No. 17-1089

IN THE

Supreme Court of the United States

MICHAEL LESLIE LAKE,

Petitioner,

v.

MICHAEL SKELTON,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

AMICUS CURIAE BRIEF OF THE SOUTHERN CENTER FOR HUMAN RIGHTS AND THE SOUTHERN POVERTY LAW CENTER IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether the Eleventh Circuit erred in holding that a Cobb County Sheriff's deputy acts as an "arm of the State" and is thus entitled to Eleventh Amendment immunity when he refuses to provide food to inmates, when key sections of the Georgia Code indicate that the provision of food is a county (not a State) function, when the State of Georgia does not control or pay for food Cobb County provides to inmates, and when the State of Georgia is not liable for a judgment against the Cobb County Sheriff?

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INTEREST OF *AMICUS CURIAE*[1]

The Southern Center for Human Rights ("SCHR") is a Georgia non-profit, public interest law firm based in Atlanta, Georgia. For more than 40 years, the SCHR has been dedicated to enforcing the civil and human rights of people in the criminal justice system. Through litigation and advocacy, the SCHR has sought to bring about the fair treatment of those affected by the criminal justice system in the southern United States. The SCHR has brought lawsuits, issued investigative reports, and advocated for legislative reforms on behalf of those affected by the criminal justice system to challenge unconstitutional conditions and practices in prisons and jails.

Through its efforts, the SCHR's advocacy has contributed to ending numerous human rights abuses in prisons and jails across the South. Nevertheless, human rights abuses still occur in prisons and jails by actors claiming protection under sovereign immunity. The SCHR is concerned that lower courts are misinterpreting Supreme Court precedent resulting in an overextension of Eleventh Amendment protection and thus allowing what properly should be characterized as non-State actors to perpetrate human rights abuses with impunity.

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[1] Pursuant to Rule 37.2(a), counsel of record for all parties received timely notice of amici's intent to file this brief. Counsel of record for all parties consented in writing to its filing. No counsel for any party authored this brief in whole or in part, and no person or entity other than *amici curiae* or counsel made a monetary contribution to the preparation or submission of this brief.

The Southern Poverty Law Center ("SPLC") is an Alabama nonprofit legal advocacy organization based in Montgomery, Alabama. The SPLC was founded in 1971 with the mission of ensuring civil rights for all, including those behind bars. Since then, the SPLC has worked to protect those affected by the criminal justice system. The SPLC regularly engages in advocacy on behalf of those in the criminal justice system, with a particular focus on the southern United States. As part of its work, the SPLC has filed multiple *amicus curiae* briefs in the Supreme Court of the United States and the United States Courts of Appeals.

This case concerns the *amici* because the Eleventh Circuit majority in *Lake v. Skelton*, 840 F.3d 1334 (11th Cir. 2016) would re-cast operations of a county sheriff's office—which have not to this point received Eleventh Amendment immunity—as the actions of an "arm of the State," thus rendering them shielded from suit. These newly shielded functions would include not only the provision of food, but medical treatment, sanitation, and the provision of clothing, bedding, and other essentials. While Mr. Lake's case relates to the Cobb County Sheriff's responsiveness to an inmate's dietary restrictions, left uncorrected, the Eleventh Circuit majority opinion could easily be applied to many functions that federal courts have held are *not* State actions. Because the Georgia Code primarily groups together environmental issues relating to custodial care, including sanitation, clothing, bedding, and supervision, it will become difficult, if not impossible, to distinguish between how a sheriff operates in the case of one versus another. *See, e.g.*, O.C.G.A. §§ 42-4-4 (requiring the sheriff to "furnish persons confined

in the jail with medical aid, heat, and blankets"), 42-5-2 (requiring the custodial governmental unit "to maintain the inmate, furnishing him food, clothing, and any needed medical and hospital attention"). Restated, the Eleventh Circuit majority opinion will lead to the preclusion of all official capacity claims relating to intra-jail policies and procedures affecting custodial care. In light of the large number of persons incarcerated in Georgia in county jails at any given point in time—including tens of thousands of people who have not been convicted of any crime and must therefore be presumed innocent—the Eleventh Circuit majority's decision will negatively impact the basic human needs and fundamental constitutional rights of countless people.

REASONS FOR GRANTING THE PETITION

As Judge Martin stated in her dissenting opinion in *Lake*, when the Eleventh Circuit previously granted sovereign immunity to shield sheriffs from causes of action arising out of use-of-force policies in county jails, the *en banc* court "was careful to narrowly cabin the scope of that immunity . . . . understanding . . . what a serious thing it is to expand a doctrine that blocks a whole class of people from vindicating their federal rights in federal court." *Lake v. Skelton*, 871 F.3d 1340, 1354 (11th Cir. 2017) (referencing *Manders v. Lee*. 338 F.3d 1304 (11th Cir. 2003) (*en banc*). This Court also has proceeded cautiously in applying the Eleventh Amendment, underscoring that sovereign immunity should be extended only in the service of the Amendment's "twin reasons" for existing—namely to accord States the respect they are owed under principles of federalism and to protect States'

treasuries. *Hess v. Port Auth. Trans-Hudson Corp.*, 513 U.S. 30 (1994).

Here, the *Lake* majority would bar suits against sheriffs for almost every violation of an inmate's rights ranging from using unnecessary force to denying adequate nutrition to neglecting obvious medical needs. Such an expansion of the list of actions, or inactions, for which sheriffs would receive immunity will jeopardize the constitutional rights of tens of thousands of people in Georgia alone at any given point in time. The same can be said of other States within the Eleventh Circuit, creating a compound effect of serious proportions. And the *Lake* majority view may lead other Circuits to follow in its footsteps, notwithstanding that still other Circuits disagree with the Eleventh Circuit majority's view, that the majority failed to follow its own *en banc* precedent in *Manders*, and that it admittedly failed to defer to this Court's Eleventh Amendment jurisprudence as articulated in *Hess*. Accordingly, this Court should grant a writ of certiorari.

I. LEFT UNCORRECTED, THE ELEVENTH CIRCUIT MAJORITY OPINION WILL UNDERMINE FUNDAMENTAL RIGHTS OF UNCONVICTED COUNTY JAIL INMATES

County jails are found in 144 of Georgia's 159 counties. Georgia Department of Community Affairs, Office of Research, *County Jail Inmate Population Report* 1 (Dec. 7, 2017). As of December 7, 2017, the total county jail inmate population was nearly 38,000, and of that number, 23,800 county inmates were awaiting trial. *Id.* Thus, at any given point in time, approximately 23,800 individuals—

who have not been convicted of any crime and therefore are presumed innocent—are subjected to some of the lowest standards of care among incarcerated persons.

Standards of care for unconvicted inmates are poor in Georgia for a variety of reasons, including that county jails routinely experience a high turnover rate among staff. *Id.* County jails further tend to ignore serious medical needs due to the brevity of inmates' stays, exposing a substantial number of people to medical, nutrition, and facilities-related concerns. *Id.*

For these and other reasons, issues relating to basic human needs, such as food, sanitation, and overcrowding, are frequently the subject of successful lawsuits brought by inmates. *See, e.g.*, *Harper v. Bennett*, No. 04-CV-1416 (N.D. Ga. Dec. 20, 2005)(Consent Order) (addressing overcrowding and sanitation issues in Fulton County Jail); *see also* Southern Center For Human Rights, *Gordon County Jail Fails to Provide Adequate Nutrition to Inmates: Detainees Combat Hunger by Eating Toothpaste and Toilet Paper* (Oct. 28, 2014), https://www.schr.org/ (reporting dangerously insufficient food provided at county jail); *United States v. Terrell Cnty., Ga.*, 457 F. Supp. 2d 1359, 1367 (M.D. Ga. 2006) (describing environmental safety conditions).

In fact, one report indicated that inmates in Gordon County Jail in Calhoun, Georgia were starving as the mandated two meals a day were insufficient to sustain the inmates. Alysia Santo & Lisa Iaboni, *What's in a Prison Meal?,* The Marshall Project (July, 7, 2015), https://www.themarshallproject.org/2015/07/07/what-

s-in-a-prison-meal. As a result, some inmates reportedly resorted to eating toothpaste and toilet paper. *Id*. Under Georgia law, prisoners are to receive at least two hot meals a day. David Reutter, *Appalling Prison and Jail Food Leaves Prisoners Hungry for Justice,* Prison Legal News (Apr. 15, 2010), https://www.prisonlegalnews.org/news/2010/apr/15/appalling-prison-and-jail-food-leaves-prisoners-hungry-for-justice/. Yet in another county jail in Georgia, prisoners went three months (October 2009 to January 2010) without hot food as a result of the jail's pressure cooker breaking. *Id.* As the standards get lower and lower, and Georgia jail populations continue to increase, now is not the time to drastically expand sovereign immunity to those responsible for the care of county jail inmates.

By broadening the scope of Eleventh Amendment immunity, those responsible for county jail inmates become less accountable when providing the most fundamental necessities. This case addresses a failure to provide food, but the next logical implication would be medical care as the two are often inextricably linked. In fact, many county jail inmates face medical crises while incarcerated. For example, 64% of county jail inmates suffer from a mental illness, while 40% have a chronic medical condition. Natalie Ortiz, *Addressing Mental Illness and Medical Conditions in County Jails,* National Association of Counties 1 (Sept. 2015), http://www.naco.org/addressing-mental-illness-and-medical-conditions-county-jails. These percentages are significantly higher than those found in the general population. Bureau of Justice Statistics, *Medical Problems of State and Federal Prisoners and*

Jail Inmates, 2011–2012 (Feb. 2015), http://www.bjs.gov/content/pub/pdf/mpsfpji1112.pdf. Nevertheless, many county jail inmates who suffer from a medical condition do not receive appropriate prescriptions or treatment. *Id.* at 11. In Georgia, poor medical care frequently necessitates the filing of lawsuits against county sheriffs in their official capacities. *See*, *e.g.*, Complaint, *Maley v. Corizon Health, Inc.*, No. 16-cv-00060 (S.D. Ga. Filed Feb 2, 2016) (alleging constitutional violations against Chatham County and the Chatham County Sheriff, among others, relating to the death of an inmate who was not given sufficient medical care by the county's contracted medical provider). Both the frequency and severity of fundamental care—including the provision of basic sustenance—and medical claims arising out of county jails indicate the exceptional importance of the issue in this case.

II. THE ELEVENTH CIRCUIT MAJORITY VIEW CONFLICTS WITH OTHER CIRCUITS

In addition to threatening the constitutional rights of tens of thousands of people, the majority opinion in *Lake* is at odds with the way in which other Circuits conduct their arm-of-the-state analysis. At least two key splits exist that are raised through the Eleventh Circuit majority's decision.

First, Circuits diverge in the ways they assess whether an official acts or is defined as an arm-of-the-state—an assessment the Eleventh Circuit makes under the first *Manders* factor.[2] Relying on

[2] In *Manders*, the Eleventh Circuit articulated four factors for deciding when sovereign immunity exists: "(1) how state law

Manders, the majority in *Lake* held that because Georgia's Constitution "makes the sheriff's office a constitutional office independent from the county entity," the sheriff is therefore an arm of the State. *Lake*, 871 F.3d at 1342 (quoting *Manders*, 338 F.3d at 1312).

But this holding stands in polar opposition to the Seventh Circuit's reasoning and holding in *Franklin v. Zaruba*, 150 F.3d 682 (7th Cir. 1998). As it had done in previous cases, the Seventh Circuit in *Franklin* rejected the kind of reasoning adopted by the Eleventh Circuit in *Manders* and *Lake*. Specifically, the Seventh Circuit refused to find that simply because sheriffs are not defined under state law as "agents of the county . . . , then sheriffs must therefore be agents of the state." *Id.* at 685. The kind of reasoning employed by the Eleventh Circuit "overlooks a crucial *third possibility* that [the Seventh Circuit has] found to be dispositive in other cases—namely, that the sheriff is an agent of the county sheriff's department, an independently-elected office that is not subject to the control of the county in most respects." *Id.* (emphasis added).

As Judge Martin observed in her dissent from the Eleventh Circuit's decision not to review the *Lake* majority's opinion *en banc*, this same "*third possibility*" exists under Georgia law. "It is true that the sheriff . . . occupies a constitutional office that is largely independent from other county governing authority." 871 F.3d 1353. But the county's

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defines the entity; (2) what degree of control the State maintains over the entity; (3) where the entity derives its funds; and (4) who is responsible for judgments against the entity." 338 F.3d at 1309.

"governing authority," known as the board of county commissioners, is the county's legislative body. And "[n]ot unlike the federal government's separation of powers among coequal branches, Georgia law creates a separation of powers at the county level: the sheriff is an executive officer of the county, and his authority is largely independent of the county's legislative body." *Id.* at 1354. Therefore, "[t]he sheriff's independence from the county commission should be interpreted not as independence from the county, but rather as independent authority to act for the county with respect to the functions entrusted his office." *Id.* (quoting *Manders*, 338 F.3d at 1343 n.15 (Barkett, J., dissenting)). Whether this Court ultimately agrees with Judge Martin's or Judge Barkett's conclusion, the Court should grant a writ of certiorari to address the split among Circuits illustrated by the Seventh Circuit's decision in *Franklin* (and the line of cases on which it relies) and the Eleventh Circuit's decisions in *Manders* and *Lake*.

Second, Circuits differ markedly in the weight they accord the sovereign-immunity factor assessing whether the State will be liable for any judgment against the defendant. The Eleventh Circuit addresses this concern in the last of its *Manders* factors, and, as discussed further in Part III *infra*, it clearly does not accord this factor overriding weight. By contrast the Third and Fourth Circuits accord this factor nearly dispositive significance. For example, in *National Railroad Passenger Corporation v. Pennsylvania Public Utility Commission*, 288 F.3d 519 (3d Cir. 2002), the Third Circuit held that although the other factors in its sovereign immunity test tilted in favor of sovereign

immunity, "because the funding factor was the most important factor and it weighed so heavily against the [defendant]," the other "factors, although weighing in favor of the [defendant's claimed sovereign immunity], simply do not tip the scales in favor of a finding that the [defendant] is an arm or alter ego of the [State]." *Id.* at 524. Accordingly, the defendant's request to be cloaked in sovereign immunity was denied. Similarly, in vacating and remanding a district court's sovereign immunity decision, the Fourth Circuit instructed the lower court to follow this Court's precedent in *Hess*, noting that "the primary consideration of Eleventh Amendment immunity is whether the state is liable for the judgment [at issue], not the function performed by the [defendant]." *Gray v. Laws*, 51 F.3d 426, 435 (4th Cir. 1995). Because Circuits hold significantly different views of the importance of the liable-for-judgment factor in their respective sovereign immunity tests—and because these differences lead to inconsistent results—this Court should issue a writ of certiorari to clarify the law.

III. THE ELEVENTH CIRCUIT'S OPINION CONFLICTS WITH THIS COURT'S PRECEDENT AND MISAPPLIES THE ELEVENTH CIRCUIT'S OWN SOVEREIGN IMMUNITY TEST

Without this Court's review, the Eleventh Circuit majority opinion not only will negatively impact tens of thousands of Georgia county jail inmates and conflict with holdings from other Circuits, it will stand (a) in contravention of this Court's Eleventh Amendment jurisprudence

articulated in *Hess*, and (b) as a flawed application of the Eleventh Circuit's own precedent in *Manders*.

A. The Eleventh Circuit Majority's Opinion Contradicts This Court's Precedent By Ignoring The "Twin Purposes" Of The Eleventh Amendment

Recognizing that the "[a]doption of the [Eleventh] Amendment responded most immediately to the States' fears that 'federal courts would force them to pay their Revolutionary War debts, leading to their financial ruin,'" *Hess*, 513 U.S. at 39 (quoting *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 151 (1984)), this Court has emphasized that, at the heart of the Eleventh Amendment are its "twin reasons" for existing: protecting States' integrity and safeguarding States' treasuries, *id.*

Because concerns over federalism and financial solvency form the existential bedrock of the Eleventh Amendment, "[w]hen indicators of [sovereign] immunity point in different directions, the Eleventh Amendment's reasons for being remain [the] prime guide" in determining whether sovereign immunity should apply. *Id.* at 47.

Here, the Eleventh Circuit majority admitted that, as applied to the Cobb County Sheriff's duty to provide food for county jail inmates, the factors set forth by the Eleventh Circuit in *Manders* point in different directions. *Lake*, 840 F.3d at 1339 ("The first three factors . . . favor immunity [for Major Skelton] . . . [a]nd the fourth factor . . . does not defeat immunity.") (internal quotations omitted). Notwithstanding this admission, the Eleventh

Circuit neglected to look deeper into the "twin reasons" for the Eleventh Amendment to determine the extent to which both favor (or disfavor) the application of sovereign immunity. Instead, it made a blanket determination that the *Manders* test on the whole points toward sovereign immunity.

The *Lake* majority acknowledged its departure from *Hess*. As the majority explained, "[t]o the extent that our dissenting colleague suggests that this appeal should be decided based on the 'Eleventh Amendment's twin reasons for being,' we can only say that we are bound by the test of the en banc majority in *Manders*. . . ." *Lake*, 840 F.3d at 1344.

The majority's reticence to acquiesce to this Court's superseding precedent in *Hess* is likely born of the fact that the fourth *Manders* factor—which the Eleventh Circuit admits does not point clearly toward sovereign immunity—itself forms one of the "twin reasons" for the Eleventh Amendment: the financial solvency concern for States' treasuries. *Hess*, 513 U.S. at 48 ("[T]he impetus for the Eleventh Amendment [is] the prevention of federal-court judgments that must be paid out of a State's treasury."). Indeed, the "vulnerability of the State's purse [i]s the most salient factor in Eleventh Amendment determinations." *Id.* Even the Eleventh Circuit elsewhere has held, "the fact that the state is not liable weighs heavily against extending the state's Eleventh Amendment immunity to the challenged conduct by the sheriff." *Abusaid v. Hillsborough Cnty. Bd. Of Cnty. Comm'rs*, 405 F.3d 1298, 1313 (11th Cir. 2005).

The Eleventh Circuit majority admitted that no law exists in Georgia mandating the State to pay

adverse judgments rendered against the sheriff in his official capacity. *Lake*, 840 F.3d at 1344. Rather, any adverse judgments against a sheriff in his official capacity are paid from the budget for the sheriff's office. *Id.* Lest there be any question on this point, the State of Georgia has itself said that there is "not one decision, state or federal, holding that the State can be held monetarily liable for the acts or omissions of a county sheriff" and that "the State's purse is not implicated" by claims against a sheriff. *Fitzgerald v. State*, No. 4:13-CV-00258-HLM (N.D. Ga. Feb. 18, 2014), Doc. 20 at 3 n.1.

Had the Eleventh Circuit abided by *Hess*, the fourth *Manders* factor alone should have foreclosed sovereign immunity. *Hess*, 513 U.S. at 48. Instead, the majority erroneously strained—without any genuine basis—to claim that the budget for the sheriff's office implicates both county and state funds. *Lake*, 840 F.3d at 1344. This unsupported reasoning would cloak every sheriff's office in sovereign immunity for virtually every official act or omission because any judgment against a sheriff's office will always implicate the sheriff's budget. That rationale is bereft of support among the "twin reasons" for the existence of the Eleventh Amendment, and it runs afoul of this Court's decision in *Hess*. Accordingly, it should be reversed.

B. The Eleventh Circuit Majority Opinion Misapplies That Court's Own Sovereign Immunity Test

Beyond its departure from this Court's Eleventh Amendment precedent, the Eleventh Circuit majority opinion constitutes an abrupt turn in that court's own custodial care jurisprudence. Left

uncorrected, that turn would remove federal causes of action against the "officer in charge" of county jails for even the most fundamentally administrative and local tasks. In fact, taken to its logical conclusion, the majority's opinion would re-characterize functions which have previously not received Eleventh Amendment immunity into conduct by a sheriff acting as an "arm of the State," thereby rendering the sheriff immune. Among others, this includes medical treatment, environmental conditions such as sanitation and temperature, and the provision of clothing, bedding, and other basic needs. While Mr. Lake's case relates to the Cobb County Sheriff's provision of food, if unchecked, the logic of the Majority opinion could easily be applied to many functions that lower federal courts have previously concluded were not State driven. Because the Georgia Code primarily groups together environmental issues relating to custodial care, including sanitation, clothing, bedding, and supervision, it will become impossible to distinguish between how a sheriff operates in the case of one versus another. *See, e.g.*, O.C.G.A. §§ 42-4-4 (requiring the sheriff to "furnish persons confined in the jail with medical aid, heat, and blankets"), 42-5-2 (requiring the custodial governmental unit "to maintain the inmate, furnishing him food, clothing, and any needed medical and hospital attention"). Put differently, the Eleventh Circuit majority opinion could bar all official capacity claims relating to intra-jail policies and procedures affecting custodial care.

Ultimately, the basis for the Eleventh Circuit majority's error is twofold: First, when analyzing the first factor—how state law defines the entity—the majority opinion disregards key Georgia law to draw

the erroneous conclusion that, by not being a part of the county, the Sheriff's office is necessarily an agent of the State. Second, the Eleventh Circuit fails to analyze the *Manders* factors within the context of the specific function at issue.

In *Manders*, the Eleventh Circuit, sitting *en banc*, carefully cabined Eleventh Amendment immunity, adhering closely to the specific function at issue: the county sheriff's use-of-force policy within a jail. 338 F.3d at 1319. The court made clear that Eleventh Amendment immunity would be determined by looking only to the specific function at issue. *Id.* at 1308. Following *Manders*, the *Lake* majority re-emphasized that immunity "must be assessed in light of the particular function in which the defendant was engaged when taking the actions out of which liability is asserted to arise." *Abusaid*, 405 F.3d at 1303 (quoting *Manders*, 338 F.3d at 1308). Tucked within the "particular function" direction in *Manders* is a fundamental awareness that Georgia sheriffs are not acting under the control of the state in all circumstances. *Manders*, 338 F. 3d at 1318–19 (deciding only whether Georgia sheriffs "wear their State hat" in the particular function). As suggested by *Manders* and its progeny, critical distinctions may arise even within the confines of a county jail. *Id.* at 1323 n.43 (distinguishing use-of-force policies from matters involving the medical care of inmates); *see also Dukes v. Georgia*, 428 F. Supp. 2d 1298, 1319–22 (N.D. Ga.), *aff'd*, 212 F. App'x. 916 (11th Cir. 2006) (distinguishing use-of-force policies and medical care within a county jail).

The particular function at issue in this case is the provision of food to inmates. While the majority

opinion in *Lake* correctly identified the "particular function" requirement, *Lake*, 840 F.3d at 1339, its analysis misapplied this requirement by overlooking key sections of the Georgia Code that indicate the sheriff's independence from the State in the context of food service. *See*, *e.g.*, *id.* at 1343—44 (evaluating the source-of-funds factor as "indistinguishable" from *Manders*, despite the fact that the Georgia Code has no provision addressing use-of-force funding, while in contrast a specific provision places fiscal responsibility for inmates' food on the county, *see* O.C.G.A. § 42-5-2). And despite acknowledging the limited scope of analysis required by *Manders*, the majority opinion in *Lake* evaluates the general "framework" of the Cobb County Sheriff's office in great detail.[3]

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[3] Even in its broader evaluation of "the governmental structure of the sheriff's office vis-à-vis the state," *Lake*, 840 F.3d at 1337—38, the majority in *Lake* fails to give sufficient weight to the manner in which Georgia courts have interpreted the sheriff's role. *See Grech v. Clayton Cnty., Ga.*, 335 F.3d 1326, 1355 n.11 & 12 (11th Cir. 2003) (en banc) (Barkett, J., dissenting) (collecting Georgia case law treating the sheriff as an officer of the county). Neither does the majority consider all of the relevant Georgia Code provisions that touch on the sheriff's office. For example, the majority opinion ignores the liability that Georgia law imposes on "local governing authorities" when county jails are knowingly under-staffed. O.C.G.A. § 42-4-31(b) ("If the local governing authority having jurisdiction over a detention facility has knowledge that the facility is operating without a full-time jailer on duty while persons are incarcerated therein, each member of the local governing authority having such knowledge and failing to attempt to correct the deficiency shall be in violation of this article."). If the sheriff is acting as an "arm of the state" when staffing the jail, then why would the county be liable? The only

First, the Majority opinion fails to note the importance of O.C.G.A. § 15-12-78, which expressly requires grand juries to "inspect the sanitary condition of the jails" along with the "the treatment of the inmates," and then "make such recommendations to the county governing authorities as may be necessary . . . which recommendations the governing authorities shall strictly enforce." O.C.G.A. § 15-12-78. This section directly links the county with a method to oversee the provision of care at the county jail—including its food service—and imposes an obligation on the county to "strictly enforce" recommendations about county jail conditions. *Id.*

Second, the *Lake* majority asserts that the food served to inmates must comply with certain state agency health standards, placing it under control of the state. *Lake*, 840 F.3d at 1340. But O.C.G.A. § 42-4-32 provides a baseline for food service. Sheriffs and counties have *independence* and authority to exceed those thresholds, and "[e]stablishing minimum requirements is not sufficient to demonstrate control." *Lightfoot v. Henry Cnty. Sch. Dist.*, 771 F.3d 764, 773 (11th Cir. 2014).

Third, the majority opinion in *Lake* claims that O.C.G.A. § 42-5-2 operates differently when it applies to municipalities, imposing a "unified duty" on municipalities to both pay for and provide medical care, but solely a duty to pay for care on counties. In part, the majority justifies this distinction by pointing out that municipalities supervise their jailers, while, in contrast, "counties lack supervisory

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explanation is that the county has a role beyond mere fiscal accountability in the administration of the jail.

authorities." *See Lake*, 840 F.3d at 1341, 1347 (citing O.C.G.A § 42-4-1(b)). But just as chiefs of police "are the jailers of the municipal corporations" that operate "subject to the supervision of the municipal governing authority," O.C.G.A. § 42-4-1(b), Georgia's sheriffs "are the jailers of the counties" that operate "subject to the supervision of the county governing authority," *id.* § 42-4-1(a). Therefore, the majority identifies a distinction without a difference, and in the process highlights yet another connection between the sheriff and the county that he or she serves.

Ultimately, as discussed *supra* in Part II, the majority view in *Lake* fails to consider key Georgia law that demonstrates that while the Sheriff might be independent from the county, that does not necessarily mean that the Sheriff is an arm of the state. *See Coffey v. Brooks Cnty.*, 500 S.E.2d 341, 351 (1998) (Eldridge, J., dissenting in part) ("The sheriff is not an entity of the State, either as an agency or department. The sheriff is a county officer; however, the sheriff is independent of and not answerable to the governing authorities of the county." (citation omitted)); *Manders*, 338 F.3d at 1343 n.15 (Barkett, J., dissenting) ("Thus, the sheriff's independence from the county commission should be interpreted not as independence from the county, but rather as independent authority to act for the county with respect to the functions entrusted his office."). Moreover, not only does the majority not consider the possibility of a third option such that the Sheriff is independent of both the county and the state—or an independent executive office within the county—but the majority does not properly limit the scope of its review to the "particular function" at issue under

state law, which is the provision of food service. Because analysis of the "particular function" at issue is the core feature of the Eleventh Circuit's precedent in *Manders*, the Eleventh Circuit majority's decision in *Lake* is not only erroneous under the Eleventh Circuit's own precedent; worse, it flies in the face of common sense and risks the well-being of tens of thousands of Georgia inmates, many of whom have never been convicted of any crime and are thus presumed innocent.

IV. CONCLUSION

For the foregoing reasons, the Court should grant the petition.

Respectfully submitted,

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