13

Ala. Const. Art. VII 13

Ala. Const. Art. VII. §173 13

Ala. Const. Art. VII. §174 13

Statutes

Ala. Code § 36-1-12(c) 11

Other Authorities

The Federalist No. 47 (James Madison) 4

The Federalist No. 48 (James Madison) 4

INTEREST OF AMICUS CURIAE

The State of Alabama has a substantial interest in the proper scope and application of State immunity, which preserves the separation of powers and protects the decision-making of constitutional officers whose work is essential to a functioning government. The court below would permit litigation to proceed against a constitutional officer and his deputy over acts taken in the performance of their official duties. The threat of liability in this case has far-reaching consequences for State immunity, which must be vigorously enforced where it applies. Accordingly, the State writes to emphasize the basis in constitutional law and precedent for the application of State immunity to the constitutional officers listed in Article V, §112 of the Alabama Constitution.

SUMMARY OF ARGUMENT

The Alabama Constitution makes the State immune from suit. Ala. Const. Art. I, §14. As the Court has long recognized, State immunity extends to constitutional officers—those executive officials whose roles are so necessary they are established directly by the Constitution. Ala. Const. Art. V, §112. From the Governor to the Walker County Sheriff, these officials are immune "whenever the acts that are the basis of the alleged

liability were performed within the course and scope of [their] employment." *Ex parte Davis*, 930 So. 2d 497, 500-01 (Ala. 2005).

State immunity for these officers is supported by two reasons of constitutional structure: First, constitutional officers wield executive power, so judicial incursions upon their decision-making threatens the separation of powers mandated by the Alabama Constitution. Second, constitutional officers perform vital functions, which may be undermined and distorted by the fear of potential liability. Consistent with these principles, this Court has long enforced State immunity against attempts by plaintiffs to embroil the judiciary in matters beyond its jurisdiction.

There is no exception to State immunity for damage actions against constitutional officers who acted based on a mistaken view of the law or beyond their authority. It is easy to see why. Such an exception would swiftly swamp the rule, and the State's highest-ranking officials would be left (at best) with State-agent immunity like any other state employee. But the Governor, the Attorney General, and the other constitutional officers are not like any other employee. The power they wield and the visibility of their offices make them more vulnerable to litigation and thus in greater need of immunity from suit to avoid interference with their

crucial duties. To be sure, aggrieved citizens have remedies. They can bring suits for injunctive or declaratory relief falling into one of the *Parker* exceptions, and they can hold officials to account through the electoral process or impeachment.

Here, the plaintiff seeks a remedy barred by State immunity. He was injured in a collision with a fleeing criminal suspect and seeks to impose liability for his injuries upon Sheriff James E. Underwood and Deputy Sheriff Braden Miles. But Underwood and Miles are constitutional officers who enjoy State immunity, so they are entitled to a writ of mandamus ordering the circuit court to dismiss the case.

ARGUMENT

I. State immunity for constitutional officers preserves the separation of powers and guards against the distortion of executive decision-making.

A. The Alabama Constitution vests the powers of government in "three distinct branches: legislative, executive, and judicial." Ala. Const. Art. III, §42(b). The separation of powers is what makes the State "a government of laws and not of individuals." *Id.* §42(c). The powers and duties of each branch must be jealously preserved and guarded against encroachment by the others, for the "accumulation of all powers, legislative,

executive, and judiciary, in the same hands … [is] the very definition of tyranny." The Federalist No. 47 (James Madison). To that end, the Alabama Constitution commands that the branches shall be "distinct," an even firmer protection of liberty than the U.S. Constitution, which divides powers only implicitly. *See Op. of the Justices No. 380*, 892 So. 2d 332, 334 n.1 (Ala. 2004); *accord Ex parte James*, 836 So. 2d 813, 815 (Ala. 2002) (Alabama's separation-of-powers "command [is] stated with a forcefulness rivaled by few, if any, similar provisions in constitutions of other sovereigns.").

The Alabama Constitution also contains a clear-statement rule, which prevents one branch from exercising the power of another "except as expressly directed or permitted in this constitution." Ala. Const. Art. III, §42(c); *see also Monroe v. Harco, Inc.*, 762 So. 2d 828, 831 (Ala. 2000) ("Each branch … has distinct powers and responsibilities, and our Constitution demands that [they] never be shared."). A branch may violate the separation of powers not only by exercising another branch's core power but also by dominating another branch through "an overruling influence." The Federalist No. 48 (James Madison). "Even when a branch does not arrogate power to itself," the "doctrine requires that a branch

not impair another in the performance of its constitutional duties." *Loving v. United States*, 517 U.S. 748, 757 (1996); *cf., e.g.*, *United States v. Texas*, 599 U.S. 670, 678-80 (2023) (limits of judicial power to review executive enforcement decisions); *Bowsher v. Synar*, 478 U.S. 714, 726-27 (1986) (limits of legislative power to remove duly appointed executive officers).

B. Enshrined in Section 14 of Article I of the Alabama Constitution, State immunity flows from the executive power and protects it against incursion by the judiciary. The "core power of the executive branch is to carry out [] legislative policies within a certain degree of executive discretion." *Op. of the Justices No. 380*, 892 So. 2d at 335. One way to preserve executive discretion is State immunity, sometimes called sovereign, constitutional, or absolute immunity. Section 14 is "an expression of a strong public policy against the intrusion of the judiciary into the management of the State." *Ex parte Cranman*, 792 So. 2d 392, 401 (Ala. 2000).

While the text of Section 14 states that "the State of Alabama shall never be made a defendant," Ala. Const. Art. I, §14, the constitutional principle extends much more broadly. *See DeStafney v. Univ. of Alabama*, 413 So. 2d 391, 392 (Ala. 1981) ("keeping in mind that claimants have

traditionally sought to circumvent the absolutism of §14 by naming individual State officials and employees as parties defendant…"); *Ex parte Pinkard*, 373 So. 3d 192, 199 (Ala. 2022) ("[S]ometimes … a plaintiff will label a claim an 'individual capacity' claim even though the substance of that claim makes clear that the State is, in reality, the adverse party."). Who counts as "the State" is the key question, which this Court has answered by extending immunity to "arms or agencies of the state," constitutional officers, and even state employees when they act "as agents of the state." *See Ex parte Tuscaloosa Cnty.*, 796 So. 2d 1100, 1103 (Ala. 2000) (citing *Town of Loxley v. Coleman*, 720 So. 2d 907, 908-09 (Ala. 1998)); *cf. Armory Comm'n of Ala. v. Staudt*, 388 So. 2d 991, 993 (Ala. 1980) (describing a functional inquiry). When it applies, the "wall of immunity erected by §14 is nearly impregnable." *Ala. Agr. & Mech. Univ. v. Jones*, 895 So. 2d 867, 872 (Ala. 2004); *Hutchinson v. Bd. of Trustees of Univ. of Ala.*, 256 So. 2d 281, 284 (1971) ("almost invincible").

While there are certainly difficult issues in defining the contours of State immunity, the doctrine's extension to constitutional officers is not one of them. Time and again, the Court has correctly interpreted the Alabama Constitution to shield constitutional officers from liability for acts

within the scope of their duties. *See, e.g.*, *Ex parte Worley*, 46 So. 3d 916, 925 (Ala. 2009); *Ex parte Tirey*, 977 So. 2d 469, 469-70 (Ala. 2007); *Ex parte Davis*, 930 So. 2d at 501-02; *Boshell v. Walker County Sheriff*, 598 So. 2d 843, 844 (Ala. 1992); *cf. Parker v. Amerson*, 519 So. 2d 442 (Ala. 1987). Although State immunity extends (with limitations) to state *employees* only when sued in their official capacity, the Court "has consistently held that a claim for monetary damages made against a constitutional officer in the officer's individual capacity is barred by State immunity whenever the acts that are the basis of the alleged liability were performed within the course and scope of the officer's employment." *Ex parte Davis*, 930 So. 2d at 500-01.

It is critical to the structure of our government that the Court preserve State immunity for constitutional officers. Suits against them are effectively suits against the State. The constitutional officers include the "governor, lieutenant governor, attorney-general, state auditor, secretary of state, state treasurer, superintendent of education, commissioner of agriculture and industries, and [the] sheriff for each county." Ala. Const. Art. V, §112. This defined set of officials is tasked with performing the most vital functions of the State, and each one exercises core powers of

the executive branch. The exercise of those powers is, of course, governed by law—law which this Court may interpret and apply in the course of issuing injunctive and declaratory relief directed at individual constitutional officers. *See, e.g.*, *Curry v. Woodstock Slag Corp.*, 6 So. 2d 479, 480-81 (1942). Such relief is possible only if it falls into one of the five long-recognized exceptions to immunity, each of which permits a prospective equitable remedy. *Parker*, 519 So. 2d at 443.

But liability for damages imposed based on acts within the scope of a constitutional officer's duties is another matter. Any case threatening such liability raises severe separation-of-powers concerns. The "vulnerability" of constitutional officers to tort actions for damages, "if not constrained, could lead to excessive judicial interference in the affairs of coequal branches of government." *Ex parte Cranman*, 792 So. 2d at 400-01. The Court in *Ex parte Cranman* ultimately permitted a tort action against a state employee, not a constitutional officer. In doing so, the Court noted that many individuals act on behalf of the State, yet do not engage in "planning tasks," "policy-level decision-making," or "decision-making that directly relates to the exercise of a governmental-policy judgment." *Id.* at 403-04. In contrast, every one of the constitutional

officers—those who form the core of the executive branch—exercises the kind of high-level judgment attributable to the State itself.

The alternative to categorical immunity for constitutional officers is at odds with our constitutional structure, which must be understood on the assumption that our government is designed to work well. *See Nixon v. Fitzgerald*, 457 U.S. 731, 748 (1982) (considering for immunity purposes that the "system [is] structured to achieve effective government."). An official who faces "harassment by unfounded litigation" may divert "energies from his public duties" and possibly "shade his decisions instead of exercising the independence of judgment required by the public trust." *Imbler v. Pachtman*, 424 U.S. 409, 423 (1976). For some officers, particularly those highly visible to the public, only "absolute immunity" can "assure that the individual can perform his functions without harassment or intimidation." *Cleavinger v. Saxner*, 474 U.S. 193, 202 (1985).

In Alabama, the Constitution tells us exactly who those officers are. They are the constitutional officers, whose "sheer prominence," "visibility," and "effect … on countless people" make them an "easily identifiable target" for litigation." *Fitzgerald*, 457 U.S. at 752-53; *see also id.* at 761 (Burger, C.J., concurring); *Harlow v. Fitzgerald*, 457 U.S. 800, 827 (1982)

(Burger, C.J., dissenting); *Clinton v. Jones*, 520 U.S. 681, 720-22 (1997) (Breyer. J., concurring). And precisely because these officers wield tremendous power, the need for independent decision-making, uncolored by the threat of personal liability, is at its apex. A Sheriff, owing to his public role in countless actions to ensure public safety and secure justice, may be among the officers most vulnerable and whose independent judgment most needs protection. *Cf. Imbler*, 424 U.S. at 423-24; *Bradley v. Fisher*, 80 U.S. 335, 348 (1871).

None of this is to say that actions against constitutional officers generally lack merit. But one of the justifications for immunity is that it is "impossible to know whether the claim is well founded" until litigation is complete—by which time "all officials, the innocent as well as the guilty" have endured its burdens. *Gregoire v. Biddle*, 177 F.2d 579, 581 (2d Cir. 1949) (Hand, J.). The threat of protracted and costly litigation may "dampen the ardor of all but the most resolute, or the most irresponsible, in the unflinching discharge of their duties." *Id.* A constitutional officer might think twice before making an unpopular decision or one with a low but real risk of harm. No doubt some constitutional officers subjected to the threat of litigation would be tempted to exercise their

duties to minimize the risk. This temptation is not only one the Court should avoid magnifying with the uncertain threat of tort liability; it is one that the Alabama Constitution considers intolerable.

C. State-agent immunity is inadequate to protect constitutional officers. State-agent immunity applies when the conduct at issue falls within one of a handful of statutorily defined circumstances. *See* Ala. Code § 36-1-12(c). Whereas the jurisdictional limitation imposed by State immunity keeps constitutional officers out of the court, State-agent immunity often locks them in it—forcing them to face the burden of trial and litigation to prove their conduct is covered to maintain their immunity. Moreover, to the extent State-agent immunity's contours can be by statute, the Legislature could effectively commandeer the executive branch by threatening to strip its protections from nonpliant officers. *See Parker*, 519 So. 2d at 446. This Court may impose limits on the Legislature's ability to "make[] an executive officer liable" for tortious acts, but constitutional officers should never be vulnerable to such legislative interference in the first place. The guarantee of separated powers is "devoid of meaning if one branch can arbitrarily impose restrictions on another branch." *Id.*

D. The foregoing demonstrates that protecting the state coffers is one rationale for State immunity but not the only one. A separate and weighty concern is the danger that courts (induced by private plaintiffs) can reach the levers of executive power through the pockets of constitutional officers. State immunity is the barrier the Alabama Constitution places in the way of such overreaching. *See Ex parte Worley*, 46 So. 3d at 925 ("'Suits against [constitutional] officers for actions taken in the line and scope of their employment inherently constitute actions against the State, and such actions are prohibited by §14.'") (quoting *Ex parte Shelley*, 53 So. 3d 887, 895 (Ala. 2009)).

Stripping constitutional officers of State immunity would foment legal bedlam. Sheriffs and deputies may hesitate before pursuing criminals; an attorney-general may avoid potentially unpopular prosecutions; and a governor might refrain from acting in emergency situations. These officers need to act boldly and independently, not out of fear that they will be haled into court for daring to take a risk for the public good.

The application of State immunity to constitutional officers is not "dangerously overbroad." *Cf. Ex parte Pinkard*, 373 So. 3d at 200. The officers who comprise the executive department are a limited and defined

group enumerated by the Alabama Constitution; the standards for them are properly much different than those applicable to the thousands of other state employees. Nor does application of State immunity here leave aggrieved citizens without a remedy. Against these officials, plaintiffs may bring suits seeking equitable remedies that fall within the familiar five-exception framework.

In addition, constitutional officers are liable through the democratic process. For one, nearly all are elected to their offices, so aggrieved citizens have a built-in remedy—vote the officer out. *See* Ala. Const. Art. V, §112. Another remedy for most is impeachment. *See* Ala. Const. Art. VII. Certain constitutional officers "may be removed from office for willful neglect of duty, corruption in office, incompetency, or intemperance." Ala. Const. Art. VII. §173. Others, including sheriffs, "may be removed from office" for those reasons, any other reasons found "elsewhere in th[e] constitution," "by the supreme court," or "under such regulations as may be prescribed by rule of the Supreme Court of Alabama or law." Ala. Const. Art. VII. §174; *see also* Ala. Const. Art. V §138 (providing for impeachment for injury to prisoners "owing to the neglect, connivance, cowardice, or other grave fault of the sheriff").

These checks—election and impeachment—are part of our constitutional design, and the design is a wise one. Unlike expansive abrogation of State immunity, political checks place power first and foremost in the People of Alabama, making constitutional officers responsive to the public they serve, not to the threat of private lawsuits.

II. There is no exception that would permit this suit to proceed.

Applying State immunity, the "Court has specifically held that a suit against a sheriff is essentially a suit against the state and thus not maintainable." *Parker,* 519 So. 2d at 446 (citing *Montiel v. Holcombe,* 199 So. 245, 245 (1940)); *accord Ex parte Sumter Cnty.*, 953 So. 2d 1235, 1239-40 (Ala. 2006) ("[C]laims against sheriffs and deputy sheriffs are barred by the absolute immunity of Article I, §14 … when [they] were acting within the line and scope of their employment." (cleaned up)).

In opposition to the motion to dismiss below, the plaintiff failed to appreciate the distinction between State immunity and State-agent immunity. *Cf. Pinkard*, 373 So. 3d at 201 (distinguishing types of immunity and permitting right to recover damages from certain *State employees*, not constitutional officers). And many of the principal authorities cited did not involve constitutional officers at all. *See, e.g.*, *Ex parte Moulton*,

116 So. 3d 1119, 1130-31 (Ala. 2013) (university and hospital administrators); *Phillips v. Thomas*, 555 So. 2d 81 (Ala. 1989) (employees within the Department of Human Resources); *Wallace v. Bd. of Ed. of Montgomery Cnty.*, 197 So. 2d 428, 429 (1967) (members of county board of education)

The plaintiff's primary response is that allegations relevant to *Ex parte Moulton*'s exception "are essentially allegations that the [officer] acted outside the line and scope of their position, which ultimately is *not* an action against the State." Pet. App'x 7 at 9. This argument says it all. The plaintiff here *cannot show* that the actions at issue here were "outside the line and scope" of the Sheriff's and Deputy Sheriff's official duties. And that is unsurprising because a high-speed chase after a criminal suspect—even one that unfortunately results in a collision—is well within the "line and scope of [a deputy sheriff's] employment." *Ex parte Blankenship*, 893 So. 2d 303, 305 (Ala. 2004); *Ex parte McWhorter,* 880 So. 2d 1116, 1117 (Ala. 2003) (similar); *Ex parte Purvis*, 689 So. 2d 794, 795-96 (Ala. 1996) (immunity despite allegations of intentional violations of "proper procedures for approaching, detaining, and apprehending dangerous fugitives"). State immunity covers conduct within the

scope of employment; a plaintiff cannot circumvent the doctrine through allegations perhaps related to the scope of employment that do not describe actions taken outside of it.

Moreover, the set of bad acts excepted by the *Ex parte Moulton* test (for State-agent immunity) is not coextensive with the scope of official duties. Surely not every mistake of law, for example, results in actions beyond the scope of employment. *See Ex parte Moulton*, 116 So. 3d 1119, 1131 (Ala. 2013). The plaintiff's proposal to graft *Ex parte Moulton* into the State immunity doctrine would mean exceedingly weak protection for the State's highest officers. If all that a plaintiff must do is allege a mistake of law or act beyond proper authority, then it is difficult to see what kind of claims would be barred by State immunity at all. The resulting flood of claims would proliferate interbranch conflicts and severely hinder the independent exercise of executive power.

This Court rejected the same argument in *Ex parte Purvis*, wherein the plaintiff also relied upon the exception to *State-agent* immunity for acts done "willfully, maliciously, illegally, fraudulently, in bad faith, beyond his authority, or under a mistaken interpretation of the law." 689 So. 2d at 795. The Court relied upon *Karrick v. Johnson*, 659 So. 2d 77

(Ala. 1995), which had "reiterated the limited circumstances in which a sheriff and a sheriff's deputy are amenable to suit, in light of [Section 14.]" 689 So. 2d at 795. Those limited circumstances are the familiar *Parker* exceptions, none of which permits a claim for money damages and none of which is satisfied here. *See also Ex parte Tirey* 977 So. 2d 469, 469-70 (Ala. 2007) (granting State immunity from claims against sheriff despite exceptions applicable to State-agent immunity).

The Court has upheld State immunity for sheriffs and deputy sheriffs in a wide variety of cases. *See supra* p. 7; *see also Alexander v Hatfield*, 652 So. 2d 1142, 1143 (Ala. 1994) ("the only exceptions to the sovereign immunity of sheriffs" are those in *Parker*); *Drain v. Odom,* 631 So. 2d 971, 971 (Ala. 1994) (similar); *King v. Colbert County*, 620 So. 2d 623, 624 (Ala. 1993) (similar). In *Ex parte Davis*, for instance, this Court held that several tort claims against a deputy arising from a search and arrest were precluded by State immunity. While the Court recognized that §14 of the Alabama Constitution "does not necessarily immunize State officers and agents from individual civil liability," it distinguished 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." *Id.* at 500-01 "A claim for monetary damages made against a constitutional officer in the officer's individual capacity is barred by State immunity whenever the acts that are the basis of the alleged liability were performed within the course and scope of the officer's employment." *Id.*

Likewise in *Ex parte Worley*, this Court applied immunity to bar claims against a former and current Secretary of State in their individual and official capacities. 46 So. 3d at 924-25. The plaintiffs sought damages for actions within the line and scope of the officers' employment. *Id.* Thus, the defendants, as constitutional officers, received State immunity because the claims against them were in essence claims against the State. *Id.* It did not matter that the two were sued in their individual capacities; the mere fact that the suit arose from the defendants' official duties was enough to protect them. *Id.* The Court issued a writ of mandamus ordering the lower court to grant the defendants' motion for judgment on the pleadings. *Id.* This case should be resolved the same way.

Many federal courts have understood Alabama law to distinguish between State immunity and State-agent immunity and between constitutional officers and other state officials and employees. "The Alabama

Supreme Court explained that under Article I, § 14, the *only* exceptions to a sheriff's immunity from suit are actions brought to *enjoin* the sheriff's conduct." *Tinney v. Shores*, 77 F.3d 378, 383 (11th Cir. 1996) (citing *Alexander*, 652 So. 2d at 1143); *see also Hight v. Smith,* No. 6:21-CV-01307-LSC, 2022 WL 17178660, at *4 (N.D. Ala. Nov. 23, 2022) (citing "the longstanding special status of sheriffs and their deputies," as opposed to "other types of state officials"); *see also Hambric v. Twilley,* No. 6:23-CV-00748-LSC, 2024 WL 289930, at *3 (N.D. Ala. Jan. 25, 2024); *Reynolds v. Calhoun,* 650 F. Supp. 3d 1272, 1276-79 (M.D. Ala. 2023); *Bozeman v. Cnty. of Elmore*, No. 2:20-CV-640-ECM, 2021 WL 2954004, at *5 (M.D. Ala. July 14, 2021) (distinguishing two types of immunity, affording State immunity to Elmore County Sheriff, and granting motion to dismiss for lack of an allegation that Sheriff "was on a personal errand or otherwise working outside of his job duties").

The Court's precedent stands for a clear and unambiguous principle: constitutional officers are not the same as state employees, and the two are not held to the same standards. Stripping constitutional officers of State immunity would blur this crucial distinction and do irreparable harm to the State's basic constitutional structure.

CONCLUSION

The Court should issue the writ of mandamus.

Respectfully submitted,

Steve Marshall
Attorney General

s/ Edmund G. LaCour Jr.
Edmund G. LaCour Jr.
Solicitor General
Robert M. Overing
Deputy Solicitor General
STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL
501 Washington Avenue
Montgomery, AL 36130
Telephone: 334-242-7300
Fax: 334-242-2848
Edmund.LaCour@AlabamaAG.gov

June 28, 2024

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 3,949 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/ Edmund G. LaCour Jr.
Edmund G. LaCour Jr.
Solicitor General

CERTIFICATE OF SERVICE

I certify that on June 28, 2024, 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:

Charles Clyde Tatum, Jr.
Post Office Box 349
Jasper, Alabama 35502-0349
205-387-0708
ctatum7@aol.com

Seth L. Diamond
Attorney at Law
3 Riverchase Office Plaza #102
Birmingham, Alabama 35244
256-778-1529
sediamondlaw@gmail.com

On June 28, 2024, I also served a copy on the Circuit Court by mail at the following address.

Hon. Hugh D. Farris, Jr.
Circuit Court of Walker County
18th Street/2nd Avenue
P.O. Box 1030
Jasper, AL 35502

s/ Edmund G. LaCour Jr.
Edmund G. LaCour Jr.
Solicitor General

ADDRESS OF COUNSEL:
STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL
501 Washington Avenue
Montgomery, AL 36130
Telephone: 334-242-7300
Fax: 334-242-2848
Edmund.LaCour@AlabamaAG.gov