CASE NUMBER SC-2024-0263

IN THE SUPREME COURT OF ALABAMA

JAMES E UNDERWOOD AND BRADEN MILES,

Petitioners,

vs.

JOHN LONG,

Respondent.

ON PETITION FOR WRIT OF MANDAMUS TO THE CIRCUIT COURT OF WALKER COUNTY, ALABAMA

Circuit Court No. 64-CV-2019-900131.80

SUPPLEMENTAL BRIEF IN OPPOSITION TO PETITION FOR WRIT OF MANDAMUS

Charles C. Tatum, Jr., Esquire
Seth L. Diamond, Esquire
Counsel for the Respondent/Plaintiff
Post Office Box 349
Jasper, Alabama 35502
(205) 387-0708
ctatum7@aol.com
sediamondlaw@gmail.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

SUPPLEMENTAL BRIEF IN OPPOSITION TO PETITION FOR WRIT OF MANDAMUS

John Long, for supplemental brief in response to the arguments raised by the State of Alabama in its *amicus curiae* brief filed on June 28, 2024, and on a deputy sheriff's entitlement to immunity under *§ 36-22-3(b), Ala. Code 1975*, shows unto your honors as follows:

SUMMARY OF THE ARGUMENT

1. The State's argument that the judiciary branch should be precluded from deciding cases involving executive officers due to the separation of powers doctrine is inimical to this court's ruling in Ex parte Cranman 792 So. 2d 392 (Ala. 2000). In that case, the court decided firstly that, Article VI of the Alabama Constitution vests the Judiciary Branch with the authority to decide cases and secondly, to any extent Art. I §14, state immunity, conflicts with Art. I §13, an individual's right to seek a remedy, §13 takes dominance.

2. The State and the Petitioners ignore a well-recognized exception that state officers who act outside the line and scope of their employment are not "the state" and hence are not shielded with Art. I §14 immunity. Additionally, in a case such as this, where there are allegations that an employee is combining their activities and personal

motives with the business of his employer, this court has ruled that immunity necessarily becomes a question of fact, which cannot be resolved by a motion to dismiss.

3. Art. V §112 state officers enjoy the same constitutional immunity under Art. I §14 as state officials. The test for granting state immunity has never been to merely look at the officer's position, but rather, whether the claim being made was against the state. In making this determination, the court has established a two-prong analysis. The first prong has been whether "a result favorable to the plaintiff would directly affect a contract or property right of the state," *Parker,* and, the second prong has been for the court to consider "the nature of the suit or the relief demanded". *Ex parte Carter*.

Since the court in *Taylor* returned to its pre-*Barnhart* understanding that state officials sued in their individual capacity for misconduct in the performance of their duties are no longer within the ambit of Art. I §14 protection, and the court previously acknowledged in White v. Birchfield, 582 So. 2d 1085 (Ala. 1991), that state officers are not immune from suit "when he acts willfully, maliciously, illegally, legally, fraudulently, in bad faith, beyond his authority, or under a

mistaken interpretation of the law" (which has since been codified by the legislature in Ala. Code §36-1-2), there is no legal basis for the court to summarily hold that state officers, by virtue of their position, are absolutely immune when sued in their individual capacities.

4. By enacting Sheriff Deputy Statutory Immunity under §36-22-3(b), the legislature unequivocally repudiated court made law that deputies are vicariously immune to the same extent as the sheriff for Art. I §14 purposes. Hence, this court should likewise repudiate this infirm principle and apply the clear and unambiguous language of the statute, which is synonymous with state agent immunity under *Ex parte Cranman*.

ARGUMENT

1. *The Separation of Powers Principle Does Not Divest the Judiciary of its Constitutional Authority to Decide Cases.*

The State's argument that the judiciary branch should be precluded from deciding cases involving executive officers due to the separation of powers doctrine is long on theory but short of substance. In Ex parte Cranman 792 So. 2d 392 (Ala. 2000), this court addressed the same

argument at length and concluded that while Article I §14[1] "prohibits lawsuits against the State[, it] does not mention lawsuits against individuals," and therefore, "the right to a remedy through a lawsuit against an individual", created by Art. I §13[2] "stands above any implications from §14", and therefore, the separation of powers principle does not restrict the Judiciary Branch from deciding cases. *Id.* at 401.

The *Cranman* court posited as follows,

> "we conclude that while we have the constitutional power to decide cases -- thereby applying the law in cases that come before us -- if the authority conferred upon this Court pursuant to the Judicial Article (Article VI) conflicts with the provisions of 13, we must construe 13 as dominant, subject to our obligation to observe the separation of powers established by 43. In applying the doctrine of separation of powers, we must recognize 14 as an expression of a strong public policy against the intrusion of the judiciary into the management of the State while, at the same time, acknowledging that it 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 against an individual must, as to the issue before us, stand above the implications from 14 in the hierarchy within the declaration of rights." *Id.* at 40 1.

---

[1] "That the State of Alabama shall never be made a defendant in any court of law or equity." Alabama Const. Art. I §14.

[2] "That all courts shall be open; and that every person, for any injury done him, in his lands, goods, person, or reputation, shall have a remedy by due process of law; and right and justice shall be administered without sale, denial, or delay." Alabama Const. Art. I §13.

In reaching its decision, the *Cranman* Court relied on precedent from near the time the constitution was adopted and gave significance to its decision in Elmore v. Fields, 153 Ala. 345, 45 So. 66 (1907), where it ruled that "because the State can do no wrong, its agents, when committing a tort, are not acting within their authority and, therefore, they do not act on behalf of the *State. Elmore,* 153 Ala. at 351, 45 So. at 67." *Cranman* at 401.

Moreso, the Court reflected on its decision in *Finnell v. Pitts*, 222 Ala. 290, 132 So. 2 (1930), where it held, "[w]e also think that this suit does not violate the constitutional prohibition against suing the state. For though the state cannot be sued (section 14, Constitution), its immunity from suit does not relieve the officers of the state from their responsibility for an illegal trespass or tort on the rights of an individual, even though they act pursuant to authority attempted to be conferred by the state." *Id.* at 402.

Furthermore, the *Cranman* Court relied on *DeStafney v. University of Alabama*, 413 So. 2d 391 (Ala. 1981), where it "recogniz[ed] that a claim alleging personal injury caused by the alleged negligent conduct of a State employee, even when that conduct is committed in the line and

scope of her employment, is not within the ambit of the constitutional prohibition against lawsuits against the State as expressed in 14." *Cranman* at 402.

Thus, since this court has previously rejected the same argument now being made by the State that the separation of power doctrine constrains the Court's authority to decide cases against individual state actors, there is no basis in law to give this argument any deference.

Moreso, the State's contention that the law affords a sufficient alternative remedy through the democratic process or impeachment is woefully inapt. The State has obviously chosen to overlook that deputy sheriffs are not elected by the public and, through untested legal theory, have yet to be made subject to the impeachment powers of this Court. Furthermore, there is no legal basis for concluding that, just because an officer can be impeached, it precludes a citizen making a claim against the officer in court as afforded by Section 13. Thus, the Court should not be persuaded by this argument either.

2. *State Officers Acting Outside the Line and Scope of Their Employment Are Not Shielded with Art. I §14 Immunity.*

The State and petitioners ignore a well recognized exception to Art. I §14 immunity and make the same flawed argument that individual

capacity lawsuits against executive state officers, enumerated by Art. V §112, are automatically barred because they are, in effect, suits against the State. This Court, however, has refused to adopt such an expansive interpretation of sovereign immunity, and it has denied immunity, where such officers were acting outside the line and scope of their employment.

In Ex parte Haralson, 853 So. 2d 928 (Ala. 2003), this Court ruled that "we cannot conclude. . . without evidence showing that at the time of the accident he was acting within the line and scope of his employment, that Deputy Haralson is entitled to immunity. No State officer, such as a deputy sheriff, can avoid tort liability simply by claiming that his '"mere status as a State official cloaks him with the State's constitutional immunity.'" *Phillips*, 555 So. 2d at 83 (quoting *Barnes v. Dale*, 530 So. 2d 770, 781 (Ala. 1988)); see also *Mitchell*, 598 So. 2d at 806. It is conceivable that Griffith could prove facts that would show that at the time of the accident Deputy Haralson was on a personal errand or otherwise had departed from the line and scope of his employment. If so, Griffith "may possibly prevail" on her claims. *Id.* at 931[3].

[3]*See* also as persuasive authority Bradley v. Franklin, 786 F. App'x 918, 921 (11th Cir. 2019). "Alabama law does not extend absolute immunity to officials when they act outside the scope of their employment, as the

These holdings make clear that deputy sheriffs, or other state actors, sued in their individual capacity for alleged misconduct, rather than in their official capacity, are not "the state" and hence are not shielded with absolute immunity afforded the state under Article 14. This court made this conclusion clear in Taylor v. Allstate Prop. & Cas. Ins. Co., 373 So. 3d 192 (Ala. 2022), and it should apply the same reasoning in this case.

Notwithstanding, should the court refuse to apply its holding in *Taylor* and *Harlason* in this matter, it is noteworthy in his complaint Long makes no allegation the petitioners were acting within the line and scope of their employment; rather, Long alleges they were acting under the color of state law.

"An act is effected "under color of law" [ ] if it is effected by a law enforcement officer acting "under pretense of law." *Screws*, 325 U.S. at 111, 65 S. Ct. at 1040 (internal quotation marks omitted). [ ]("Misuse of

---

defendants appeared to be doing. . . According to the defendants, even if their activities were ill-intended, the actions occurred during the course of police investigations, [ ], such that absolute immunity still applies. This view requires an extraordinarily broad view of absolute immunity that would effectively immunize any conduct when the sheriff flashes his or her badge. The district court correctly rejected this view because Alabama law does not provide such infinite immunity. *Id.* at 923.

power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken 'under color of' state law.")." United States v. House, 684 F.3d 1173, 1200 (11th Cir. 2012).

By the nature of the allegations in Long's complaint, and accepting them as true, as required when ruling on a motion dismiss, it is evident that deputy Miles violated Alabama Code §32-5-7, which regulates high-speed pursuits. The statute provides in relevant part that "[t]he driver of an authorized emergency vehicle, . . .when in the pursuit of an actual or suspected violator of the law . . , may . . .[e]xceed the maximum speed limits so long as he does not endanger life or property, [however, it] shall not relieve the driver. . .from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others."

Based on *Finnell v. Pitts, supra,* and the cases following it, it cannot be said that Miles was acting as "the State," while operating his vehicle in violation of the law and causing injury to Long.

In Blackwood v. City of Hanceville, 936 So. 2d 495 (Ala. 2006), this Court overruled the Circuit Court's finding that Officer Conner was

acting within the scope of his authority, and thus immune, when he admittedly drove at speeds of 90 mph through a dangerous intersection, while responding to an emergency, and caused a collision. "[A]ssuming . . .Conner was traveling at a minimum speed of 91 miles per hour while approaching the dangerous [ ] intersection, he would be charged with notice that he was driving in a manner that endangered life or property and represented a reckless disregard for the safety of others. It will be for the jury to decide [ ] whether, acting within his discretion to exercise his best judgment, Conner should have known that the speed at which he was driving, under all the attendant circumstances, endangered life or property and constituted a reckless disregard for the safety of others," *Id.* at 507.

Similarly, in the present case, "assuming [Deputy Miles] was traveling at a minimum speed [of 115 mph, along a winding and narrow roadway, over a distance of 9 miles] while approaching the dangerous [curve], he would be charged with notice that he was driving in a manner that endangered life or property and represented a reckless disregard for the safety of others. It will be for the jury to decide [ ] whether, acting within his discretion to exercise his best judgment, [Miles] should have known

that the speed at which he was driving, under all the attendant circumstances, endangered life or property and constituted a reckless disregard for the safety of others." *Blackwood, supra.*

It can also be inferred from the allegations in the complaint that the reckless pursuit by Miles was for personal motives such as an unreasonable personal desire to apprehend the fleeing suspect or for recognition to further his own career in law enforcement. This court has held that where an employee is combining their personal motives with the business of his employer, this court has ruled that it necessarily becomes a question of fact whether he was acting outside the scope of his employment, which cannot be resolved by a motion to dismiss.

"[T[he fact that an employee is combining personal activities with the employer's business . . . becomes a question for the jury to determine whether the employee was acting from personal motives [outside the line and scope of their employment and] having no relationship to the business of the employer." *Hendley v. Springhill Memorial Hosp.*, 575 So. 2d 547, 550 (Ala. 1990). Hudson v. Muller, 653 So. 2d 942, 944 (Ala. 1995).

Thus, on the face of the complaint, it is clear, Long has alleged sufficient facts that deputy Miles was not acting in the line and scope of

employment, when he caused a collision by driving in an unreasonably dangerous and reckless manner in violation of the law and for personal motives, and therefore he is not entitled to State Immunity for claims asserted against him in his individual capacity.

3. *State Officers Share the Same Immunity as State Officials Under Art. 1 §14.*

The State and the petitioners seemingly rely on this Court's decision in *Ex parte Davis,* 930 So. 2d 497 (Ala. 2005), for the mistaken proposition that all individual capacity suits against constitutional officers, such as the Sheriff – and its deputies, arising out of their scope of their employment, are categorically barred by Art. I §14 because these claims are "essentially a suit against the state". *Id* at 500-501.

However, the court's decision in *Davis* was logically flawed because it relied on precedent arising out of official capacity claims, or suits against the office instead of the individual, and the court failed to make any reasoned distinction between the two.

Indeed, the *Davis* court specifically relied on *Boshell v. Walker County Sheriff*, 598 So. 2d 843, 844 (Ala. 1992) for the proposition that "a sheriff, as an executive officer of the State of Alabama, is immune, under Art. I §14, of the Alabama Constitution, from suit based on state law claims

arising out of the execution of the duties of his office". *Davis* at 501. Yet, the *Boshell* case was an action for damages for false arrest against the sheriff of Walker County solely in his "official capacity," and the court never reached any individual capacity claims. *Boshell* at 844.

The *Davis* court also relied on *Montiel v. Holcombe*, 240 Ala. 352, 354, 199 So. 245 (1940) for the proposition that "an action against a sheriff [ ] for damages arising out of the performance of his duties is '"essentially a suit against the state."' *Davis* at 501. Yet again, the *Montiel* case was an action against the Sheriff and the District Attorney of Mobile County in their official capacities to enjoin them from prosecuting a criminal offense. Thus, just like *Boshell,* the *Montiel* court never reached any individual capacity claims. *Montiel* at 245.

The court's decision in *Davis* is problematic for a number of reasons. Firstly, it mars any distinction between official and individual capacity claims without proper precedent or reasoning. Secondly, the source of immunity relied on by *Davis* is the same source of immunity as claimed by other state officials - Article I, Section 14. The Article, however, makes no distinction between the two and merely states that the state shall not be made a party to suit. This unambiguous provision affords the state or

state actors, whether state officials or officers, complete protection from being sued in their official capacity, but it offers no protection against the individual. This clear statement of law does not change in wording or meaning, depending on the title of the actor sued. Accordingly, this court should overturn *Davis*, and the line of cases relied on by the petitioners and the state, to the extent they extend Article I Section 14 immunity beyond the boundary expressly granted by the constitution.

Notwithstanding, the litmus test for determining whether an action is against the State, for purposes of granting state officer's sovereign immunity[4], has been a two-prong analysis.

The first prong is whether "a result favorable to the plaintiff would directly affect a contract or property right of the state." Parker v. Amerson, 519 So. 2d 442, 445 (Ala. 1987), quoting from Gill v. Sewell, 356 So. 2d 1196 (Ala. 1978). In other words, whether the defendant is simply a "conduit" through which the plaintiff seeks recovery of damages from the State, Barnes v. Dale, 530 So. 2d 770, 784 (Ala. 1988), or "a judgment against the officer would directly affect the financial status of the State

[4] The *Parker* Court expressly ruled that the sheriff is a "**state officer**". *Parker at* 446.

treasury," Lyons v. River Road Constr., Inc., 858 So. 2d 257 at 261 (Ala. 2003).'" Haley v. Barbour County, 885 So. 2d 783 at 788 (Ala. 2004). Thus, preserving the distinction between official and individual capacity claims.

"Unlike an official-capacity claim, an individual-capacity claim seeks to hold a government official or employee personally liable, and to the extent that it seeks monetary recovery, it demands it from the individual himself rather than from a "governmental entity" or the State treasury. Because genuine individual-capacity claims run against officers personally, not against the State, we have traditionally held that such claims cannot trigger § 14's jurisdictional bar. See Sawyer, 984 So. 2d at 1108." Taylor v. Allstate Prop. & Cas. Ins. Co., 373 So. 3d 192, 199 (Ala. 2022).

"[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. For over a century, our caselaw recognized this. Indeed, 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 [his or her] individual capacity' is, of course, not an

action against that person in his or her official capacity" and, therefore, "would of necessity fail to qualify as 'an action against the State' for purposes of § 14." Ex parte Bronner, 171 So. 3d 614, 622 n. 7 (Ala. 2014); *Taylor* at 200.

Therefore, since the Court in *Taylor* returned to its "pre-Barnhart[5] understanding of § 14, which properly recognized that State immunity does not bar claims that name and seek relief only from individual officers in their personal capacity" against State Officials, this Court should properly recognize that individual capacity claims against constitutional officers are likewise not within the prohibitions of Art. I §14.

The second prong is that "the Court considers the nature of the suit or the relief demanded, not the character of the office of the person against whom the suit is brought.' Ex parte Carter, 395 So. 2d 65, 67-68 (Ala. 1980)," Ex parte Moulton, 116 So. 3d 1119, 1130-31 (Ala. 2013). This

[5] "[T]his Court recently held for the first time in Barnhart v. Ingalls, 275 So. 3d 1112 (Ala. 2018), that claims against a State officer alleging that the officer breached "duties ... that ... existed solely because of [the officer's] official position[]" are, "in effect," claims against the State and likewise trigger § 14 immunity. Id. at 1126." Taylor v. Allstate Prop. & Cas. Ins. Co., 373 So. 3d 192, 199 (Ala. 2022).

second prong contradicts the only assertion of the State and petitioners, that they are entitled to state immunity solely because of their status as executive state officers.

This Court has defined certain actions that do not implicate State contract or property interests as "exceptions" to § 14 immunity. *See Moulton,* 116 So. 3d at 1132 (quoting *Harbert,* 990 So. 2d at 840 (internal citations omitted).

"""There are [ ] general categories of actions, which [ ] we [have] stated do not come within the prohibition of § 14: (1) actions brought to compel State officials to perform their legal duties; (2) actions brought to enjoin State officials from enforcing an unconstitutional law; (3) actions to compel State officials to perform ministerial acts; and (4) actions brought under the Declaratory Judgments Act. . . . (5) valid inverse condemnation actions brought against State officials in their representative capacity; and . . . (6) (a) actions for injunction brought against State officials in their representative capacity where it is alleged that they had acted fraudulently, in bad faith, beyond their authority, or in a mistaken interpretation of law, [ ] and (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. Phillips v. Thomas, 555 So. 2d 81, 83 (Ala. 1989)." Ex parte Moulton, 116 So. 3d 1119, 1131-32 (Ala. 2013).

The restated sixth exception 6(b), along with the protections of Ala. Code §36-1-12, certainly affords state officers and officials alike with sufficient immunity to allow them to exercise their discretion and judgment, within the confines of the law, without fear of unconstrained lawsuits as contemplated by this court in *Ex parte Cranman*.

Furthermore, applying the *Moulton* sixth exception (*See* Ala. Code §36-1-12 (d)(2)), to constitutional (i.e. State) officers is not a novel concept. In White v. Birchfield, 582 So. 2d 1085 (Ala. 1991), the court addressed the sixth exception in the context of a respondeat superior claim brought against the sheriff for the negligent conduct of his deputy and ruled that although "Sheriff Morgan is immune from liability based upon a theory of respondeat superior . . .we are not to be understood as granting absolute immunity to a sheriff in all situations. Our caselaw has established several exceptions to the rule of absolute immunity: "[A] state officer . . . is not protected by § 14 when he acts willfully,

maliciously, illegally, legally, fraudulently, in bad faith, beyond his authority, or under a mistaken interpretation of the law." *Id.* at 1088.

In the present case, Long satisfies both the first and second prongs in that he brought his claims against the petitioners in their individual capacities and does not seek recovery from the State treasury, thus no contract or property right of the State is affected. Moreso, Long alleges sufficient facts to demonstrate the petitioners acted willfully, illegally, and beyond the scope of their employment and authority, where deputy Miles recklessly engaged in a high-speed pursuit in violation of the law, which was contributed to by the Sheriff's deliberate indifference to his lack of policies, training, and supervision regarding the same.

Hence, there is no plausible basis to trigger Art. I §14 immunity, and the trial court did not err in denying petitioners' motion to dismiss[6].

4. *Statutory Immunity for Sheriff Deputies is Consistent with State Agent Immunity.*

[6] The petitioners do not challenge the factual sufficiency of Long's claims and instead contend they are jurisdictionally barred. Any further challenges at to whether Long can prove his claims should be reserved for the trial court.

Under Ala. Code §36-22-3(b), the legislature enacted a limited form of immunity applicable to deputies, which states in pertinent part as follows:

> "[D]eputies. . . 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.

Although there is a dearth of caselaw interpreting this provision, the rules for statutory construction provide that when "determining the meaning of a statute, this Court looks to the plain meaning of the words as written by the legislature . . .'Words [ ] must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used a court is bound to interpret that language to mean exactly what it says. If the language of the statute is unambiguous, then there is no room for judicial construction and the clearly expressed intent of the legislature must be given effect.'" DeKalb Cnty. LP Gas Co. v. Suburban Gas, Inc., 729 So. 2d 270, 275 (Ala. 1998).

The clear, plain, and unambiguous language of the statute make apparent that the legislature intended that a sheriff deputy's immunity

to be co-extensive with that as the sheriff, provided two conditions are met:

1. They are acting within the line and scope of their duties,
2. And, they are acting in full compliance with the law.

The first requirement, that they act within the line and scope of their duties, uses similar wording to that as been used by this court where state officials must be acting within the line and scope of their employment or authority to be given Art. 1 §14 immunity.

The second requirement, "in compliance with the law" is an all-encompassing expression. The law is known to exist from many sources: whether it be from the constitution and statutes – both federal and state, or from regulations, or from common law, or from departmental policies, rules, and guidelines that have the effect of law. Hence, since the legislature did not qualify the expression, it is evident to be "in compliance with the law" a deputy must conduct themselves in accordance with all aspects of the law, from all sources, to be accorded Art I §14 immunity.

Simply put, deputies are not entitled to immunity when either (1) they act beyond the scope of their authority, duties, or employment, or (2) they

act in disregard of the law. It is readily apparent that the legislature intended to bring the law that applies to suits against sheriff deputies in line with the law that applies to other state agents, who are already subject to State-agent immunity.

Specifically, this Court has long adhered to the rule that "State-agents *shall not* be immune from civil liability in his or her personal capacity (1) when the Constitution or laws of the United States, or the Constitution of this State, or laws, rules, or regulations of this State enacted or promulgated for the purpose of regulating the activities of a governmental agency require otherwise; or (2) when the State agent acts willfully, maliciously, fraudulently, in bad faith, beyond his or her authority, or under a mistaken interpretation of the law." Ex parte Cranman, at 405 (Ala. 2000). Moreso, this Court has ruled that "[a] State agent acts beyond authority and is therefore not immune when he or she 'fail[s] to discharge duties pursuant to detailed rules or regulations, such as those stated on a checklist,'" S.K. v. Montgomery Cnty. Bd. of Educ., 88 So. 3d 837, 843 (Ala. 2012), which have the effect of the law. (See also Ala. Code §36-1-12(d)).

By their very nature, the above violations at their core involve situations where the government worker has failed to act "in compliance with the law". Thus, if a deputy violated either the "law, rules, regulations or Constitution of the United States or of this State" or acted "willfully, maliciously, fraudulently, in bad faith, beyond his or her authority, or under a mistaken interpretation of the law," he did not act in compliance with the law and accordingly is not shielded with immunity.

Additionally, there is no compelling reason to give deputies any different immunity than that of their municipal counterparts (e.g. police officers), who are similarly shielded with State-agent immunity, which the legislature seemingly acknowledged by the statute's enactment.

The statute's enactment is also significant for two reasons. First, it legislates, not adjudicates, the legal parameters under which deputies are to be afforded immunity under Art. I §14. Second, it acknowledges that deputies are not the state, they are not the sheriff, and they are not absolutely immune from suit in their individual capacities just as any other state actor.

One must ask, then, how did we reach this point where it is contended that deputies are the "alter ego of the sheriff", and thus they are "immune to the same extent". Ex parte Donaldson, 80 So. 3d 895, 898 (Ala. 2011). The answer is simple, and perhaps repulsive to judicial purists, that we got here through judicial legislation. This becomes readily apparent by a cursory review of early Alabama cases that were relied on by the court.

One of the earliest cases of record is Rogers v. Carroll, 111 Ala. 610, 20 So. 602 (1895), where the court held that a sheriff can be vicariously liable, and be ordered to pay a statutory penalty, for the acts of his deputy who had failed to timely serve a summons and complaint. *Id.* at 615. (*See* S. Bell Tel. & Tel. Co. v. Francis, 109 Ala. 224, 233, 19 So. 1, 4 (1895) ("a public officer is liable. . .for the trespasses of his deputy, committed *colore officii*)). Similarly, in Hereford v. Brentz, 192 Ala. 465, 68 So. 350 (1915), the court held likewise that a sheriff can be vicariously liable for the tortious acts of his deputy who had committed a false arrest. And in Mosely v. Kennedy, 245 Ala. 448, 17 So. 2d 536 (1944), the court held that a deputy could not receive a statutory reward for providing evidence leading to the arrest and conviction of illegal distillers because the deputy was acting as an employee of the sheriff.

Indeed, as demonstrated above, this *judicial fiat* arose out the principles of agency. Since historically the court had imposed vicarious liability on a sheriff for the tortious acts of his deputy, in Hereford v. Jefferson Cnty., 586 So. 2d 209 (Ala. 1991) the court turned the same legal principle on its head and ruled that deputies were vicariously immune because they were the "legal extension of the sheriff" and should be immune to the same extent.[7]

Although a Sheriff was once considered a county employee and subject to tort liability, the legislature made him a "constitutional officer" so that he could be more effectively removed from office for having condoned rampant mob lynching of blacks and other abominable conduct committed during the period. *Parker* at 443. Notwithstanding, neither sheriff's deputies, nor anyone else employed by the sheriff were made constitutional officers by the legislature, and there is no sound public policy to so.

It is easy to see how "the state," an inanimate entity, acts through individuals who in turn are acting in their "official capacities as officers

[7] The court readily acknowledged and corrected this erroneous analysis in *Taylor* and should apply the same corrected reasoning in this case.

of the state." To that end, the state actor cannot be sued in their official capacity for tort liability, regardless whether he is a constitutional officer, a jailor, or a clerical employee. That is the immunity afforded by Article 1 section 14, which flows to the State not the individual. *Taylor* at 199. The sheriff, on the other hand, is an animated elected official, who necessarily can be held liable in his individual capacity for his tortious wrongful or unlawful acts, as such acts are not considered acts of the state. *Finnell, supra*.

By way of example, an unarmed suspect flees a deputy on foot from a traffic stop because he has unserved warrants and does not want to go to jail. The deputy gives chase, captures the suspect, and after applying handcuffs he proceeds to beat the suspect unconscious because he was mad for having had to chase after him. Further, although the sheriff is aware from prior misconduct that this deputy has violent tendencies and has injured other suspects in a similar fashion, the sheriff ignores the behavior and does nothing to prevent it from recurring.

The petitioners and the state would have this court conclude that under their contorted interpretation of Art. I §14, the deputy and the sheriff in the above example are both immune from suit in their

individual capacities. Yet, the only immunity afforded to either of them is immunity from suit in their official capacities. For the court to adopt the petitioners' interpretation would subject the citizens to the capricious whims of state actors in hope for relief from federal courts to obtain justice because there is no meaningful state remedy. Such an outcome is especially egregious since the intent behind naming the sherif as a constitutional officer was to constrain the abuses of the sheriff, not to subject the citizenry to his whimsy. *Parker*.

While the petitioners and the state contend that interpreting the constitution as it is written will unnecessarily expose them to excessive litigation. This is not proven, but if one is willing to assume it is true, that is no basis for sacrificing an individual's right to seek a remedy under Art. I §13, and to subject the citizenry to the capricious and arbitrary urges of reckless state actors. There is no more reason or justification for using judicial fiat to extend this immunity to deputies sued in their individual capacities, then it would be to extend it to any other employee of the sheriff.

Indeed, any immunity accorded to state officers and deputies have been set out by statute (*See* §§36-1-2 and 36-22-3(b)) and by the common

law. Therefore, this court should refrain from creating new areas of immunity than that which has been expressly provided. To do so, violates the citizenry's right to redress under Art. 1 §13 and the separation of powers principle under Art. III §42. Since the legislature unequivocally repudiated court made law that deputies are the "alter-ego" of the sheriffs for Art. I §14 purposes when it enacted §36-22-3(b), this court should likewise repudiate the same principle. As such, the plaintiff requests that the court overturn the line of cases relied on by the petitioners and the state that hold this proposition.

Since Long has alleged sufficient facts that deputy Miles did not conduct himself within the scope of his duties or in compliance with the law - by having recklessly engaged in a high speed pursuit in a dangerous manner which caused injury in violation of Ala. Code §32-5-7 *supra,* he is not immune under §36-22-3(b), and the trial court did not err by denying the petitioner's motion to dismiss.

CONCLUSION

This case presents a unique opportunity for the court to correct its conflicting opinions regarding the proper application of sovereign immunity to state officers. To do so, the court should simply apply the law as it is plainly written. In sum, the court should first disavow any

suit or claim against the State of Alabama, or its agencies, as such are plainly barred by Art. 1 §14. For all that is left, suits or claims against individual state actors, the court need only apply the law under §36-1-12, to determine whether they are to be afforded immunity. When applying §36-1-12 to John Long's claims it is clear that the trial court did not err in denying petitioners' motion to dismiss.

Respectfully submitted,
Attorneys for John Long

By: *s/Charles C. Tatum, Jr.* (TAT009)
Charles C. Tatum, Jr., Esquire
By: *s/Seth L. Diamond* (DIA009)
Seth L. Diamond, Esq.
Post Office Box 349
Jasper, Alabama 35502
(205) 387-0708
ctatum7@aol.com
sediamondlaw@gmail.com

CERTIFICATE OF COMPLIANCE

Pursuant to Ala. R. App. P. 32(d), the undersigned counsel certifies that the Answer and Brief complies with the font, font size, and word limit requirements. The document contains 6,507 words and is 29 pages in length. The font used is Century Schoolbook, and the font size is fourteen (14).

*s/Seth L. Diamond*_____
Of Counsel

CERTIFICATE OF SERVICE

I hereby certify that on February 4, 2025, I have served a copy of the above and foregoing Answer to Petition for Writ of Mandamus on the trial court and all attorneys of record by email transmission, to the email addresses below:

Jamie Helen Kidd Frawley
jfrawley@wmwfirm.com

Fred L. Clements, Jr.
fclements@wmwfirm.com

Hon. H. Doug Farris
doug.farris@alacourt.gov

Edmond LaCour
Edmund.LaCour@AlabamaAG.gov

R. Edwin Lamberth
rel@gilmorelawfirm.com

s/*Seth L. Diamond*
Of Counsel