IN THE COURT OF APPEALS
STATE OF GEORGIA

APPEAL NUMBER A25A0874

MCINTOSH COUNTY, GEORGIA,
Appellant (Defendant below)

v.

MARC NOLDEN,
Appellee (Plaintiff below)

BRIEF OF APPELLANT

Appeal from the Superior Court of McIntosh County
Civil Action No. SUV2023000114
The Honorable Michael L. Karpf, Presiding

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I. INTRODUCTION

Standing alone, this appeal raises only the question of whether a Georgia county may be held liable for torts committed by employees of its elected constitutional officers. The law on the issue is well-settled; the answer is "no," and the trial court erred by holding otherwise.

In conjunction with the related cross-appeal, however, this appeal raises a second question: under O.C.G.A. § 36-92-1 *et seq.*, as amended in 2019, is there *any* defendant that may be held liable for torts committed by the employees of elected constitutional officers? The plain language of the statute requires that this question, too, be answered in the negative. The statute provides a limited waiver of the sovereign immunity of a "local government entity," which can only be a city, a county, or a consolidated city-county government, for torts committed by its employees. O.C.G.A. §36-92-1(3). On the other hand, a "local government officer or employee" – a term that explicitly encompasses both a "sheriff" and a "deputy sheriff" – is exempt from liability under the statute. O.C.G.A. §36-92-1(4).

Under O.C.G.A. §36-92-3, liability for the torts of a local government employee rests with his employer, and a deputy's employer is the sheriff in

his official capacity. But sheriffs are excluded from the list of "local government entities" which may be sued under O.C.G.A. §36-92-3, and instead named as "local government officers or employees," which are immune from liability. Consequently, there is *no* appropriate defendant for claims arising from alleged motor-vehicle-related torts committed by sheriffs' deputies under the current version of O.C.G.A. §36-92-3.

Although this result is plainly problematic, practical considerations cannot override the plain language of the statute precluding liability on the part of the sheriff or the deputy and the well-established precedent precluding liability on the part of the county. This is a problem of the General Assembly's creation, and it is a problem that only the General Assembly can fix. The legislature can, and should, remove "sheriffs" from the definition of "local government employees," and add "constitutional officers in their official capacities" to the list of "local government entities," in O.C.G.A. §36-92-1. Unless and until this occurs, though, motor-vehicle claims arising from the negligence of sheriff's deputies will remain non-actionable. The trial court correctly granted dismissal to the sheriff and the deputy, and erred when it denied dismissal to McIntosh County.

II. STATEMENT OF JURISDICTION

This case is properly before this Court because the "Court of Appeals shall be a court of review and shall exercise appellate and certiorari jurisdiction in all cases not reserved to the Supreme Court or conferred on other courts by law." Georgia Constitution Art. 6, § 5, Para. 3. This case is not one exclusively reserved to the Supreme Court.

On September 20, 2024, the trial judge entered an order that, *inter alia*, denied Appellant's motion to dismiss. R—53. As allowed by O.C.G.A. §5-6-34(b), Appellant sought and obtained a certificate of immediate review, which was signed on September 30, 2024. R—61. Appellant timely filed an application for interlocutory review with this Court on October 10, 2024. On November 6, 2024, the Court granted the application, and Appellant timely filed its notice of appeal nine days later, on November 15, 2024. R—62.

III. ENUMERATION OF ERROR

1. O.C.G.A. §36-92-2 waives the sovereign immunity of "local government entities" for claims arising from "the negligent use of a covered motor vehicle," and O.C.G.A. §36-92-3 provides that any claim under the statute must be brought against "the local government entity for which the officer or employee was acting." Austin Sanchez was employed as a deputy of McIntosh County Sheriff Stephen Jessup when he was involved in a motor-vehicle accident with Appellee Marc Nolden. Did the trial court err when it held that McIntosh County, which undisputedly was not Sanchez's employer, can nevertheless be held liable for Sanchez's conduct under O.C.G.A. §36-92-2?

IV. STATEMENT OF THE CASE

This case arises from a motor vehicle collision between Appellee Marc Nolden and Austin Sanchez, a deputy employed by the Sheriff of McIntosh County. Because this action comes before the Court at the pleadings stage, the relevant facts are few. Nolden alleges that:

- "Deputy Sanchez was following too closely and ran into the back of Plaintiff's vehicle." Complaint, R—8, ¶ 9.
- "The collision resulted from the negligence of Deputy Sheriff Sanchez." *Id.*, ¶ 10).
- "At all times relevant, [] Deputy Sheriff Sanchez was acting in the course and scope of his employment with either McIntosh County or Sheriff Jesup [sic]" *Id.*, ¶ 12.
- "Either McIntosh County or Sheriff Jesup [sic] is liable for the negligence of Deputy Sheriff Sanchez under the doctrine of respondeat superior." *Id.*, ¶ 14.

Nolden initially filed suit against McIntosh County alone. The County moved for dismissal, showing that its sovereign immunity has not been waived under O.C.G.A. §36-92-2 to permit Nolden's claims because, as a matter of law, the County is not the employer of the deputies of the McIntosh County Sheriff. Nolden dismissed his suit without prejudice and

then filed this renewal action, naming the County, Sheriff Stephen Jessup, and Deputy Austin R. Sanchez as Defendants. R—7.

All defendants moved for dismissal. R—11. Deputy Sanchez showed that O.C.G.A. §36-92-1 identifies a deputy sheriff as a "local government officer or employee," and that O.C.G.A. §36-92-3(b) precludes suit against a "local government officer or employee" individually. R—16. McIntosh County showed that its immunity is not waived by O.C.G.A. §36-92-2 with respect to the actions of Deputy Sanchez because Sanchez is not employed by, and does not act on behalf of, the County. R—14. And Sheriff Jessup showed that he, like Deputy Sanchez, is explicitly identified as a "local government officer or employee" – who is not subject to suit – by O.C.G.A. §36-92-1. R—17. Sheriff Jessup further showed that he cannot be held liable as a "local government entity" for the actions of his deputies, because a "local government entity" can only be a county, a city, or a consolidated city-county government. *Id.*

The trial court granted the motion to dismiss as to Sheriff Jessup and Deputy Sanchez, but denied dismissal for McIntosh County. R—53. Although the lower court did not disagree that Deputy Sanchez has no

employment relationship with McIntosh County, it held that O.C.G.A. 36-92-2(c) "limits liability for losses based on the conduct of the local government officer or employee, and not the employment relationship between such employee and that local government entity." R—57. The trial court concluded that, when the Legislature added "sheriff" and "deputy sheriff" to the list of local government officers and employees who may *not* be held liable under O.C.G.A. §36-92-2, it "expressly render[ed] a local government entity liable for the acts of a sheriff or deputy sheriff involving negligent use of a covered vehicle." *Id.* McIntosh County now appeals this ruling, and Nolden has cross-appealed the trial court's ruling that Sheriff Jessup is entitled to dismissal.[1]

[1] Nolden does not challenge on appeal the trial court's ruling that Deputy Sanchez is entitled to dismissal. *See* Notice of Cross Appeal, filed November 19, 2024.

V. SUMMARY OF THE ARGUMENT

The problems with the trial court's order are twofold. First, the holding that a county may be liable for the actions of an employee of an elected constitutional officer directly contradicts significant controlling precedent to the contrary. For three decades, this Court and the Supreme Court of Georgia have consistently and repeatedly held that elected constitutional officers are independent from the counties in which they serve, and that counties cannot be held liable for torts committed by the employees of those officers. The trial court's ruling cannot stand unless and until the dozens of cases affirming this rule are overturned.

Second, the trial court's reasoning that a county may be held liable for a deputy sheriff's actions under O.C.G.A. §36-92-2 – because a county appears on the list of "local government entities," and a deputy sheriff appears on the list of "local government officers or employees" – leads to absurd results the moment it is extended beyond the facts of this case. If a "local government entity" may be liable for the actions of a "local government officer or employee" regardless of whether there exists an employment or other agency relationship between them, there is nothing

preventing suit against a county for the actions of city employees on the other side of the state. Fortunately, the Legislature left no question that this interpretation is improper by enacting O.C.G.A. §36-92-3(b), which provides that suit must be brought against "the local government entity *for which the officer or employee was acting*." (Emphasis supplied).

For each of these independently sufficient reasons, the trial court's order is clearly erroneous with respect to McIntosh County and should not be allowed to stand. However, this case also presents an important opportunity for this Court to affirm that the trial court's order was correct to the extent that it dismissed Nolden's claims Sheriff Jessup. Nolden maintains that either McIntosh County or Sheriff Jessup *must* potentially be liable for Sanchez's alleged conduct. But well-established law regarding the relationship between sheriffs and counties, and the plain language of O.C.G.A. §36-92-3, permit only one conclusion: neither McIntosh County nor Sheriff Jessup is potentially liable. Contrary to Nolden's suggestion, a ruling that the trial court erred by denying dismissal to McIntosh County does not require a corollary ruling that the trial court erred by granting dismissal to Sheriff Jessup.

VI. ARGUMENT AND CITATION OF AUTHORITIES

1. The trial court committed clear error when it held that a county may be liable for torts committed by a deputy of the county sheriff.

Unless the General Assembly "specifically" provides for a waiver of sovereign immunity, it operates to bar any claim against a Georgia county. *See Woodard v. Laurens County*, 265 Ga. 404 (1995); *Gilbert v. Richardson*, 264 Ga. 744 (1994). In *Gilbert*, the Supreme Court of Georgia held that Georgia sheriffs, and the counties in which those sheriffs serve, are not interchangeable for purposes of claims asserting negligence by the sheriff's deputies – and that a county's sovereign immunity thus is not waived for claims challenging tortious acts of sheriffs and their employees. 264 Ga. at 754 (1994) (holding that because "deputy sheriffs are employed by the sheriff rather than the county," sheriffs in their official capacity rather than the counties in which they serve are the appropriate entity to be held liable "for a deputy's negligence in performing an official function."). *See also Mendez v. Moats*, 310 Ga. 114, 121, 852 S.E.2d 816, 820 (2020) (Nahmias, J., concurring) (noting that *Gilbert* "held that sheriffs, not counties, are liable

in their official capacities for respondeat superior claims alleging negligence against their deputies.").

Following *Gilbert*, the Georgia appellate courts have consistently and repeatedly affirmed that suits alleging negligence by sheriffs' deputies are barred by sovereign immunity if they are brought against counties, because the sheriff in his official capacity – not the county – is the deputies' sole employer. *See, e.g., Nichols v. Prather*, 286 Ga. App. 889, 895 (2007) (reversing trial court's denial of summary judgment to county and holding that the "county cannot be held liable for [a deputy's] acts under an agency theory, because the deputy was an employee of the sheriff's department, not the county," and noting that "[a]lthough the county's liability insurer will necessarily pay for any judgment against [the sheriff and deputy] in their official capacities[,]it is improper to name [the county] as a defendant . . ."); *Brown v. Jackson*, 221 Ga. App. 200, 201, 470 S.E.2d 786, 787 (1996) (holding that trial court erred by denying county's motion for summary judgment in wrongful death case challenging actions of deputy sheriffs because "[d]eputy sheriffs and deputy jailors are employees of the sheriff,

whom the sheriffs alone are entitled to appoint or discharge. . . . The sheriff, and not the county, is liable for the misconduct of his deputies").

Three decades of precedent establish that a Georgia county's sovereign immunity is not waived for claims arising from the negligence of deputies of the county sheriff. But the trial court waved away that precedent and pointed instead to the recent opinion of the Supreme Court of Georgia in *Collington v. Clayton County* – a case that did not involve sovereign immunity. Order, R—56, citing 318 Ga. 29, 30 (2024). In *Collington*, the Supreme Court analyzed "whether official-capacity claims against a county sheriff for the purported negligent use of a covered motor vehicle are 'claims against counties' *as that phrase is used in OCGA § 36-11-1*." 318 Ga. at 29 (emphasis supplied). The court ruled, solely in the context of the presentment statute, that such claims against sheriffs are "claims against counties" for which O.C.G.A. §36-11-1 requires that notice be provided. *Id.* at 37. In so holding, the court explicitly noted that it was not "decid[ing] who the proper defendant is to be sued" in cases brought under O.C.G.A. §36-92-3, and was instead ruling only on the "limited issue" of the applicability of the presentment statute. *Id.* at 33, n. 8.

The question of whether a county is a "proper defendant [] to be sued" under O.C.G.A. §36-92-3 for claims concerning alleged negligence of a sheriff's deputy remains controlled by long-standing precedent from this Court and the Supreme Court – the answer is "no." Thirty years of consistent rulings that counties are not liable for the actions of sheriffs and their deputies, and the constitutional provisions on which those rulings rely, preclude any attempt to avoid the bar of claims against sheriffs under O.C.G.A. §36-92-3 by asserting those claims against counties instead.

2. The trial court committed clear error when it held that a "local government entity" may be held liable under O.C.G.A. §36-92-2 for the actions of a "local government officer or employee" with whom it has no employment relationship.

Again, a county is not the employer of the deputies of the sheriff who serves in that county. *See Green v. Baldwin Cnty. Bd. of Commissioners,* 355 Ga. App. 120, 121, 842 S.E.2d 916, 917 (2020) ("It is well established that deputy sheriffs are employees of the sheriff, not the county, and the county cannot be held vicariously liable as their principal."). The limited waiver of immunity in O.C.G.A. §36-92-2 does not extend to "losses resulting from conduct on any part of local government officers or employees which was not within the scope of their official duties or employment." O.C.G.A. §36-

92-2(c). The statute thus does not waive a county's immunity with respect to claims against a sheriff's deputies, as those deputies are not employed by the county. *See Oconee Cnty. v. Cannon,* 310 Ga. 728, 854 S.E.2d 531 (2021) (noting that county was not proper defendant in case seeking damages for the negligent acts of a sheriff's deputy).

The waiver of a local government entity's sovereign immunity by the purchase of vehicle liability insurance is governed by O.C.G.A. §36-92-2, which provides that "[t]he sovereign immunity of local government entities for a loss arising out of claims for the negligent use of a covered motor vehicle is waived *only to the extent and in the manner provided in this chapter.*" O.C.G.A. §36-92-2(b) (emphasis supplied). The very next subsection of that statute sets forth the condition above – that the immunity of a government entity is waived only for actions taken by its own officers and employees, "within the scope of their official duties or employment." O.C.G.A. §36-92-2(c). And O.C.G.A. §36-92-3(b) reiterates this requirement, stating unequivocally that the sole proper defendant in an action challenging the conduct of a local government officer or

employee is "the local government entity for which the officer or employee was acting" at the time of the alleged tort.

McIntosh County cited all of the foregoing authority in support of its showing below that its immunity is not waived for claims related to the actions of Defendant Sanchez because Sanchez is not the County's employee and does not act on its behalf. The trial court did not disagree that Sanchez is not employed by McIntosh County, but it nonetheless rejected the County's argument based on "the legislature's amendment of O.C.G.A. §36-92-1(4) adding "sheriff" and "deputy sheriff" to the definition of "local government officer or employee":

> Within the context of this statutory scheme, the legislature expressly renders a local government entity liable for the acts of a sheriff or deputy sheriff involving negligent use of a covered vehicle. O.C.G.A. § 36-92-2(c) limits liability for losses based on the conduct of the local government officer or employee, and not the employment relationship between such employee and that local government entity.
> Order, R—57.

But the fact that sheriffs and deputy sheriffs fall under the definition of "local government officer or employee" does not establish that they are officers or employees *of McIntosh County*. The definition of "local government entity" includes counties, cities, and consolidated city-county

governments. O.C.G.A. §36-92-1(3). But Sanchez (and Jessup) no more act on behalf of McIntosh County than they act on behalf of the City of Darien – or, for that matter, the City of Atlanta or the Athens-Clarke County consolidated government.

The trial court's order concludes that McIntosh County may be liable for the conduct of Defendant Sanchez solely because the latter is a "local government officer or employee" and the former is a "local government entity," explicitly rejecting the notion that *any* particular relationship between the two is required before such a connection may be drawn. R—57. This holding is untenable in light of the plain language of O.C.G.A. §36-92-3(b) and §36-92-2(c), which provide, respectively, that suit is allowed only against the local government entity "for which [an] officer or employee was acting" at the time he allegedly committed a tort, and only if the employee was acting "within the scope of his official duties or employment." And while this statutory language unequivocally precludes the trial court's ruling, the outcome would be the same even if the language were somehow ambiguous, as "implied waivers [of sovereign immunity] are not favored, and it must be clear from the statute that

immunity is waived and the extent of such waiver." *Georgia Lottery Corp. v. Patel*, 353 Ga. App. 320, 322, 836 S.E.2d 634, 636 (2019).

By allowing Nolden's claims against McIntosh County to proceed, the trial court necessarily found that O.C.G.A. §36-92-1 *et seq.* clearly and explicitly waives McIntosh County's immunity for claims challenging the conduct of *any* person who meets the definition of "local government officer or employee" – regardless of whether that person is *McIntosh County's* officer or employee. But the plain language of the relevant statutes makes clear that this is not the law. Even if substantial precedent did not establish that county immunity bars claims arising from the conduct of sheriffs' deputies, specifically, nothing in O.C.G.A. §36-92-1 would amount to a waiver here given the lack of any employment or other agency relationship between Deputy Sanchez and McIntosh County.

3. The trial court correctly ruled that O.C.G.A. §36-92-3 bars any claim against Sheriff Jessup for alleged tortious conduct by Deputy Sanchez.

Nolden argued below that if McIntosh County is not an appropriate defendant in a suit challenging Deputy Sanchez's alleged conduct, then suit against Sheriff Jessup for that conduct must be proper. But the

language of O.C.G.A. §36-92-1 is unequivocal – a sheriff is a "local government employee" who may not be sued under O.C.G.A. §36-92-3, not a "local government entity" for which immunity is waived. The statute, as currently drafted, explicitly excludes sheriffs (and their deputies) from the class of persons who may be sued for automobile-related negligence by sheriffs' deputies. And a long line of Georgia cases leaves no doubt that a county also cannot be sued for such alleged negligence. Under the current state of the law, there is no defendant subject to suit for such claims.

In response to the showing by McIntosh County and Jessup below that neither of them is a proper defendant for Nolden's claims, Nolden – understandably – argued that such a result cannot possibly have been intended by the General Assembly when it enacted the current version of O.C.G.A. §36-92-1 *et seq.* But as the Supreme Court has made clear, the fact that a law produces seemingly arbitrary or unfair results is irrelevant if the text of the law is unambiguous.

"When determining the meaning of a statute, we start with the statutory text itself, because a statute draws its meaning from its text." *Alston & Bird, LLP v. Hatcher Mgmt. Holdings, LLC*, 312 Ga. 350, 353 (2021)

(citation and punctuation omitted). A court construing a statute must "afford the statutory text its plain and ordinary meaning," view it "in the context in which it appears," and read it "in its most natural and reasonable way, as an ordinary speaker of the English language would." *Deal v. Coleman*, 294 Ga. 170, 172-173 (2013) (citation and punctuation omitted). "[W]hen we interpret unambiguous statutory text that appears not to serve the purpose we imagine the statute to have, we must follow the path of the text, not the apparently different path of the 'purpose.'" *Alston & Bird,* 312 Ga. at 350.

In *Alston & Bird*, the Georgia Supreme Court confronted a provision in Georgia's apportionment statute that had the devastating – and seemingly unintended – effect of precluding the reduction of damages for comparative fault in a wide class of cases. O.C.G.A. §51-12-33(a) provides that "[w]here an action is brought against one or more persons for injury to person or property and the plaintiff is to some degree responsible for the injury or damages claimed," any award of damages to the plaintiff shall be reduced in accordance with the plaintiff's share of fault. At the time of the *Alston & Bird* decision, O.C.G.A. §51-12-33(b) – which covers

apportionment of damages among responsible parties other than the plaintiff – was structured similarly to subsection (a), but stated that it applied only "[w]here an action is brought against more than one person."

The plaintiff corporation in *Alston & Bird* brought a legal malpractice suit against the firm that represented it through its formation. 312 Ga. at 351. The law firm filed a notice of nonparty fault under O.C.G.A. §51-12-33(d), naming the corporation's manager – against whom the corporation had already won a substantial judgment for embezzlement – as a party to whom fault should be apportioned. *Id.* A jury ultimately found for the plaintiff on its claims of legal malpractice and breach of fiduciary duty and awarded more than two million dollars, apportioning 32% of fault to the law firm, 8% to the plaintiff, and 60% to the nonparty manager. *Id.* at 352. The trial court ordered the law firm to pay 32% of the judgment, but the plaintiff appealed, arguing that the apportionment provision of O.C.G.A. §51-12-33(b) was inapplicable because the case had been brought against only one defendant. *Id.* The Court of Appeals agreed with the plaintiff, and ultimately, the Supreme Court felt constrained to do so as well. *Id.* Although the apportionment statute allowed a notice of nonparty fault to

be filed in *any* case, and required juries to compute percentages of fault in *every* case, the plain language of subsection (b) allowed the reduction of damages clearly contemplated by these provisions only if the case was "brought against more than one person." *Id.* at 356.

The Supreme Court, while not disagreeing with the defendant's arguments that this result was clearly unfair and that there was no reason for apportionment to be unavailable in single-defendant cases, quickly disposed of the defendant's argument that the court could do something to prevent this result:

> A&B and amici argue that allowing apportionment of damages according to the percentage of fault allocated to nonparties in multiple-defendant cases but not in single-defendant cases would be arbitrary and not reflective of the General Assembly's intent. But "[t]he best indicator of the General Assembly's intent is the statutory text it actually adopted." [cit.] If the General Assembly intended subsection (b) to apply to cases brought against a single defendant, it could have and should have said so . . . The General Assembly chose to exclude single-defendant cases from the scope of subsection (b). And "we must presume that the General Assembly meant what it said and said what it meant." [cit.]
>
> Applying subsection (b) to single-defendant cases may well advance some of the intentions behind the Tort Reform Act better than the statute as we interpret it today. But the "General Assembly does not enact a general intention; it enacts statutes. Statutes have words, and words have meanings. It is those

> meanings that we interpret and apply, not some amorphous general intention." [cits.] The General Assembly chose to exclude single-defendant cases from apportionment among non-parties. A&B does not argue that such a choice was beyond the legislative power the Georgia Constitution vests in the General Assembly. And the judicial power we exercise today does not permit us to make a different choice.
> *Id.* at 358-59.

Following the issuance of the Georgia Supreme Court's opinion in *Alston & Bird*, the General Assembly quickly amended subsection (b) of the apportionment statute to apply to cases "brought against one or more persons." 2022 Georgia Laws Act 876 (H.B. 961).

Here, as in *Alston & Bird*, the statutory language is unambiguous: only "local government entities" can be sued under O.C.G.A. §36-92-3, and sheriffs are not "local government entities." O.C.G.A. §36-92-1. Rather, sheriffs and their deputies are "local government employees," who cannot be held liable under the statute. O.C.G.A. §36-92-1. "We must presume that the General Assembly meant what it said and said what it meant" when, in 2019, it amended O.C.G.A. §36-92-1 to add sheriffs and their deputies to the class of persons who may not be sued under O.C.G.A. §36-92-3.

Nolden argued below that if the General Assembly truly intended to preclude suit against sheriffs in their official capacities under O.C.G.A. §36-

92-3, "it would said [sic] that clearly and unequivocally by amending subsection (3) by adding these words: 'The Sheriff and his office are not a local government entity.'" R—39. But the referenced subsection is the definition of "local government entity," and the list provided in that definition is exhaustive: "'Local government entity' means any county, municipal corporation, or consolidated city-county government of this state. Such term shall not include a local school system." O.C.G.A. §36-92-1(d). "A well-established canon of statutory construction, *inclusio unius, exclusio alterius*, provides that the inclusion of one implies the exclusion of the others." *Davis v. Wallace*, 310 Ga. App. 340, 345 (2011) (citation omitted, alteration adopted). The rule that Nolden contends should have been spelled out explicitly – that "the sheriff and his office are not a local government entity" – is inherent in the exclusion of the sheriff from the list of "local government entities." Whether or not this *should* be the rule, and whether or not the legislature *intended* for this to be the rule, it currently *is* the rule due to the plain language of O.C.G.A. §36-92-1.

Sheriff Jessup has never disputed that he, in his official capacity, is likely the most appropriate potential defendant for claims arising from the

negligence of his deputies. But examination of the changes that would need to be made to O.C.G.A. §36-92-1 to permit such claims to be brought against sheriffs only confirms that such claims are precluded under the current statute. Sheriffs, in their official capacities, would need to be added to the list of "local government entities" in O.C.G.A. §36-92-1(3). To ensure that this same issue does not arise with other elected constitutional officers, whose employees – like those of the sheriff – are employed by the constitutional officer rather than by the county, the definition of "local government entity" could be amended to include "an elected constitutional officer in his or her official capacity."[2] And to prevent ambiguity, the definition of "local government officer or employee" in O.C.G.A. §36-92-1(4) would need to be modified to include "a sheriff in his individual capacity," rather than simply "a sheriff."

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[2] *See Channell v. Houston,* 287 Ga. 682, 684, 699 S.E.2d 308, 310 (2010) ("Sheriffs are elected, constitutional officers [cit.] with duties arising from statutory and common law. [cit.] They are not employees of county commissions."); *Griffies v. Coweta Cnty.,* 272 Ga. 506, 507, 530 S.E.2d 718, 719 (2000) (noting that "clerk of superior court[] is an elected constitutional officer and is not an employee of the county commission").

With these changes, claims against sheriffs in their official capacities for the negligence of their deputies would be cognizable under O.C.G.A. §36-92-3. Without them, the plain language of O.C.G.A. §36-92-1 and §36-92-3 precludes such claims. Consequently, a ruling that the trial court erred by denying dismissal to McIntosh County does not require – and, indeed, does not permit – a corollary ruling that dismissal was improperly granted to Sheriff Jessup.

VI. Conclusion

For the foregoing reasons, Appellants respectfully request that the Court reverse the order of the trial court to the extent that it denied dismissal to McIntosh County, and affirm that order to the extent that it granted dismissal to Sheriff Jessup.

This sixth day of January, 2024.

Certification: This submission does not exceed the word count limit imposed by Rule 24.

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CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing pleading by addressing same to:

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and depositing same in the United States Mail with sufficient postage affixed to assure delivery.

This sixth day of January, 2024.

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