

**DOCKET NO. SC-2024-0263**

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**IN THE SUPREME COURT OF ALABAMA**

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**JAMES E. UNDERWOOD, BRADEN MILES,**

**Petitioners,**

**v.**

**JOHN LONG,**

**Respondent.**

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

**(Case No. CV-19-900131.00,  
Hon. Doug Farris, Presiding)**

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**PETITIONERS' SUPPLEMENTAL BRIEF**

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## TABLE OF AUTHORITIES

### Cases

<i>Alexander v. Hatfield</i> , 652 So. 2d 1142, 1144 (Ala.1994) .....	6
<i>Bracknell v. Montgomery County Comm’n</i> , No. 2:06-CV-311-WKW, 2007 WL 1034961, at *2 (M.D. Ala. Mar. 29, 2007) .....	14
<i>Carr v. City of Florence, Alabama</i> , 916 F.2d 1521, 1526 (11th Cir.1990)	6
<i>Drain v. Odom</i> , 631 So.2d 971, 972 (Ala.1994).....	6
<i>Ex parte Blankenship</i> , 893 So.2d 303 (Ala. 2004).....	7
<i>Ex parte Cranman</i> , 792 So. 2d 392 (Ala. 2000) .....	9, 10
<i>Ex parte Davis</i> , 9 So. 3d 480 (Ala. 2008).....	7
<i>Ex parte Donaldson</i> , 80 So. 3d 895, 899 (Ala. 2011).....	8, 9
<i>Ex parte Haralson</i> , 853 So. 2d 928, 932 (Ala. 2003) .....	8
<i>Ex parte Holladay</i> , 466 So. 2d 956, 960 (Ala. 1985) .....	12
<i>Ex parte McCall</i> , 596 So. 2d 4, 6 (Ala. 1992) .....	12
<i>Ex parte Shelley</i> , 53 So. 3d 887, 889 (Ala. 2009) .....	passim
<i>Ex parte Sumter County</i> , 953 So. 2d 1235 (Ala. 2006) .....	7, 14
<i>Hereford v. Jefferson County</i> , 586 So. 2d 209 (Ala. 1991) .....	7, 8
<i>LeFrere v. Quezada</i> , 588 F.3d 1317, 1318 (2009).....	7
<i>Mosely v. Kennedy</i> , 17 So. 2d 536, 536 (Ala. 1944).....	7, 8

<i>Pace v. Armstrong World Industries, Inc.</i> , 578 So. 2d 281, 283 (Ala. 1991).....	13
<i>Rogers v. Carroll</i> , 20 So. 602, 602 (Ala. 1896) .....	8
<i>Parker v. Amerson</i> , 519 So. 2d 442, 442-43 (Ala.1987).....	5
<i>Siegelman v. Chase Manhattan Bank (USA), Nat. Ass’n</i> , 575 So. 2d 1041, 1051 (Ala. 1991) .....	12
<i>Thomas v. Walker County Bd. of Commissioners</i> , No. CV-05-J-506-NW, 2006 WL 8436635, at *11 (N.D. Ala. Sept. 7, 2006) .....	14
<i>Vinson v. Clarke County, Ala.</i> , 10 F. Supp. 2d 1282, 1305 (S.D. Ala. 1998).....	14
<i>Wright v. Bailey</i> , 611 So.2d 300, 303 (Ala.1992).....	6

**Statutes**

Ala. Code § 14-6-1.....	14, 15, 17
Ala. Code § 32-5A-7 .....	11
Ala. Code § 36-22-3(b) .....	passim
Art. I, § 14.....	passim
Art. V, § 112.....	3, 4, 7

## ARGUMENT

### I. **THE IMMUNITY PROVISION CONTAINED IN ALA. CODE § 36-22-3(b) IS IMMATERIAL TO WHETHER PETITIONER MILES IS ENTITLED TO IMMUNITY UNDER ART. I, § 14 OF THE ALABAMA CONSTITUTION.**

Deputy sheriffs' unique status as alter-egos of the sheriff serves as the basis for extending to them sheriffs' constitution-based State immunity, under Art. I, § 14 and Art. V, § 112. Thus, in response to this Court's order for the Respondent to submit a supplemental brief on a deputy sheriff's entitlement to immunity under § 36-22-3(b), whether a deputy may be entitled to immunity granted through statute has no bearing on constitution-based immunity. No recent case illustrates how the unique relationship between sheriffs and their deputies serves as the basis of extending sheriffs' constitutional immunity onto deputies more thoroughly than this Court's opinion in *Ex parte Shelley*, 53 So. 3d 887, 889 (Ala. 2009). The issue addressed by this Court in *Ex parte Shelley* was whether jailers were entitled to sheriffs' State immunity. The basis of this Court's conclusion that immunity does not extend to jailers, in short, was that jailers are not deputy sheriffs. Thus, a deputy's status as the alter-ego of the sheriff was central to this Court's holding.

In *Ex parte Shelley*, Michael Shelley, a Houston County jailer, was transporting inmate Terry Irvin when he allegedly ran a red light and collided with John Rice's vehicle resulting in Irvin's death and injuries to Rice that required surgery. 53 So. 3d 887, 889 (Ala. 2009). *Shelley* filed a motion to dismiss or, in the alternative, a motion for a summary judgment based on the doctrine of State immunity under Art. I, § 14 of the Alabama Constitution, which the circuit court denied. *Shelley*, 53 So. 3d at 889. *Id.* Shelley then filed a petition for mandamus to this Court asserting entitlement to State immunity under Art. I, § 14 because he was acting within the line and scope of his employment at the time of the accident. *Shelley*, 53 So. 3d at 891.

This Court began its analysis by recognizing sheriffs' status as constitutionally enumerated executive officers of the State of Alabama under Art. V, § 112, and subject to certain recognized exceptions, sheriffs are entitled to State immunity under and under Art. I, § 14. *Shelley*, 53 So. 3d at 891 (citing *Parker v. Amerson*, 519 So. 2d 442, 442-43 (Ala.1987)). This Court then recognized its previous holdings that deputies, likewise, are entitled to State immunity:

We have also held that deputy sheriffs are immune from suit to the same extent as sheriffs. "In general, the acts of the

deputy sheriff are the acts of the sheriff. The deputy sheriff is the alter ego of the sheriff.” *Carr v. City of Florence, Alabama*, 916 F.2d 1521, 1526 (11th Cir.1990), quoted with approval in *Drain v. Odom*, 631 So.2d 971, 972 (Ala.1994), and *Wright v. Bailey*, 611 So.2d 300, 303 (Ala.1992). “[Under Alabama law, a] deputy is legally an extension of the sheriff. If the deputy’s acts are generally considered the acts of the sheriff, it is logical that those acts should enjoy the same immunity covering the sheriff’s own acts.” *Carr*, at 1526, quoted with approval in *Wright v. Bailey*, at 303.

*Shelley*, 53 So. 3d at 891 (alteration in original) (citing *Alexander v. Hatfield*, 652 So. 2d 1142, 1144 (Ala.1994)). Thus, the issue before this Court was whether sheriffs’ jailers, like deputy sheriffs, are entitled to State immunity under § 14 from tortious actions occurring within the line and scope of their employment. *Id.* at 895.

This Court then addressed and overruled *Lancaster v. Monroe County*, wherein the Eleventh Circuit Court of Appeals, in what it later referred to as an “*Erie-guess*,” concluded that under Alabama law, State immunity extended to sheriffs’ jailers. *Shelley*, 53 So. 3d at 893; *Lancaster v. Monroe County, Ala.*, 116 F.3d 1419, 1431 (11th Cir. 1997), *overruled in part on the issue on the application of State immunity under Alabama law as recognized in LeFrere v. Quezada*, 588 F.3d 1317, 1318

(2009).<sup>1</sup> Notably, *Lancaster* was merely persuasive authority because as “the Eleventh Circuit noted in *Lancaster*, this Court had not considered whether a county jailer, like a sheriff and his deputies, is entitled to absolute immunity under § 14.” *Shelley*, 53 So. 3d at 894-95. This Court, likewise, disregarded Shelley’s reliance on its prior opinions having precedential value on jailers’ entitlement to State immunity, specifically *Ex parte Davis*, 9 So. 3d 480 (Ala. 2008); *Ex parte Sumter County*, 953 So. 2d 1235 (Ala. 2006); *Ex parte Blankenship*, 893 So.2d 303 (Ala. 2004); *Hereford v. Jefferson County*, 586 So. 2d 209 (Ala. 1991); *Mosely v. Kennedy*, 17 So. 2d 536, 536 (Ala. 1944), because those cases arose from incidents involving deputy sheriffs rather than sheriffs’ jailers. *Shelley*, 53 So. 3d at 891-92, 895.

Most importantly to the matter currently before this Court, the opinion then addresses the error in *Shelley*’s contention that because jailers carry out some of the duties of the sheriff on behalf of the sheriff, sheriff, jailers “should be clothed with the immunity sheriffs possess as executive officers of the State.” *Shelley*, 53 So. 3d at 895. This Court

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<sup>1</sup> Specifically, the *Lancaster* opinion concluded “[w]e believe the Alabama Supreme Court would accord the same treatment to Ms. Lancaster’s claims of negligence and wrongful death against the jailers that it has given claims against sheriffs and deputy sheriffs. Accordingly, we hold that those claims are barred by Alabama’s absolute sovereign immunity.” 116 F.3d at 1431.

explained that *Shelley's* argument, based upon the duties jailers perform for the sheriff failed to recognize that the source of sheriffs' entitlement to State immunity under § 14 for actions take in the line and scope of their employment derived from their status as constitutional officer under Art. V, § 112. *Id.* In other words, the mere fact that jailers may carry out some duties of the sheriff was insufficient to confer upon jailers the same constitution-based immunity conferred upon deputy sheriffs.

This Court explained that constitution-based State immunity is conferred upon deputies because of the unique relationship between sheriffs and their deputies, emphasizing that deputies are the “alter ego” of the sheriff. *Shelley*, 53 So. at 896 (citing *Ex parte Haralson*, 853 So. 2d 928, 932 (Ala. 2003) (quoting *Hereford v. Jefferson County*, 586 So. 2d 209, 210 (Ala. 1991) (quoting in turn *Mosely v. Kennedy*, 17 So. 2d 536, 537 (Ala. 1944))). This designation as the sheriff's alter-ego distinguishes deputies from other employees who are hired by the sheriff to perform specific tasks. “An alter ego is, by definition, a second self; *the deputy is legally an extension of the sheriff.*” *Id.* (emphasis in original).

Elaborating on the unique relationship between a sheriff and a deputy, this Court quoted its precedent dating back over 100 years:



On all the evidence, Reeves was a general deputy of Carroll the sheriff. He was a deputy sheriff, as distinguished from a specially deputized 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 processes as had the sheriff, and his acts or omissions under or in respect of process were the 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.

*Shelley*, 53 So. 3d at 896 (quoting *Rogers v. Carroll*, 20 So. 602, 602 (Ala. 1896)). This Court then concluded that “because ‘[i]n legal contemplation, [a deputy] and the sheriff [are] one officer, so far as third persons are concerned,’ it is logical that a deputy shares in the immunity afforded to sheriffs.” *Id.* (alterations and emphasis added in original) (quoting *Rogers*, 20 So. at 602).

In *Ex parte Donaldson*, a motorist sued a deputy sheriff negligence alleging the deputy, sheriff acting within the line and scope of his employment, failed to clear before entering an intersection causing his patrol vehicle to collide with the plaintiff’s vehicle. *Ex parte Donaldson*, 80 So. 3d 895, 899 (Ala. 2011). The deputy moved for dismissal asserting both State immunity under Art. I, § 14 and state-agent immunity as

articulated in *Ex parte Cranman*, 792 So. 2d 392 (Ala. 2000), which was denied by the circuit court. *Donaldson*, 80 So. 3d at 899. In holding the deputy was entitled to State immunity, this Court cited *Ex parte Shelley* as “explaining the alter ego status of deputy sheriffs as the basis for extending to them State immunity under § 14 of the Alabama Constitution.” *Id.* at 898 (citing *see also Shelley*, 53 So. 3d at 891-92). Since that time, deputies’ status as alter-egos of the sheriff has not changed.

The deputy argued he was entitled to State immunity because he was acting within the line and scope of his employment at the time of the collision. *Id.* at 900. In opposition the plaintiff argued that the deputy was not entitled to state-agent immunity, under *Cranman*, because he acted “beyond his authority” when he failed to “clear the intersection” because, in doing so, he “fail[ed] to discharge duties pursuant to detailed rules and regulations, such as those stated on a checklist.” *Id.* This Court commented in making such an argument, the plaintiff misunderstood Alabama immunity law. *Id.* In holding the deputy was entitled to State immunity, this Court explained that State immunity and state-agent immunity are two distinct forms of immunity, and “whether a deputy

sheriff would be entitled to State-agent immunity is immaterial to the question whether a deputy sheriff is entitled to State immunity.” *Id.*

Similarly, statutory-based immunity set out in Ala. Code § 36-22-3(b) and State-immunity conferred upon deputy sheriffs due to their unique status as alter-egos of the sheriff are two distinct forms of immunity. The former is statutory and the latter under this Court’s *stare decisis*, is constitution-based. Thus, whether a deputy would be entitled to immunity under the conditions set out in Ala. Code § 36-22-3(b) is immaterial to whether a deputy is entitled to State immunity under Art. I, § 14.

On a final matter, since the applicability of Ala. Code § 36-22-3(b) has never been raised by the parties, it is worth mentioning that petitioner Deputy Miles at the time of the collision was acting in compliance with the law at the time of the motor vehicle collision. Notably, while in pursuit of a criminal suspect, the suspect negotiated a curve at a high speed, crossed the center-line, and collided head-on into the Respondent’s vehicle. (Compl. ¶ 15.) It is alleged that Deputy Miles pursued the suspect at a high rate of speed, however, it is also alleged that “Miles activated his lights and siren” while in pursuit of the suspect. (Compl.

¶ 10.) Thus, Miles was in compliance with the emergency vehicle statute, under Ala. Code § 32-5A-7.

**II. THE LEGISLATIVE INTENT BEHIND AMENDING ALA. CODE § 36-22-3 WAS TO BROADEN THE APPLICATION OF SHERIFFS' IMMUNITY RATHER THAN LIMIT ITS APPLICATION TO DEPUTY SHERIFFS.**

Inevitably, because the § 36-22-3(b) contains two pre-requisites for immunity to apply, acting in the line and scope of employment and acting in compliance with the law, and Art. I, § 14 only requires acting in the line and scope of employment, deputy sheriffs' entitlement to State immunity would inevitably be narrowed § 36-22-3(b). The legislative intent, however, was to broaden the scope of sheriffs' immunity.

“The fundamental rule of statutory construction is to ascertain and give effect to the intent of the legislature in enacting the statute.” *Ex parte McCall*, 596 So. 2d 4, 6 (Ala. 1992). “This Court’s role is not to displace the legislature by amending statutes to make them express what [it] think[s] the legislature should have done.” *Siegelman v. Chase Manhattan Bank (USA), Nat. Ass’n*, 575 So. 2d 1041, 1051 (Ala. 1991). When construing a statute, courts may glean intent “from the language used, the reason and necessity for the act, and the purpose sought to be obtained.” *Ex parte Holladay*, 466 So. 2d 956, 960 (Ala. 1985). Courts

should gather the intent “from the language of the statute itself, *if possible* . . . . [but] may also look to the reason and necessity for the statute and the purpose sought to be obtained by enacting the statute.” *Pace v. Armstrong World Industries, Inc.*, 578 So. 2d 281, 283 (Ala. 1991) (emphasis added).

The historical context behind amending Ala. Code §§ 36-22-3 and 14-6-1 to include immunity provisions demonstrates legislative intent to expand sheriffs’ immunity. Although this Court’s Order requested briefing on deputies’ immunity under Ala. Code § 36-22-3(b), discussing the historical context of the statute necessitates discussing the amendments to both §§ 36-22-3 and 14-6-1 as they were amended simultaneously under Act 2011-685, SB90. Additionally, discussion of jailer immunity is necessary because jailer immunity was the impetus for the Legislature to amend §§ 36-22-3 and 14-6-1.

As mentioned in the section above, the issue of whether’ jailers were entitled to State immunity was first addressed by the Eleventh Circuit in *Lancaster* wherein the court held that State immunity was applicable to jailers. 116 F.3d at 1431.<sup>2</sup> Over the following twelve years, *Lancaster*

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<sup>2</sup> Specifically, the Eleventh Circuit concluded “[w]e believe the Alabama Supreme Court would accord the same treatment to Ms. Lancaster’s claims of negligence and wrongful death against the

was effectively the law, recognized in dicta by this Court, and consistently applied in the federal district courts. *See e.g. Ex parte Sumter County*, 953 So. 2d 1235, 1239 (Ala. 2006) (stating “[d]eputies and jailers are alter egos of the Sheriff”) (citing *Lancaster*, 116 F.3d at 1431); *Vinson v. Clarke County, Ala.*, 10 F. Supp. 2d 1282, 1305 (S.D. Ala. 1998) (holding a sheriff’s jailer entitled to State immunity for tortious actions taken within the scope of his employment) (citing *Lancaster*, 116 F.3d at 1429-31); *Thomas v. Walker County Bd. of Commissioners*, No. CV-05-J-506-NW, 2006 WL 8436635, at \*11 (N.D. Ala. Sept. 7, 2006) (same); *Bracknell v. Montgomery County Comm’n*, No. 2:06-CV-311-WKW, 2007 WL 1034961, at \*2 (M.D. Ala. Mar. 29, 2007) (stating “[c]ounty jailers are also afforded absolute immunity because of their close working relationship with the sheriff) (citing *Lancaster*, 116 F.3d 1429).

In September of 2009, this Court addressed the issue for the first time in *Ex parte Shelley*, overruled *Lancaster*, and held State immunity under Art. I, § 14 inapplicable to sheriffs’ jailers. 53 So. 3d at 897. As a result, jailers’ entitlement to State immunity, which had been applied consistently by the courts under *Lancaster*, was effectively revoked. In

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jailers that it has given claims against sheriffs and deputy sheriffs. Accordingly, we hold that those claims are barred by Alabama’s absolute sovereign immunity.” *Lancaster*, 116 F.3d at 1431.

June of 2011, the Legislature enacted the Jailer Liability Protection Act, No. 2011-685, SB90, which amended Ala. Code § 14-6-1, which extended sheriffs' immunity jailers, and § 36-22-3(b), which extended immunity jailers, deputies, and reserve deputies undertaking the duties of their sheriff under § 36-22-3(a). *See Young v. Myhrer*, 651 F. App'x 878, 880 (11th Cir. 2016); *see also* Ala. Code §§ 14-6-1 and 36-22-3(b). As reported at that time, Act No. 2011-685 “was born out of [the case] involving a Houston County Jailer, Michael Shelley, who was involved in an accident.” Lance Griffin, *State Bill Would Give Immunity to Jailers*, Dothan Eagle, March 16, 2011, Politics. Thus, amending §§ 36-22-3 and 14-6-1 was a legislative responsive *Ex parte Shelley*, which in effect withdrew immunity that had been applied under *Lancaster*. Because the §§ 36-22-3 and 14-6-1 were amended to include immunity provisions in response to *Ex parte Shelley*, the Legislative intent could only have been to broaden the application of sheriffs' immunity post- *Ex parte Shelley*.

Additionally, legislative history demonstrates the intent to broaden the application of sheriffs' immunity to include jailers. For example, when SB90 was introduced, the synopsis outlined the purpose and intended effect of amending §§ 14-6-1 and 36-22-3 as follows:

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 (Ala. Mar. 1, 2011) (introduced). Notably, the synopsis shows that the Legislature was aware that the courts had been granting State immunity not only but deputies but also other persons carrying out sheriff's duties. Although the synopsis uses the term "other persons," jailers had been the only recipients of State immunity in the sheriffs' employ other than deputies. Upon adoption, the intent of the Legislature was similarly summarized as follows: "[t]o amend Sections 14-6-1 and 36-22-3 of the Code of Alabama 1975, to specify the sovereign immunity protections granted to persons employed by the sheriff when acting for and under the direction and supervision of the sheriff." S.B. 90 (Ala. June 14, 2011) (enacted). Significantly, the synopsis was absent any language expressing an intent to limit the application of State immunity for deputies.

On June 14, 2011, Alabama law SB 90 took effect. The amendment to § 36-22-3 added subsection (b) and (c). Subsection (b) stated the



following regarding certain persons carrying out sheriffs' duties under

§ 36-22-3(a):<sup>3</sup>

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.

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<sup>3</sup> Subsection (a) states the following:

(a) It shall be the duty of the sheriff:

(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.

Ala. Code § 36-22-3(b).<sup>4</sup> Subsection (c) was also added stating as follows:

(c) Notwithstanding the provisions of Sections 14-6-1, 32-7-23, and this section, nothing in Section 14-6-1 and this section shall serve as a bar to an individual's or entity's recovery under the uninsured motorist coverage of the individual or entity, or prevent an insured from being legally entitled to recover damages under the uninsured motorist coverage of the insured.

Ala. Code § 36-22-3(c).

Legislative intent to expand the application of sheriffs' immunity as *Ala. Code* § 36-22-3(b) as it provides immunity for not only jailers but also reserve deputies. While an argument could be made that including deputies in subsection (b) indicates legislative intent to limit their entitlement to immunity. However, as

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<sup>4</sup> Alabama Code § 14-6-1 was amended as follows:

The sheriff has the legal custody and charge of the jail in his or her county and all prisoners committed thereto, except in cases otherwise provided by law. The sheriff may employ persons to carry out his or her duty to operate the jail and supervise the inmates housed therein for whose acts he or she is civilly responsible. *Persons so employed by the sheriff shall be acting for and under the direction and supervision of the sheriff and 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 such persons are acting within the line and scope of their duties and are acting in compliance with the law.*

Ala. Code § 14-6-1 (emphasis added to reflect the amended language).

discussed earlier in this brief, immunity conveyed via statute and immunity conveyed via the Alabama Constitution are separate and distinct immunities. Moreover, subsection (b) does not contain any clear language indicating an intent to limit the deputy sheriffs' entitlement to State immunity under Art. I, § 14.

On a final note, if the amendments contain any type of limiting factor, it is contained in subsection (c) regarding recovery under uninsured motorist coverage. Notably, when SB90 was introduced, the language contained subsection (c) was not included in the proposed language of the act. *See* S.B. 90 (Ala. Mar. 1, 2011) (introduced). Likewise, the conditional language under subsection (b) stating “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” was absent as well. *Id.* This language was included simultaneously in a later bill draft. *See* S.B. 90 (Ala. Mar. 24, 2011) (engrossed). Based on the timing of those additions, it seems more likely that the intent of the language added to subsection (b) was to supplement the provisions in subsection (c) related to uninsured motorist coverage rather than attempting to limit deputy sheriffs' entitlement to State immunity

Submitted this the 4th day of February 2025.

**s/Fred L. Clements, Jr.**  
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## CERTIFICATE OF COMPLIANCE

In accordance with Ala. R. App. Procedure 21(d) 32(a), the font used in this petition is set in Century Schoolbook 14 with justified margins and is within the word limit of 6,000 words. The word count beginning and ending with the section entitled Argument contains 3,711 words.

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**CERTIFICATE OF SERVICE**

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

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