No. 25-

IN THE

Supreme Court of the United States

DAVIE COUNTY AND STOKES COUNTY,

Petitioners,

v.

JUILIANA SWINK, ADMINISTRATRIX OF THE ESTATE OF DAVID RAY GUNTER; SOUTHERN HEALTH PARTNERS, INC.; JASON JUNKINS, MEDICAL DIRECTOR; FRAN JACKSON; MANUEL MALDANADO; AND SANDRA HUNT,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The questions presented are:

1) Given the Supreme Court's decision in *Monell*, can a governmental entity be held liable, either under the doctrine of *respondeat superior* or the "non-delegable duty" doctrine, for the constitutional torts of a healthcare provider hired by the governmental entity?

2) Given the policymaker framework of the Supreme Court as articulated in cases such as *Pembaur*, *Praprotnik*, and *Jett,* does the hiring by a governmental entity of a healthcare provider to provide healthcare services at a jail automatically convert the healthcare provider into a governmental policymaker for purposes of Section 1983 liability?

PARTIES TO THE PROCEEDING

Petitioners are Davie County and Stokes County.

Respondents are Juiliana Swink, Administratrix of the Estate of David Ray Gunter; Southern Health Partners, Inc.; Jason Junkins, Medical Director; Fran Jackson; Manuel Maldanado; and Sandra Hunt.

The remaining Appellees at the Fourth Circuit have no interest in the outcome of this case pursuant to SCR 12.6: Ohio Casualty Insurance Company; Western Surety Company; Cameron Sloan; Mike Marshall; Eric Cone; Doe Defendants; Andy Stokes.

STATEMENT OF RELATED PROCEEDINGS

This case arises from and is related to the following proceedings:

- *Swink v. Southern Health Partners, Inc.*, No. 21-2183 (4th Cir.) (amended opinion issued December 2, 2025; rehearing *en banc* denied December 4, 2025).

- *Gunter v. Southern Health Partners, Inc.*, No. 1:16CV262 (M.D.N.C.) (Order granting summary judgment as to all public defendants, including Petitioner counties, issued March 15, 2021).

- *Gunter v. Southern Health Partners, Inc.*, No. 1:16CV262 (M.D.N.C.) (Order granting summary judgment as to remaining defendants, issued September 17, 2021).

There are no additional proceedings in any court that are directly related to these cases within the meaning of this Court's Rule 14.1(b)(iii).

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PETITION FOR A WRIT OF CERTIORARI

Petitioners respectfully petition for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit that gave rise to this petition is published at *Swink v. Southern Health Partners, Inc.*, 160 F.4th 438 (4th Cir. 2025) and is reproduced in the Appendix filed herewith ("App.") at App. 1a. The opinion of the District Court in this case, granting Petitioners' motion for summary judgment, is reproduced at App. 70a and is unreported but is available at *Gunter v. Southern Health Partners, Inc.*, 2021 WL 965036 (M.D.N.C. 2021).

JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit was entered on December 2, 2025. (App. 1a). The Fourth Circuit denied the Petitioners' petition for rehearing on December 16, 2026. (App. 106a). The jurisdiction of this Court is invoked under 28 U.S.C.§ 1254 (1).

RELEVANT STATUTORY PROVISION

42 U.S.C. § 1983 states in relevant part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia,

> subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable….

INTRODUCTION

In the context of jail medical care, governmental entities across the nation, as a matter of standard practice, hire doctors or other healthcare providers to ensure that inmates have access to medical care.

The United States Supreme Court has repeatedly emphasized that governmental entities cannot be held liable under 42 U.S.C. § 1983 on a *respondeat superior* theory—or, in other words, a government entity cannot be held liable solely because it employs a tortfeasor. *See*, *e.g.*, *Monell v. Dept. of Social Services* 436 U.S. 658, 692 (1978). Furthermore, in the Supreme Court's decision in *Jett v. Dallas Independent School District*, 491 U.S. 701 (1989) and the plurality opinions in *Pembaur v. Cincinnati*, 475 U.S. 469 (1986) and *St. Louis v. Praprotnik*, 485 U.S. 112 (1988), the Supreme Court established the framework for lower courts to utilize when determining whether a particular official or entity possessed final policymaking authority for a governmental entity in a particular area for

purposes of Section 1983, including principles relating to whether there has been a delegation of final policymaking authority by the governmental entity.

In spite of the Supreme Court's holdings, directives and guiding principles in *Monell*, *Pembaur*, *Praprotnik*, and *Jett*, three circuits—the Eleventh Circuit, Seventh Circuit, and now the Fourth Circuit—have held that when a governmental entity hires a healthcare provider to provide healthcare services to inmates, the governmental entity becomes automatically liable under Section 1983 for the constitutional torts of the provider, either under the common law "non-delegable duty" doctrine or under the theory that the mere hiring of the provider automatically delegates to the provider the authority to make final government policy. These federal circuit court decisions are contrary to the fundamental principle that a governmental entity cannot be held liable under Section 1983 under the doctrine of *respondeat superior*. In addition, these circuit decisions are contrary to the framework established by this court relating to the identification of government policymakers under Section 1983 articulated by the Supreme Court in *Pembaur*, *Praprotnik*, and *Jett*. In fact, these Circuit cases completely ignore *Pembaur*, *Praprotnik*, and *Jett*, not even bothering to discuss these cases or their rules and guiding principles.

In contrast, the Sixth Circuit has correctly reasoned that under Supreme Court precedent, including *Monell* and *Pembaur*, simply hiring a medical care provider does not automatically make a governmental entity liable under Section 1983 for the provider's unconstitutional actions. The Fifth Circuit has specifically declined to follow the rule adopted by the Eleventh and Seventh (and now

the Fourth) circuits, which the Fifth Circuit correctly described as a doctrine that stated that if a governmental entity hires a healthcare provider to provide healthcare to inmates, the provider's policies "would be automatically attributed to the county."

The Supreme Court should grant this Petition. In cases of this kind, numerous lower courts have been holding that when a governmental entity hires a healthcare provider to provide inmate healthcare, the governmental entity is automatically liable for unconstitutional actions of the provider, completely ignoring the mandatory rules and guiding principles announced by this Court in *Monell*, *Pembaur*, *Praprotnik*, and *Jett* while making up their own rules. This is a direct challenge to the authority of this Court that should not be allowed to stand or continue.

For all these reasons, and as shown at length below, the Court should grant certiorari and reverse the Fourth Circuit's judgment as it relates to the Petitioner counties.

STATEMENT OF THE CASE

This is a case in which Juliana Swink, Administratrix of the Estate of David Ray Gunter, seeks compensation for injuries to Mr. Gunter that allegedly occurred during a brief stint at local jails in Davie County, North Carolina and Stokes County, North Carolina due to medical decisions of Southern Health Partners, Inc. ("SHP") and its healthcare professionals. The claims that remain against the Petitioners, Davie County and Stokes County, are *Monell* claims under 42 U.S.C. § 1983, in which Plaintiff seeks to hold these counties liable for the unconstitutional actions of SHP.

A. Background Facts

1. The Petitioner counties hired Southern Health Partners, Inc. to ensure that inmates were provided with medical care at the local jails

North Carolina law identifies Davie County, Stokes County, and/or the respective county sheriffs as the entities (or persons) with the authority to make official government policy regarding the provision of medical care at the Davie County and Stokes County Detention Centers. N.C. Gen. Stat. 153A-225 and N.C. Gen. Stat. §§ 162-22, 24.

A private healthcare provider, Southern Health Partners, Inc. ("SHP") was hired by the Petitioner counties via contracts to "provide adequate healthcare to inmates" at the Davie County jail and the Stokes County jail. (App. 4a, 5a, 6a).

2. Mr. Gunter's brief stays at the Davie County and Stokes County Detention Centers

David Gunter, the original Plaintiff in this case,[1] had a mechanical heart valve implanted when he was 15 years old. (App. 2a). Patients with mechanical heart valves face a higher risk of blood clots; thus, Gunter was prescribed a daily dose of Coumadin, a prescription blood thinner. (App. 2a).

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1. Mr. Gunter passed away in June of 2025 and Juliana Swink, Administratrix of the Estate of David Ray Gunter, was substituted as the Plaintiff.

On November 6, 2012, when he was 37 years old, Gunter was arrested pursuant to a bench warrant. (App. 4a). On November 7, 2012, Gunter was booked into the Davie County Detention Center, (App. 4a), where he stayed until he was transferred to the Stokes County Detention Center on November 16, 2012. (App. 6a). On November 21, 2012, Gunter was released from custody. (App. 8a).

As noted above, during the brief period of Gunter's incarceration, SHP was hired by both Davie County and Stokes County to provide medical care at their respective local jails. During the two weeks that Gunter was incarcerated at the local jails in Davie County and Stokes County, there were a few days when he did not receive his prescribed dose of Coumadin. (App. 6a, 7a).

In the two months after Gunter's release, Gunter was diagnosed with two separate blood clots, both of which required surgery. (App. 8a).

B. District Court Proceedings

The plaintiff David Ray Gunter filed this action against multiple defendants, asserting claims under 42 U.S.C. § 1983 as well as multiple state law claims. Plaintiff alleges that the healthcare provider hired by the counties, SHP, violated Plaintiff's constitutional rights by causing him to miss some doses of Coumadin. (App. 9a). Plaintiff asserted a Section 1983 *Monell* claim against the counties, seeking to hold the counties liable for the constitutional torts of the provider, SHP. (App. 9a).

On March 15, 2021, in *Gunter v. Southern Health Partners*, 2021 WL 965035 (M.D.N.C. 2021), (App. 70a), the district court granted summary judgment as to all

public defendants, including the Petitioners Davie County and Stokes County. As to Plaintiff's Section 1983 claims against the public defendants, the Court held that all public defendants, including Petitioners Davie County and Stokes County, were entitled to summary judgment. (App. 84a-91a).

On September 17, 2021, the district court granted summary judgment as to the remaining defendants SHP and its medical care providers. *Gunter v. Southern Health Partners*, 2021 WL 4255370 (M.D.N.C. 2021).

C. Decision of the Fourth Circuit

On November 20, 2024, the Fourth Circuit issued its 2-1 decision. The opinion was amended on December 2, 2025 to correct a typographical error, and this amended decision is published at *Swink v. Southern Health Partners*, 160 F.4th 438 (4th Cir. 2025). (App. 1a.) The Fourth Circuit affirmed in part, and reversed in part, the district court's decision. The only portion of the Fourth Circuit's opinion that is relevant to this Petition is the Fourth Circuit's holding at 160 F.4th at 452-53, (App. 23a-24a), that the counties could be held liable under 42 U.S.C. § 1983 for any wrongdoing of SHP, simply by virtue of the fact that both counties hired SHP to provide healthcare services at the respective local jails. Thus, the Fourth Circuit majority opinion in this case stated as follows:

> Gunter has brought a *Monell* claim against Davie and Stokes Counties, arguing that they contracted out their authority and obligation to provide adequate medical care to inmates at their jails to SHP, whose decisions, a reasonable jury could find, resulted in his injuries….

> "The Count[ies]' express policies as embodied in the[ir] contract[s] [with SHP] show that the Count[ies] delegated to … [SHP] final authority to make decisions about inmates' medical care." [*King v. Kramer*, 680 F.3d 1013, 1021 (7th Cir. 2012)];….(Davie County contracting with SHP "to provide for the delivery of all medical and dental services to inmates" at DCDC);…. (Stokes County contracting with SHP "to provide for the delivery of all medical, dental and mental health services to inmates" at SCDC). As such, they may be held responsible for SHP's "decisions." *See Lytle*, 326 F.3d at 471; *See also King*, 680 F.3d at 1021; *Hunter v. Town of Mocksville, North Carolina*, 897 F.3d 538, 554 (4th Cir. 2018) ("[A] 'governmental unit may create an official policy by making a *single decision* regarding a course of action in response to particular circumstances' so long as that governmental unit possessed 'final authority to create official policy.' " (quoting *Semple v. City of Moundsville*, 195 F.3d 708, 712 (4th Cir. 1999)); *West v. Atkins*, 487 U.S. 42, 56, 108 S.Ct. 2250, 101 L.Ed.2d 40 (1988) ("Contracting out prison medical care does not relieve the State of its constitutional duty to provide adequate medical treatment to those in its custody, and it does not deprive the State's prisoners of the means to vindicate their [] rights.").

(App. 23a-24a). Simply put, the Fourth Circuit held that when the counties hired SHP to make *decisions* about inmate medical care, the mere hiring of SHP

automatically transformed SHP into the entity with the "final authority to create official policy." *Id*. Notably, even though the Fourth Circuit majority opinion held that SHP was a policymaker for the counties, the Supreme Court decisions of *Pembaur*, *Praprotnik*, and *Jett* were not mentioned by the Fourth Circuit at all.

Judge Richardson authored a separate opinion in *Swink*, *supra*., concurring in part and dissenting in part (hereafter "dissenting opinion"). (App. 40a). Judge Richardson correctly reasoned that the majority opinion's holding (that the Petitioner counties could be held liable under Section 1983 solely because the counties hired SHP to provide medical care at their respective jails) was in direct conflict with Supreme Court precedent. Thus, the well-reasoned dissenting opinion of Judge Richardson correctly applied controlling Supreme Court precedent, stating in pertinent part as follows:

> All of Gunter's *Monell* arguments rise and fall with his allegation that the Counties have a "policy" of contracting with Southern Health Partners to provide medical care in county jails. Gunter argues that because the Counties hired Southern Health Partners "to fulfill their duty to provide medical care to inmates, the policies of [Southern Health Partners] became the policies of the Counties," and therefore, the Counties are "directly responsible" for them…. This is simply *respondeat superior* liability in a poor disguise. And *Monell* itself prohibits imposing such liability: "[A] municipality cannot be held liable *solely* because it employs a tortfeasor—or; in other words, a municipality cannot be held

> liable under § 1983 on a *respondeat superior* theory." *Monell* 436 U.S. at 691. The decision to hire an outside medical supplier, without more, does not render a county liable under *Monell* for an "injury inflicted solely by its employees or *agents*." *Id.* at 694 (emphasis added).
>
> Rather than being liable for its agent's actions, a municipality is responsible under § 1983 only for its own actions—"when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury." *Id.* at 694. An actual county policy or custom may serve as the basis for a *Monell* claim. But simply hiring a third-party agent does not demonstrate a dereliction of duty if the agent fails to perform adequately. And the mere existence of a contract between the Counties and its agent does not suggest the Counties adopt as their own policy any error that the agent makes.

(App. 54a-55a). (Richardson, J., dissenting). Judge Richardson's dissenting opinion also correctly noted that the Fourth Circuit majority opinion's reliance on the Supreme Court's decision in *West v. Atkins*, 487 U.S. 42 (1988) was completely misplaced:

> The Majority relies on the Supreme Court's opinion in *West v. Atkins*, 487 U.S. 42 (1988). But that case did not extend *Monell* liability.... In fact, the *Atkins* Court cites *Monell*'s rejection of *respondeat superior* § 1983 claims in its

> reasoning, noting that if it did not find prison physicians could be held personally liable under § 1983, "it would greatly diminish the meaning of a prisoner's Eighth Amendment right, since few of those with supervisory and custodial functions are likely to be involved directly in patient care" and "§ 1983 liability is not available under the doctrine of *respondeat superior*." *Id*. at n. 12.

(App. 55a n.7). (Richardson, J., dissenting).

The Petitioners Davie County and Stokes County filed a petition for rehearing and petition for rehearing *en banc* on December 4, 2025, and the petition for rehearing was denied on December 16, 2025. (App. 106a).

Petitioners now file this Petition for a Writ of Certiorari.

REASONS FOR WHY THE PETITION SHOULD BE GRANTED

I. PETITIONER'S PETITION FOR A WRIT OF CERTIORARI SHOULD BE GRANTED BECAUSE THE DECISION OF THE FOURTH CIRCUIT IS IN DIRECT CONFLICT WITH SUPREME COURT PRECEDENT AND IS THEREFORE WRONGLY DECIDED

In the context of jail medical care, governmental entities across the nation, as a matter of standard practice, hire doctors, private companies, and/or other healthcare providers to make sure that inmates have

access to medical care. *See*, *e.g.*, Jessica Carda-Auten et al., Jail Health Care in the Southeastern United States from Entry to Release, 100 Milbank Q. I (2022) (stating that ninety percent of jails in the Southeastern United States hire private companies to provide inmate health care); Jason Szep et al., Special Report: U.S. Jails Are Outsourcing Medical Care—and the Death Toll is Rising, Reuters (Oct. 26, 2020) (reporting that in 2018, more than 60 percent of jails hired private health care providers); Pew Charitable Trust, Prison Health Care: Costs and Quality (Oct. 2017) (describing governmental entities' extensive reliance on private healthcare providers to provide inmate health care). In this case, the Fourth Circuit completely ignored Supreme Court authority, and held that when the Petitioner counties hired SHP to make decisions regarding inmate healthcare, the counties became automatically liable for unconstitutional actions of SHP.

A. The Fourth Circuit Decision In This Case Imposes Impermissible Respondeat Superior Liability On The Petitioner Counties

1. *Monell* and its progeny establish that a governmental entity cannot be held liable under 42 U.S.C. § 1983 by virtue of the doctrine of *respondeat superior*

The United States Supreme Court has repeatedly emphasized that governments cannot be held liable under 42 U.S.C. § 1983 on a *respondeat superior* theory—or, in other words, a government entity cannot be held liable solely because it employs a tortfeasor. *See*, *e.g. Monell v. Dept. of Social Services* 436 U.S. 658, 692 (1978). Pursuant

to *Monell* and its progeny, "a municipality cannot be held liable under § 1983 on a respondeat superior theory." *Id.* at 691; *see also*, *e.g.*, *Connick v. Thompson*, 563 U.S. 51, 60-62 (2011). This Court has held that when an agent's alleged unconstitutional act forms the basis of a plaintiff's claim against a governmental entity, the entity's failure to prevent the harm must be shown to be deliberate under "rigorous requirements of culpability and causation." *Bd. of Cty. Comm'rs of Bryan Cty. v. Brown*, 520 U.S. 397, 415 (1997); *City of Canton v. Harris*, 489 U.S. 378, 388 (1989). Thus, "under § 1983, local governments are responsible only for 'their own illegal acts.'" *Connick v. Thompson*, *Id.* at 60. To succeed on a *Monell* claim, the plaintiff must demonstrate that the actions taken by the officials in inflicting the constitutional injury were done pursuant to "some official policy" established by the defendant government entity. *Monell*, 436 U.S. at 692. Typically, this showing requires a plaintiff to identify some official "decision[] of a government's lawmakers," "act[] of its policymaking officials," or "practice[] so persistent and widespread as to practically have the force of law." *Id.* at 691.

2. The Fourth Circuit's holding, that the counties are automatically liable under Section 1983 for SHP's unconstitutional acts simply because the counties hired SHP, violates clear Supreme Court precedent holding that a governmental entity cannot be held liable under Section 1983 solely because it hires a tortfeasor

It is well established that neither Davie County nor Stokes County may be held liable under 42 U.S.C. § 1983

"unless action pursuant to official municipal policy of some nature caused a constitutional tort." *Monell*, *supra*. at 691. As the United States Supreme Court has made clear, governmental entities "may be liable under § 1983 only for acts for which the [governmental entity] is actually responsible, 'that is, acts which the [governmental entity] has officially sanctioned or ordered.'" *Praprotnik*, *supra.* at 123 (plurality opinion), *citing Pembaur*, *supra*. at 480. In other words, there is no vicarious liability under Section 1983, and therefore governmental entities cannot be held liable under Section 1983 by application of the doctrine of *respondeat superior*. *See*, *e.g.*, *Monell*, *supra*. at 691; *Pembaur*, *supra*. at 478-479; *Praprotnik*, *supra*. at 122. A governmental entity "cannot be held liable [under Section 1983] solely because it employs a tortfeasor." *Monell*, *supra*.

In the instant case, there has been no contention that the Petitioner counties promulgated a policy of providing unconstitutional medical treatment to inmates. *See Praprotnik*, *supra.* at 128. Instead, Plaintiff asserted, and the Fourth Circuit opinion held, that the Petitioner counties may be held liable under Section 1983 solely because they hired an alleged tortfeasor, SHP. (App. 23a-24a). In other words, the Fourth Circuit opinion holds the counties may be liable under Section 1983 under the doctrine of *respondeat superior*. This is in direct conflict with binding Supreme Court precedent. As the Supreme Court stated in *Board of Commissioners of Bryan, Oklahoma v. Brown*, 520 U.S. 397 (1997):

> Cases involving constitutional injuries allegedly traceable to an ill-considered hiring decision pose the greatest risk that a municipality will

> be held liable for an injury that it did not cause. In the broadest sense, every injury is traceable to a hiring decision. Where a court fails to adhere to rigorous requirements of culpability and causation, municipal liability collapses into *respondeat superior* liability.

Id. at 415. This is exactly what the Fourth Circuit has done in the instant case. By holding that the Petitioner counties are liable under Section 1983 simply by virtue of hiring an alleged tortfeasor, while failing to "adhere to rigorous requirements of culpability and causation," *Id*., the Fourth Circuit opinion "collapse[d]" an allegedly "ill conceived hiring decision" into *respondeat superior* liability. (App. 54a) (Richardson, J., dissenting) (stating that the *Swink* majority analysis amounted to "simply *respondeat superior* liability in poor disguise."). The Fourth Circuit's opinion is in direct conflict with clear Supreme Court precedent.

In short, the Fourth Circuit's holding, that Davie County and Stokes County may be held liable simply by virtue of hiring a tortfeasor, is directly contrary to longstanding Supreme Court precedent. As the Supreme Court has repeatedly emphasized, governmental entities may *not* be held liable under Section 1983 under the doctrine of *respondeat superior.*

B. The Fourth Circuit Decision Below Wrongly Treats The Healthcare Provider Hired By The Counties As An Automatic Final Policymaker Under Section 1983, Completely Ignoring The Supreme Court's Policymaker Framework

1. This Court, in the seminal cases of *Pembaur*, *Praprotnik*, and *Jett* established the framework for lower courts to use when analyzing whether a particular entity or official possesses final policymaking authority in a particular area for purposes of a Section 1983 *Monell* claim

In the cases of *Pembaur*, *Praprotnik*, and *Jett*, the Supreme Court set forth the policymaker framework for lower courts to use when determining whether a person or entity is vested with the authority to make final governmental policy with regard to a particular area for purposes of Section 1983 claims. First, the identification of a policymaker is a question of a state law. *Jett*, *supra.* at 737. *Praprotnik*, *supra.* at 124 (plurality opinion); *Pembaur*, *supra.* at 483 (plurality opinion). Second, a federal court must *never assume* that policymaking authority is vested in a person or entity not identified by state law as the policymaker. *Praprotnik*, *supra.* at 126. Finally, there is a critical distinction between a governmental entity or officer with final policymaker authority and an entity or person who has the authority to make decisions implementing the government policy, *Pembaur*, *supra.* at 482 and 483 n.12; therefore, the fact that a particular entity or person hired by the governmental entity "has discretion in the exercise of particular functions does not, without more, give rise to municipal liability based

on the exercise of that discretion." *Pembaur*, *supra*. at 482. *See also Praprotnik*, *supra*. at 126 ("If the mere exercise of discretion by an employee could give rise to a constitutional violation [attributable to the governmental entity], the result would be indistinguishable from *respondeat superior* liability.")

In spite of the Supreme Court's mandatory rules and guiding principles set forth in *Monell*, *Pembaur*, *Praprotnik*, and *Jett*, the Fourth Circuit held below that when a governmental entity hires a healthcare provider to provide healthcare services to inmates, the hiring of the provider *automatically* delegates to the provider the authority to make final government policy, meaning that the governmental entity is automatically liable under Section 1983 for a single or isolated unconstitutional action of the healthcare provider. The Fourth Circuit decision is wrong: It completely ignores the policymaker framework articulated in the seminal cases of *Pembaur*, *Praprotnik*, and *Jett* relating to policymaking authority and delegation of such authority under Section 1983. In fact, the Fourth Circuit's decision in this case does not even mention *Pembaur*, *Praprotnik*, or *Jett*.

2. The Fourth Circuit's holding, that Davie County and Stokes County's action of hiring SHP to make decisions about medical care at the jails automatically delegated final policymaking authority to SHP with regard to providing medical care at the jails, completely ignored and is in conflict with the Supreme Court's policymaker framework

The Fourth Circuit held below that the Petitioner counties, simply by virtue of hiring Southern Health Partners to provide healthcare services to inmates, automatically delegated to Southern Health Partners the authority to make official governmental policy. (App. 23a-24a). In so holding, the Fourth Circuit completely ignored the Supreme Court's policymaker framework. Therefore, the Fourth Circuit's opinion conflicts with Supreme Court precedent.

As the Supreme Court has made clear, whether a particular entity or person "has final policymaking authority is a question of *state law*." *Jett, supra.* at 737. (emphasis in original) *citing Praprotnik*, *supra.* at 123 and *Pembaur*, *supra.* at 483. *See Praprotnik*, *supra.* at 123-124 (stating that the identification of policymaking officials is a question of state law," "not a question of federal law" or "a question of fact…."), *citing Pembaur*, *supra.* at 483. The *Praprotnik* plurality opinion added that "state law… will always direct a court to some official or body that has the responsibility for making law or setting policy in any given area of a local government's business," *Praprotnik*, *supra.* at 125, and, significantly, "a federal court *would not be justified* in assuming that a municipal policymaking

authority lies somewhere other than where the applicable law purports to put it." *Id.* at 126. (emphasis added).

Under North Carolina law, Davie County, Stokes County, and/or the County Sheriffs are the entity or entities with the final policymaking authority regarding the provision of medical care at the Davie County and Stokes County Detention Centers. *See* N.C. Gen. Stat. § 153A-225 and N.C. Gen. Stat. §§ 162-22, 24. However, the Fourth Circuit opinion below identified SHP as the entity with final policymaking authority. (App. 23a-24a). Needless to say, North Carolina State law does not identify Southern Health Partners, Inc. as the entity with the authority to make government policy regarding healthcare at local jails. Thus, the Fourth Circuit opinion conflicts with Supreme Court precedent by failing to follow state law in identifying the entity with the authority to make governmental policy.

The Fourth Circuit opinion in this case does not include any discussion of the Supreme Court's policymaker framework as set forth in *Pembaur*, *Praprotnik*, and *Jett*. In fact, the Fourth Circuit does not even mention these cases or their mandatory rules and guiding principles. Instead, the Fourth Circuit completely ignored the Supreme Court's policymaker framework, and instead simply announced and adopted a *per se* rule, holding that because the counties hired SHP to make "decisions" about inmate healthcare, the counties' hiring of SHP to make "decisions" automatically transformed SHP into a policymaker under Section 1983. (App. 23a-24a). This holding is directly contrary to the rules and guiding principles enunciated by the Supreme Court in *Pembaur*, *Praprotnik*, and *Jett*. As this Court stated in *Jett*, *supra*.,

whether a particular entity has final policymaking authority is a question of state law. *Id.* at 737. "[S]tate law… will always direct a court to some official or body that has the responsibility for…setting policy in any given area of a local government's business," and, significantly, "a federal court *would not be justified* in assuming that a municipal policymaking authority lies somewhere other than where the applicable law purports to put it." *Praprotnik*, *supra*. at 125-26. The Fourth Circuit opinion is wrongly decided because it assumed, with no analysis, that the body with the responsibility for setting government policy in the area of inmate healthcare is Southern Health Partners, even though state law clearly states that the counties and county sheriffs are the policymaking authorities for their respective jails in this area.

Furthermore, the Fourth Circuit's decision violates the Supreme Court's policymaker framework by holding that because SHP was given the authority to make medical *decisions* regarding inmate healthcare, this *decision-making* authority automatically converted SHP into a government policymaker. (App. 24a). It is certainly true that when county inmates are treated by medical professionals, the licensed medical professionals will necessarily make decisions regarding diagnoses and treatment for the inmates. This would be true whether the inmate is taken to a hospital or outside clinic, or whether counties hire medical care professionals to work at their detention centers. However, the medical care professionals' authority to make decisions regarding medical treatment is *not* the same as having the authority to make final *policy* on behalf of Davie County and/or Stokes County. This is a fundamental flaw in the Fourth Circuit's policymaker analysis. There is a critical distinction between the entity

with final policymaking authority and person or entity who has the authority to make decisions implementing the government policy. *Pembaur*, *supra*, at 482 and 483 n.12. The Fourth Circuit conflates and/or blurs this critical distinction between decision-making and policymaking, which is directly contrary to this Court's policymaker framework. *See Pembaur*, *supra*. at 482 (stating that the fact that a particular entity or person hired by the government "has discretion in the exercise of particular functions does not, without more, give rise to municipal liability based on the exercise of that discretion.") *See also Praprotnik*, *supra*. at 126 ("If the mere exercise of discretion by an employee could give rise to a constitutional violation [attributable to the governmental entity], the result would be indistinguishable from *respondeat superior* liability.")

The Fourth Circuit quotes *West v. Atkins*, *supra*. for the proposition that "[c]ontracting out prison medical care does not deprive the…prisoners of the means to vindicate their [] rights," (App. 24a), suggesting that governmental entities must be held strictly liable for unconstitutional decisions of hired providers so that the governmental entities' hiring of medical care providers does not somehow shield the governmental entities from Section 1983 liability. However, the Fourth Circuit's opinion in this case completely misreads *West v. Atkins*, *supra*. The Supreme Court's holding in *West v. Atkins* is that a medical care provider who contracts with a governmental entity to provide medical care to inmates acts under color of state law and may therefore be sued under Section 1983. *Id*. at 54. It was in light of this holding (that private healthcare providers could be sued under Section 1983) that this Court stated that when governmental entities

"contract[ed] out prison medical care," prisoners were still able to "vindicate their [constitutional] rights" by suing the provider(s) under Section 1983. *Id.* at 56 and n.14. Furthermore, as pointed out by Judge Richardson's dissenting opinion at the Fourth Circuit, the Supreme Court in *West* specifically "cites *Monell*'s rejection of *respondeat superior* § 1983 claims in its reasoning….", (App. 55a, n.7), *citing West v. Atkins*, *supra.* at 54, n.12. In short, the Fourth Circuit's reliance on *West v. Atkins* in this case is completely misplaced.

Furthermore, the Fourth Circuit's recital of the above language from *West v. Atkins* suggests that the Fourth Circuit believes that the Petitioner counties in this case must be held automatically liable for SHP's unconstitutional actions because otherwise the Petitioner counties could insulate themselves from Section 1983 liability simply by hiring a private healthcare provider. However, the Supreme Court plurality opinion in *Praprotnik* considered, and rejected, this exact argument, stating as follows:

> [E]gregious attempts by local governments to insulate themselves from liability for unconstitutional policies are precluded by a separate doctrine…. [T]he Court has long recognized that a plaintiff may be able to prove the existence of a widespread practice that, although not authorized by written law or express municipal policy, is "so permanent and well settled as to constitute a 'custom or usage' with the force of law.'" *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 167-168, 90 S. Ct. 1598, 1613-1614, 26 L.Ed.2d 142 (1970). That

> principle, which has not been affected by *Monell* or subsequent cases, ensures that the most deliberate evasions of the Constitution will be sharply limited.

Praprotnik, 485 U.S. at 127. In other words, under *Monell* and its progeny, in this situation, the counties cannot be held vicariously liable under Section 1983 for wrongful acts of hired healthcare providers, because that would be *respondeat superior* liability. *Monell*, *supra*., *Praprotnik*, *supra*. at 123, 126-127. Instead, in order for Plaintiff to sustain a plausible Section 1983 claim against the counties, Plaintiff must show that unconstitutional treatment of inmates by healthcare providers at the counties' detention centers was "so permanent and well settled as to constitute a 'custom or usage' with the force of law." *Id*. at 127. *See Monell*, *supra*. at 691. Neither the Plaintiff nor the Fourth Circuit in this case relied upon, or discussed, a "custom or usage" analysis.

In summary, the Fourth Circuit's holding, that Davie County and Stokes County's action of hiring SHP to provide medical care at the local jails automatically transformed SHP into the entity with final policymaking authority, is contrary to the Supreme Court's policymaker framework. The Supreme Court has directed that the identification of the entity or person with final policymaking authority is a question of state law. *Jett*, *supra*. at 737; *Pembaur*, *supra*. at 438; *Praprotnik*, *supra*. at 125. The Fourth Circuit opinion ignored this fundamental rule. The Fourth Circuit further ignored the Supreme Court opinions in *Pembaur*, *Praprotnik*, and *Jett* by assuming, with no analysis, that because SHP was hired to make *decisions* regarding medical care, this decision-making authority

somehow transformed SHP into the entity with the authority to make final government policy in the area of inmate medical care. In so doing, the Fourth Circuit completely disregarded the policymaker framework of *Pembaur*, *Praprotnik*, and *Jett*, including the principle that a court must *never* assume that the authority to make official governmental policy "lies somewhere other than where the applicable [state] law…put[s] it…," and that a governmental entity's act of "simply going along with the discretionary decisions made by one's subordinates…is not a delegation to them of the authority to make policy." *Praprotnik*, *supra*. at 130. In short, the Fourth Circuit completely ignored the Supreme Court's policymaker framework, and instead just made up its own rules. The Supreme Court should not tolerate such blatant disregard of its precedents. The Supreme Court should grant certiorari in this case.

II. THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE GRANTED BECAUSE THE CIRCUITS ARE DIVIDED ON THE ISSUES PRESENTED, AND DISTRICT COURTS ARE DISUNITED AND FRAGMENTED

The courts of appeals are divided over the proper standards to use, for purposes of Section 1983 liability, in the situation where a governmental entity hires a healthcare provider to provide medical care to prisoners at a jail. The circuits have divided into two camps: Some circuit cases correctly apply *Monell* and the Supreme Court's policymaker framework and hold that simply hiring a healthcare provider does not automatically make the governmental entity liable under Section 1983 for the provider's constitutional torts. In contrast, other

circuits have elected to completely disregard Supreme Court precedent, and have held that when a government entity hires a healthcare provider to provide healthcare at a jail, the governmental entity is automatically liable under Section 1983 for the provider's unconstitutional acts, either under the common law "non-delegable duty" doctrine (which amounts to impermissible Section 1983 *respondeat superior* liability) or because the circuits deemed the providers to be automatic "policymakers" for the government entity, while completely ignoring Supreme Court policymaker framework set forth in *Pembaur*, *Praprotnik*, and *Jett*.

A. Three Circuits—the Eleventh, Seventh, and Fourth—Have Ignored Supreme Court Authority, and Have Adopted A Rule Mandating That The Mere Action Of Hiring A Private Healthcare Provider To Provide For Inmate Medical Care Automatically Makes The Governmental Entity Liable For The Provider's Unconstitutional Actions Under Section 1983

Eleventh Circuit

In 1985, the Eleventh Circuit held that when a governmental entity hires a healthcare provider to provide healthcare services to inmates, the governmental entity becomes strictly liable under Section 1983 for unconstitutional acts of the provider. *Ancata v. Prison Health Services, Inc.*, 769 F.2d 700 (11th Cir. 1985). The Eleventh Circuit's reasoning was that the county was liable under the common law "non-delegable duty" doctrine. *Id.* at 705. As the Supreme Court stated in *General Bldg. Contractors Ass'n, Inc. v. Pennsylvania*, 458 U.S. 375

(1982), the "non-delegable duty" doctrine "creates an exception to the common law rule that a principal normally will not be liable for the tortious conduct of an independent contractor." *Id.* at 3152-53. As the Supreme Court has further observed, liability under the "non-delegable duty" doctrine "go[es] further" than traditional vicarious liability principles. *Meyer v. Holley*, 527 U.S. 280, 290 (2003). In other words, the Eleventh Circuit in *Ancata* invoked the common law "non-delegable" duty doctrine to make the county automatically liable under Section 1983 for the constitutional torts of the healthcare provider. This is, of course, a result that "goes further" than even *respondeat superior* liability, which is forbidden by *Monell* and its progeny.

The Eleventh Circuit (and district courts within the circuit) have continued to treat *Ancata* as controlling. *See*, *e.g. Smothers v. Childers*, 159 F.4th 922, 933 (11th Cir. 2025) (citing *Ancata* case as controlling authority).

Seventh Circuit

In the Seventh Circuit's 2012 decision of *King v. Kramer*, 680 F.3d 1013 (7th Cir. 2012), the Seventh Circuit cited the Eleventh Circuit's decision in *Ancata*, *supra.*, and held that when the county hired a private healthcare provider to provide medical services to inmates, the county automatically became liable for the constitutional torts of the provider. Although the Seventh Circuit cited *Ancata*, the Seventh Circuit did not mention the "non-delegable duty" doctrine; instead, the Seventh Circuit held that when the county hired the healthcare provider to make decisions relating to prisoner medical care, the provider automatically became a policymaker for the

county under Section 1983. Thus, the Seventh Circuit stated as follows:

> The County cannot shield itself from § 1983 liability by contracting out its duty to provide medical services….The underlying rationale is not based on *respondeat superior*, but rather on the fact that the private company's policy becomes that of the County if the County delegates final decision-making authority to it.

Id. at 1020, *citing Ancata*, *supra*. at 705-06. In rendering its decision about policymaking authority and delegation of policymaking authority under Section 1983, the Seventh Circuit did not discuss or even mention the Supreme Court's policymaker framework as set forth in *Pembaur*, *Praprotnik*, and *Jett*. Instead, the Seventh Circuit in *King* relied solely on the *Ancata* decision, which was issued before the Supreme Court's decisions in *Pembaur*, *Praprotnik*, and *Jett*.

Fourth Circuit

As explained above, the Fourth Circuit opinion in this case adopted the rule, set forth in the Seventh Circuit's *King* decision, that when the Petitioners (Davie County and Stokes County) hired a healthcare provider to provide health services at their respective jails, and thereby gave the provider "the authority to make decisions about inmates' medical care," the hiring of the provider to make operational decisions automatically transformed the provider into a policymaker for purposes of Section 1983 liability. App. 23a-24a. In so holding, the Fourth Circuit majority panel relied solely upon the *King* decision

from the Seventh Circuit, while completely ignoring the policymaker framework set forth by the Supreme Court in *Pembaur*, *Praprotnik*, and *Jett*. App. 23a-24a.

Judge Richardson's dissent at the Fourth Circuit recognized that the majority decision amounted to prohibited *respondeat superior* liability. (App. 54a-55a).

B. Circuit Cases Correctly Applying Supreme Court Principles, And Correctly Holding That A Local Government's Hiring Of A Healthcare Provider Does Not Automatically Make The Governmental Entity Liable For The Provider's Unconstitutional Actions

Sixth Circuit

In *Miller v. Calhoun County*, 408 F.3d 803 (6th Cir. 2005), the Sixth Circuit rejected the Plaintiff's argument that a doctor who was hired to provide medical care to inmates at the county jail was a policymaker for the county for purpose of Section 1983 liability. *Id.* at 817-818. The Sixth Circuit acknowledged that the doctor had the discretion to make medical decisions, but noted that the Plaintiff's argument did "not differentiate between policymaking and 'mere authority to exercise discretion.'" *Id.* at 818. The Sixth Circuit then cited the *Pembaur* plurality opinion, noting that "[t]he fact that a particular official….has discretion in the exercise of particular functions does not, without more, give rise to municipal liability based on an exercise of that discretion." *Miller*, *supra.* at 818, quoting *Pembaur*, *supra.* at 481-82. The Sixth Circuit emphasized that the doctor had discretion to make health care decisions, not the authority to "set

broad goals with respect to medical treatment of inmates." *Miller*, *supra*. In short, the Sixth Circuit in *Miller* rejected the argument that by hiring a healthcare provider to provide medical care at a jail, the local government automatically delegated to the healthcare provider the authority to make governmental policy.

Similarly, in *Winkler v. Madison County*, 893 F.3d 877 (6th Cir. 2018), the Plaintiff argued that the County should be liable under Section 1983 because the County contracted with a healthcare provider to provide inmate health care, and that the provider's actions violated the Constitution. *Id.* at 901. The Sixth Circuit rejected Plaintiff's arguments, holding that it did not violate the Constitution for the County to hire a private company to provide health care to inmates; that the County and its employees were entitled to rely on the judgment of private medical professionals responsible for prisoner care; and the Plaintiff had not identified an unconstitutional county policy. *Id.* Thus, the Sixth Circuit in *Winkler* reiterated the Sixth Circuit position that hiring a healthcare provider did not automatically constitute a delegation to the healthcare provider the authority to create government policy. *See also Graham ex rel. Graham v. County of Washtenaw*, 358 F. 3d 377, 382-3 (6th Cir. 2004) (the Sixth Circuit held that the county, which hired a medical care provider in order to improve the quality of inmate medical care, could not be held automatically liable for healthcare provider's unconstitutional actions).

Fifth Circuit

In the case of *Robinson v. Midland County, Texas*, 2022 WL 20653429 (W.D. Tex. 2022), the United States

District Court for the Western District of Texas rejected the Plaintiffs' argument that Midland County automatically delegated its policymaking authority regarding inmate health care to a healthcare provider simply by virtue of the County hiring the healthcare provider to provide inmate health care. *Id.* at *11. The District Court noted that Plaintiffs' argument on this point "is nothing more than a recast application of *respondeat superior*," and that "[a] plaintiff cannot merely rely upon the existence of a contract and a county's 'non-delegable' duty to provide delegation." *Id.*

The Fifth Circuit affirmed on different grounds in a published decision, *Robinson v. Midland County*, 80 F.4th 704 (5th Cir. 2023), and did not disturb the relevant holding and analysis of the District Court, thus leaving intact the District Court's reasoning, which is flatly inconsistent with the approach of the Eleventh Circuit in *Ancata*, the Seventh Circuit in *King*, and the Fourth Circuit's approach in this case. In so holding, the Fifth Circuit expressly refused to adopt "the theory of non-delegable duty," which the Fifth Circuit noted was the basis for the Seventh Circuit's decision in *King*, *supra*., and the Eleventh Circuit's decision in *Ancata*, *supra*., and which the Fifth Circuit correctly described as a doctrine that held that if a county hired a healthcare provider to provide healthcare to inmates, the provider's policies "would be automatically attributed to the county." *Id*. at 710, fn. 4.

C. District Courts Across The Nation Are Fragmented Regarding How To Analyze Cases Of This Kind

The federal district courts around this country have also been fragmented on how to analyze this recurring

scenario, with a number of district courts correctly applying Supreme Court precedent and holding that a governmental entity cannot be held automatically liable under Section 1983 for a decision of a healthcare provider it hired, while other federal district courts have blindly followed the *Ancata* and/or *King* analyses while ignoring *Monell* and the Supreme Court's policymaker framework.

There are multiple examples of federal district courts that have held that a local governmental entity cannot be held automatically liable for the acts of a healthcare provider simply by virtue of hiring the healthcare provider to provide healthcare to inmates. *See*, *e.g.*, *Valentine v. PrimeCare Medical, Inc.*, 697 F.Supp.3d 431, 440 (D. Md. 2023) (The Court held that the County's motion to dismiss should be granted even though the County had hired PrimeCare to provide medical care to inmates, reasoning that a governmental entity cannot be held liable "solely because it employs at tortfeasor."); *Rodriguez v. Southern Health Partners*, 2020 WL 2928486 at * 8 (N.D. Tex. 2020) ("[T]he mere fact that SHP 'collaborated and agreed' to provide medical care at the jail…does not, without more, transform SHP into a policymaker with final policymaking authority for the Jail…."); *Young v. Greenwood Co. Detention Center*, 2015 WL 9645852 at *3-*4 (D.S.C. 2015) (stating that even if Southern Health Partners policies or treatment of Plaintiff were unconstitutional, the governmental entities could not be held liable because *respondeat superior* was not a viable theory under Section 1983); *Millmine v. County of Lexington, South Carolina*, 2011 WL 182875 at *4-*5 (D.S.C. 2011) (the court correctly held that by entering into a contract with Prison Health Services (PHC) to provide medical care at the Lexington County Detention Center,

the County fulfilled its ("non-delegable duty") to provide medical care to inmates, rejecting Plaintiff's argument that the County was vicariously liable for PHC's alleged wrongful acts.).

Other federal district court cases have ignored Supreme Court authority and blindly followed *Ancata* or *King* in holding that when a local government entity enters into a contract with a healthcare provider to provide healthcare to inmates, the governmental entity is automatically liable for the constitutional torts of the provider. *See*, *e.g.*, *Johnson v. Naphcare*, 2022 WL 306981 at *19 (S.D. Ohio 2022) (Court, relying upon the *Ancata* decision, held that the county was liable for the acts of the contracted medical provider because the county had given the medical provider the authority to make medical decisions.); *Estate of Borroto v. CFG Health Systems, LLC*, 751 F.Supp. 443, 473 (D. New Jersey 2024) (adopting the *Ancata* analysis and holding that the county could be held strictly liable for private company's unconstitutional acts under the "non-delegable duty" doctrine); *Estate of Walter v. Correctional Healthcare Companies*, 323 F. Supp. 3d 1199, 1215-16 (D. Colo. 2018), (Court, relying on the Seventh Circuit's *King* decision, held that when the County hired a company to provide medical care to inmates, thereby giving the private company the authority to make medical decisions, the company automatically became a policymaker for the County for purposes of Section 1983 liability.); *Horton v. Winnebago County Sheriff's Dept.*, 2017 WL 4280981 at *7 (N.D. Ill. 2017) (Court cited the Seventh Circuit *King* decision for the proposition that the Sheriff's Department, by contracting with a healthcare provider to make operational decisions about inmate healthcare, automatically transformed

the healthcare provider into a government policymaker for purposes of Section 1983 liability.); *Scott v. Clarke*, 64 F. Supp. 3d 813, 821 (W.D. Va. 2014), (Court, relying primarily upon the Eleventh Circuit's decision in *Ancata*, held that where a governmental entity gives "decision-making" authority to a healthcare provider regarding the provision of medical care to inmates, the provider's "decisions effectively become and constitute the policies" of the governmental entity).

Thus, as described above, the circuits are divided, and district courts are fragmented, on the important issues raised by the recurring scenario in which a governmental entity hires a healthcare provider to ensure that inmates have access to medical care. Only this court can resolve the stark divide between the circuits and district courts on these important and frequently recurring issues. Thus, the Petition for a Writ of Certiorari should be granted.

III. THIS CASE MERITS REVIEW

A. The Questions Presented Arise Frequently

As shown above, governmental entities frequently hire healthcare providers to ensure that prisoners have access to medical care while they are housed in this nation's jails and prisons. *See*, *e.g. Jason Szep*, *et al.*, *supra*, (reporting that in 2018, more than 60 percent of jails hired private healthcare providers). As shown by the cases cited above (and many other lower court cases), Plaintiffs frequently sue governmental entities under Section 1983, arguing that a governmental entity's action of hiring a healthcare provider to provide medical care to prisoners makes the governmental entity automatically liable for the provider's

constitutional torts. Thus, the issues raised in this Petition are recurring and frequent.

B. Clarity Is Essential To Governmental Entities As They Consider Whether To Hire Healthcare Providers To Provide For Prisoners' Medical Care

Clear direction is needed from the Supreme Court on this frequently recurring scenario. The governmental entities around this nation that are responsible for ensuring that inmates have access to medical care are entitled to know whether they will be held strictly liable under Section 1983 for simply hiring a tortfeasor (as is now the *per se* rule in the Eleventh, Seventh, and Fourth Circuits), or whether the federal courts will be instructed by this Court to follow the mandatory rules and guiding principles articulated by this Court in *Monell* and its progeny, and *Pembaur*, *Praprotnik*, and *Jett* in cases of this kind.

As of today, some federal courts faithfully adhere to Supreme Court precedent in this frequently recurring situation. However, a great number of federal courts—including the Eleventh, Seventh, and Fourth Circuits—completely ignore *Monell* and its progeny and this Court's policymaker framework set forth in *Pembaur*, *Praprotnik*, and *Jett*, and hold that when a governmental entity hires a healthcare provider to provide medical care to prisoners, the governmental entity becomes automatically liable for the provider's constitutional torts, either under the common law "non-delegable duty" doctrine or under the theory that the governmental entity's action of hiring a healthcare provider automatically transforms the provider into a government policymaker under Section 1983. In

other words, numerous federal courts analyze these types of cases as if the Supreme Court had never even decided *Monell*, *Pembaur*, *Praprotnik*, and *Jett*. These federal courts (including the Eleventh, Seventh, and Fourth Circuits) have decided that when a governmental entity hires a healthcare provider to make decisions regarding inmate healthcare, the mandatory rules and guiding principles of *Monell*, *Pembaur*, *Praprotnik*, and *Jett* are just thrown out the window, and replaced with a rule that holds governmental entities strictly liable. These numerous federal court decisions are thumbing their noses at the authority and integrity of the Supreme Court. This situation should be rectified by the Supreme Court.

The Petitioners respectfully submit that this Court should grant this petition and direct the lower courts to apply the Supreme Court rules and principles set forth in *Monell*, *Pembaur*, *Praprotnik*, and *Jett* in this frequently recurring scenario.

C. This Case Presents A Clean Vehicle To Address The Questions Presented

This case is an excellent vehicle for resolving the questions presented. No threshold procedural obstacle would prevent the Court from reaching the issue. The United States Court of Appeals for the Fourth Circuit issued an opinion squarely addressing the question. (App. 23a-24). A ruling by this Court in favor of the Petitioners will change the result of the case as it relates to the Petitioners. This Court should therefore grant the petition for a writ of certiorari and reverse the judgment of the Fourth Circuit as it relates to the Petitioners Davie County and Stokes County.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

TABLE OF APPENDICES

APPENDIX A — AMENDED OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT, FILED DECEMBER 2, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-2183

JUILIANA SWINK, ADMINISTRATRIX OF THE ESTATE OF DAVID RAY GUNTER,

Plaintiff-Appellant,

v.

SOUTHERN HEALTH PARTNERS INC.; JASON JUNKINS, MEDICAL DIRECTOR; DAVIE COUNTY; ANDY STOKES; CAMERON SLOAN; STOKES COUNTY; MIKE MARSHALL; ERIC CONE; SANDRA HUNT; FRAN JACKSON; WESTERN SURETY COMPANY; MANUEL MALDONADO; DOE DEFENDANTS; OHIO CASUALTY INSURANCE COMPANY,

Defendants-Appellees,

and

DR. MANDY K. COHEN, SECRETARY OF DHHS; DEPARTMENT OF HEALTH AND HUMAN SERVICES,

Defendants.

Appendix A

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro.
William L. Osteen, Jr., District Judge.
(1:16-cv-00262-WO-JLW)

Argued: October 30, 2024
Decided: November 20, 2025
Amended: December 2, 2025

Before GREGORY, RICHARDSON, and BENJAMIN, Circuit Judges.

Affirmed in part, reversed in part, and remanded by published opinion. Judge Gregory wrote the opinion, in which Judge Benjamin joined. Judge Richardson wrote a separate opinion, concurring the judgment in part and dissenting in part.

GREGORY, Circuit Judge:

I.

Appellant David Ray Gunter was diagnosed with a heart condition shortly after birth. J.A. 669, Deposition of David Ray Gunter ("Gunter Dep.") 35:14-23. At fifteen years old, to address his heart condition, Gunter underwent open-heart surgery to replace his aortic valve with a mechanical heart valve ("MHV"). J.A. 670, Gunter Dep. 36:7-11. At this time, Gunter was also prescribed Coumadin, an anticoagulant or blood thinner, which reduces the formation of blood clots. *Id.* Gunter "faithfully and regularly took his Coumadin dosage at a

set hour every day" and such regimen "was effective and [Gunter] did not suffer serious complications from his heart condition provided that he faithfully observed his physicians' instructions." J.A. 245.

Individuals with MHVs have a higher risk of blood clots than those without MHVs. J.A. 2147. To ensure such patients are receiving the appropriate amount of Coumadin, providers monitor the patient's International Normalized Ratio ("INR") range, which indicates, amongst other things, the blood's thickness and clotting factors. *Id.* It is important for individuals with MHVs to maintain levels of anticoagulant within a therapeutic range and that the levels of anticoagulant do not fall above or below the therapeutic range. J.A. 245. An appropriate or "therapeutic" INR level for an individual with an MHV is between 2.5 and 3.5. *See* J.A. 695, Deposition of Virginia Glover Yoder ("Yoder Dep.") 201:14-15; J.A. 1925 ¶ 5. An individual with an MHV that has an INR level below the "therapeutic" range is at risk for clot formation, while an individual with an MHV that has an INR level above the "therapeutic" range is at risk for excessive bleeding. *See* J.A. 682, Yoder Dep. 78:4-2. Gunter typically took Coumadin once per day in the evening. J.A. 674, Gunter Dep. 80:9-10. Over the years, Gunter's daily dosage has fluctuated between 5mg and 7mg per day due to various factors, including financial access to medication, diet, and metabolism needs. J.A. 673, Gunter Dep. 74:19; *see also* J.A. 533.

In early 2012, Gunter was treated by Dr. Virginia Yoder at a Coumadin clinic in North Carolina. J.A.

1977. Due to financial difficulties, Gunter had trouble securing reliable transportation to his appointments, and subsequently, was discharged from the clinic on May 31, 2012 for failure to attend. J.A. 695, Yoder Dep. 201:4-7; *see also* J.A. 1977. Between May 2012 and November 2012, Gunter asserts he provided lawn care services for a doctor, who, in exchange for this labor, provided Coumadin and INR testing. *See* J.A. 1977, 2199.

On November 6, 2012, Gunter was arrested in Forsyth County pursuant to a bench warrant and was temporarily placed at the Forsyth County local confinement facility. J.A. 245; *see also* J.A. 672, Gunter Dep. 54:13-20. When Gunter arrived at the Forsyth County local confinement facility, "he completed a medical intake form, disclosing that he has a heart condition and alerting that he takes Warfarin[1] daily together with other medications and other medical information." J.A. 245.

On the morning of November 7, 2012, Gunter was transferred to Davie County Detention Center ("DCDC"). J.A. 246. Upon his arrival, Gunter was screened by appellee Fran Jackson, a nurse and the Davie County Medical Team Administrator for appellee Southern Health Partners, Inc. ("SHP"), the contracted medical care provider for DCDC. J.A. 94, 246, 566-77, 675, Gunter Dep. 81:7-14. Gunter advised Jackson that he had an MHV

1. The generic brand of Coumadin is referred to as "Warfarin," and both brands are used interchangeably by the parties' witnesses and district court. *See* J.A. 1218, Gunter Dep. 36:12-15. For consistency purposes, this opinion will only refer to Gunter's prescribed medication as Coumadin.

and took Coumadin, which she noted in his medical record. J.A. 94, 532-33. Jackson further noted that Gunter advised he would have his medications brought to DCDC if he was not released and advised Jackson to call his doctors if he was not released. J.A. 533. Gunter states Jackson was not "very nice" and "when she listened to [Gunter's] heart clicking" stated "[j]ust because your heart clicks doesn't mean you have a mechanical heart valve." J.A. 1228, Gunter Dep. 88:17-25.

On the morning of November 8, 2012, Jackson contacted Gunter's primary care physician and pharmacist about his condition. J.A. 533. According to Jackson's notes in the medical records, the clinic where Gunter stated his primary physician worked had last seen Gunter in June 2012 for a sick visit, but otherwise had not managed his INR levels since 2010. *Id.* Jackson's notes in the medical records further indicated the pharmacist informed Jackson that Gunter had last filled a prescription for 1mg of Coumadin on October 19, 2012, and did not have any prescriptions remaining. *Id.* Jackson also received a faxed medical record from a clinic, which indicated Gunter reported taking 7mg of Coumadin by mouth daily.

That same day, Jackson consulted with appellee Manuel Maldonado, a licensed Physician's Assistant and independent contractor for SHP who oversaw medical care at DCDC and Stokes County Detention Center ("SCDC"). J.A. 375; J.A. 648, Deposition of Manuel Maldonado ("Maldonado Dep.") 30:6-24. Maldonado ordered a prescription for 5mg of Coumadin and arranged for Gunter to have an INR test completed on November

13, 2012. J.A. 1303-04, Maldonado Dep. 83:20-25, 84:1-5. Additionally, that same day, Gunter's family delivered Coumadin to DCDC—two 5mg pills and four 1mg pills. J.A. 540. Nothing in the record suggests Gunter took or was permitted to take any of the Coumadin pills his family brought for him. Gunter did not receive any Coumadin on November 7 or November 8 but received 5mg of Coumadin each day from November 9 through November 14, pursuant to the prescription ordered by Maldonado. *See* J.A. 1303, Maldonado Dep. 83:20-25; J.A. 537.

On November 13, 2012, Gunter had an INR test which showed that his levels were 1.07, well below the therapeutic range. J.A. 1304-5, Maldonado Dep. 87:2-5, 96:16-20. As a result, Maldonado modified Gunter's prescription to be increased to 7.5mg on November 15, November 17, and November 19, and remain at 5mg on November 13, November 14, November 16, and November 18. J.A. 1306, Maldonado Dep. 97:1-14. Jackson administered Coumadin to Gunter in accordance with the new prescription on November 14 and November 15. *See* J.A. 606, Deposition of Francessia Robinson Jackson ("Jackson Dep.") 46:19-25.

On November 15, 2012, Jackson prepared transfer paperwork for Gunter which summarized Gunter's condition and listed his treatment/medications. *See* J.A. 608-10, Jackson Dep. 55:3-13; *see also* J.A. 539.

On November 16, 2012, a Friday afternoon, Gunter was transferred from DCDC to SCDC. J.A. 627, Deposition of Sandra Hunt ("Hunt Dep.") 27:23-25. SCDC contracts with SHP for medical services. J.A. 578-92.

Gunter arrived at the jail after appellee Sandra Hunt, a nurse and the Team Administrator for SHP, had left for the weekend. J.A. 628, Hunt Dep. 28:1-2. In accordance with jail policy, a detention officer telephoned Hunt at home to notify her of Gunter's arrival and to answer her questions regarding Gunter's medication. J.A. 628, Hunt Dep. 28:15-23. Hunt states she was not aware of Maldonado's order for Coumadin as the detention officer did not relay that information to her. J.A. 629, Hunt Dep. 29:14-18. Hunt did not direct the SCDC detention staff to dispense any medication to Gunter, including the medicine Gunter obtained from his family,[2] and absent specific authorization from Hunt, SCDC detention staff were prohibited from dispensing medication to Gunter. *See* J.A. 631, 633, Hunt Dep. 33:10-18, 35:4-10. Gunter did not receive any Coumadin on November 16, November 17, or November 18. *See* J.A. 635, Hunt Dep. 40:13-17.

On November 19, 2012, the following Monday when Hunt returned to work, Hunt arranged for Gunter to receive the requisite Coumadin doses on November 19 and November 20. J.A. 1299, Hunt Dep. 69:14-18. Hunt asserts she never received the transfer paperwork prepared by Jackson. J.A. 629, Hunt Dep. 29:21-23. Nothing in the record suggests Gunter submitted any grievance forms or pursued any administrative remedies against DCDC or SCDC related to their failure to provide him with his required dosages of Coumadin.

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2. Nurse Hunt asserts the medicine Gunter received from his family was outdated, and as such, she was not permitted to dispense it to Gunter. *See* J.A. 629, Hunt Dep. 29:11-13.

On November 21, 2012, Gunter was released from SCDC with only the six Coumadin pills his family initially brought him when he was held at DCDC. Nothing in the record suggests SCDC prepared a medication plan for Gunter or discharged Gunter with a medication plan.

On November 29, 2012, Gunter was admitted to Wake Forest Baptist Medical Center ("Wake Forest") for a blood clot. J.A. 746-47. At the time of his admission, his INR levels were 1.7, well below the therapeutic range. J.A. 749. His medical records from Wake Forest indicated that he began experiencing abdominal pain two days before seeking admission and had been off his Coumadin since earlier that week. J.A. 746-47. Wake Forest surgically removed the blood clot during Gunter's stay, and Gunter was later discharged on December 11, 2012, with a therapeutic INR level of 3.16. J.A. 747. Gunter's INR was subtherapeutic on four of the five INR tests he received between December 14, 2012, and January 2, 2013. On January 18, 2013, Gunter was diagnosed with a second blood clot requiring surgeons to resect part of his bowel.

II.

A.

On December 27, 2016, Gunter filed the operative Second Amended Complaint ("SAC") against appellees Davie County, Stokes County, Andy Stokes, Cameron Sloan, Mike Marshall, Eric Cone, Western Surety Company, and Ohio Casualty Company (collectively, "Public Appellees") and Southern Health Partners, Inc.

("SHP"), Jason Junkins, Sandra Hunt, Fran Jackson, and Manuel Maldonado (collectively, "Medical Appellees") alleging that his injuries resulted from the care he received during his detainment at DCDC and SCDC. *See* J.A. 222-63. As relevant here, Gunter alleged Public Appellees and Medical Appellees acted with deliberate indifference toward his constitutional right to adequate medical care. J.A. 252-53; J.A. 257-58. Gunter further alleged a *Monell* claim against Davie and Stokes Counties, as well as a medical malpractice claim against SHP, Jackson, and Maldonado. J.A. 252-62.

On July 6, 2020, Public Appellees filed a motion for summary judgment, arguing, amongst other things, they are entitled to (1) qualified immunity, governmental immunity, and public officer's immunity, and (2) summary judgment with respect to Gunter's Fourteenth Amendment deliberate indifference claim and Gunter's *Monell* claim under 42 U.S.C. § 1983. *See* J.A. 23 (Docket No. 125), 1840-63.

On March 15, 2021, the district court granted Public Appellees' motion for summary judgment and dismissed Gunter's Fourteenth Amendment deliberate indifference claim and Gunter's *Monell* claim under 42 U.S.C. § 1983. Specifically, the district court opined that "[p]retrial detainees alleging they have been subjected to unconstitutional conditions of confinement" must allege (1) "the deprivation alleged was 'objectively, sufficiently, serious'" and (2) the "prison officials acted with deliberate indifference." *See* J.A. 1842-43 (collecting cases) (citations omitted).

The district court found the evidence did not create a "genuine dispute of material fact as to whether a violation of [Gunter's] constitutional rights occurred" for three reasons. J.A. 1842. First, the district court stated even if the first prong was satisfied, Gunter's evidence does not show Public Appellees "were deliberately indifferent to [Gunter's] medical needs." J.A. 1845. Specifically, the district court stated "there is no evidence on the record that Public [Appellees] intended to prevent or delay [Gunter] from receiving medical treatment or that Public [Appellees] ignored his medical needs" and the fact Gunter "disagree[d] with the treatment he received or that a difference course of treatment might have led to a better medical outcome, . . . is not evidence of a subjective intent by Public [Appellees] to deprive [Gunter] of medical treatment, which is necessary to state a constitutional violation." J.A. 1846.

Second, the district court stated Gunter "ha[d] not presented evidence that Public [Appellees] had the medical training necessary to make decisions regarding [Gunter's] care . . . and . . . this court does not find that Public [Appellees] should have understood whether [Gunter's] medical care was proper or that it should have been appropriate for Public [Appellees] to intervene in [Gunter's] medical care." J.A. 1848. Seeing no constitutional violations, the district court also disposed of Gunter's *Monell* claim. J.A. 1849. Accordingly, the district court granted Public Appellees' motion for summary judgment as to Gunter's constitutional claims. J.A. 1848-49.

B.

Medical Appellees also filed a motion for summary judgment, which the district court granted in part and denied in part on March 23, 2021. J.A. 23 (Docket No. 123); J.A. 31 (Docket No. 178). Gunter and Medical Appellees moved for reconsideration. J.A. 31-32 (Docket Nos. 179, 181-82). On June 10, 2021, the district court granted Medical Appellees' motion for reconsideration; granted in part and denied in part Gunter's motion for reconsideration; and reopened summary judgment. J.A. 32-33 (Docket No. 190).

On September 17, 2021, the district court struck its previous March 23, 2021 Memorandum Opinion and Order stating that "for purposes of maintaining a relatively clear record, . . . one opinion and order addressing all summary judgment arguments and related issues [wa]s appropriate." *Gunter v. S. Health Partners, Inc.*, 2021 WL 4255370, at *1 (M.D.N.C. Sept. 17, 2021). That order only addressed claims and motions related to the case against Medical Appellees. See *id.*

As relevant here, Gunter brought medical malpractice claims against SHP, Jackson, and Maldonado. With respect to Gunter's medical malpractice claim against SHP, the district court found "a reasonable jury could not return a verdict in favor of [Gunter] on the evidence presented" because Gunter failed to "present[] evidence through expert testimony that [SHP] violated a standard of care owed to [Gunter]." *Id.* at *17. Specifically, the district court found Gunter's four expert witnesses either (1) declined to

opine on whether SHP's protocol breached the standard of care or (2) only offered an opinion on whether Jackson, Hunt, or Maldonado breached the standard of care. *Id.* at *17. Hence, the district court granted summary judgment for SHP on Gunter's medical malpractice claim.

With respect to Gunter's medical malpractice claim against Jackson and Maldonado, the district court found Gunter created a genuine dispute of material fact as to whether both breached the standard of care. *Gunter*, 2021 WL 4255370, at *17-19. However, the district found Gunter failed to show proximate cause. *Id.* at *21-27. First, the district court found Gunter's evidence related to his medication and INR testing prior to his incarceration was inadmissible. *Id.* at *21-22. Specifically, the district court found that Gunter "ha[d] not provided records indicating what his INR levels were prior to his incarceration or records of the prescriptions that this physician wrote for him" and that Gunter cites "his only deposition for this proposition." *Id.* at *21. Second, the district court found other evidence put forth by Gunter related to his medication and INR testing prior to his incarceration was unpersuasive. *See id.* at *21-23. For example, the district court reviewed Gunter's pharmacy records which indicated Gunter received several "emergency" doses of Coumadin without a valid prescription from his doctor, Dr. Yoder, but ultimately determined "[t]he evidence presented by [Gunter] does not reflect [Gunter] was therapeutically medicated when he was first arrested on November 6, 2012, as suggested by Dr. Sease's unrebutted affidavit." *Id.* at *23. Likewise, the district court reviewed a pre-incarceration clinical communication

record but ultimately found it did not establish proximate cause because the record did not demonstrate the clinic "specifically communicated to Nurse Jackson that [] Gunter *should* take 7mg of warfarin per day . . . the only mention of Coumadin or Warfarin in the visit summary is that [Gunter] reported taking 7mg of Warfarin Sodium by mouth daily." *Id.* at *22 (emphasis in original). Third, the district court determined, as explained below in Section II.C.1-2, Gunter's experts—Dr. Yoder, a doctor of pharmacy, and Dr. Damian Laber, a physician—failed to testify "with a reasonable degree of medical certainty." *Id.* at *23-26.[3]

C.

1.

Dr. Yoder testified at a deposition that Gunter's missed doses in jail were the proximate cause of his blood clot injuries. J.A. 1559, Yoder Dep. 207:8-19. Dr. Yoder further testified Gunter had been her patient for years and that she assumed Gunter was properly anticoagulated prior to his incarceration. *See* S.J.A. 2515, Yoder Dep. 122:22-25. Specifically, Dr. Yoder stated, "the thing that I know about [Gunter] is that, regardless of how long it's been since he actually stepped foot in my office, he ha[s] always taken his medication" and "I've never known him to just be off of it just because." J.A. 2518, Yoder Dep. 125:5-9.

3. In addition, the district court rejected Gunter's deliberate indifference claim against Medical Appellees for essentially the same reasons it rejected his deliberate indifference claim against Public Appellees. *See Gunter*, 2021 WL 4255370 at *31-32.

Counsel of Appellees asked Dr. Yoder to assess Gunter's level of contributory negligence, assuming Gunter was not anticoagulated prior to incarceration. The deposition transcript provides, in relevant part:

> **Appellees' Counsel:** Okay. So wouldn't the -- assuming that he wasn't compliant with his Coumadin dosages, that he didn't take the correct dosage every single day, that he didn't seek medical care from a physician or from a pharmacist and he did not seek out a Lovenox bridge[4] or anything like that, wouldn't he be at least as equally responsible as the jail for the clot? . . . .
>
> **Dr. Yoder:** I don't -- I don't think that there's a 50/50 split in blame just based on the number of days in a month. That's the problem with anticoagulation, is that one day, one week -- I mean, it's all about trends, and unfortunately, I don't -- like you said, we don't have all of the data in --
>
> **Appellees Counsel:** Well, what percentage would you be at fault for -- if you're saying --
>
> **Dr. Yoder:** I don't know.

4. A Lovenox bridge is used to create a rapid anticoagulant effect to cover the patient while they are waiting for Coumadin therapy to take full effect. J.A. 709.

> **Appellees Counsel:** -- that the jail not giving him his medicine on these five days is the cause of that clot, what percentage is he at fault for the cause of that clot because of his failures in adhering to -- in being compliant? . . . .
>
> **Dr. Yoder:** I -- I don't know how to assess that.

S.J.A. 2605-06, Yoder Dep. 212:7-213:14.

Generally, Dr. Yoder relied on several factors in determining proximate cause, including the relationship she had with Gunter and his history of always taking his medication, the number of Coumadin doses Gunter missed, the lack of monitoring Gunter's INR levels, the fact that Gunter was not administered a Lovenox bridge "to protect him against an event happening down the road[,]" the consistency of inconsistent dosing, the timing of the missed doses, and the presentation of symptoms and subsequent admission. J.A. 1559-60, Yoder Dep. 207:22-208:18.

The district court found Dr. Yoder's testimony concluding "missed doses in the jail were the proximate cause" of Gunter's blood clots unpersuasive for three reasons. *Gunter*, 2021 WL 4255370, at *23. First, the district court found Dr. Yoder's testimony "reflect[ed] impermissible speculation that [Gunter] had been properly anticoagulated prior to entering the jail." *Id.* Second, the district court found Dr. Yoder "could not assess the extent to which changing her underlying assumption about [Gunter's] compliance would change her assessment

as to whether [Gunter] was liable for his injury" or state a percentage range with respect to Gunter's level of fault. *Id.* at *24. Third, the district court found Dr. Yoder "confus[ed] correlation with causation by drawing a conclusion from a temporal relationship." *Id.* Hence, the district court found Dr. Yoder's testimony unpersuasive.

2.

Dr. Laber also testified at a deposition that the lack of anticoagulation for Gunter's cardiac valve was the cause of Gunter's blood clots for which he was hospitalized. S.J.A. 2774, Deposition of Damian A. Laber ("Laber Dep." 116:13-18). Dr. Laber further testified he believed Gunter was anticoagulated before he was incarcerated because "[Gunter] sa[id] so" and "[Gunter] was taking his medication, and he ha[d] this valve replacement when he was a child . . . [s]o he knows this for many, many, many years." S.J.A. 2744, Laber Dep. 86:18-23. When asked by counsel for Appellees if he could "state to a reasonable degree of medical certainty that [Gunter's] blood clot formed weeks before his hospitalization[,]" Dr. Laber responded "I don't think we can tell for sure." S.J.A. 2712, Laber Dep. 54:7-11. In addition, Dr. Laber outlined a range of times in which clot formation was likely, and stated based on the medical record, it could be implied Gunter's blood clot formed days or weeks before Gunter's hospitalization. S.J.A. 2712, Laber Dep. 54:6. Moreover, Dr. Laber noted "throughout the whole incarceration, there [was] not one INR that was therapeutic" and "the risks go exponentially higher for each time [Gunter] remains below the therapeutic range." S.J.A. 2782, Laber Dep. 124:1-11.

In addition, regarding proximate cause and the county jails' failure to provide Gunter with the proper dosage of medication, the deposition transcript reflects the following, in relevant part:

> **Appellees Counsel:** How many days did Mr. Gunter not get Coumadin at the jail?
>
> **Dr. Laber:** The records are not very good -- actually, are fairly poor, okay? There should be a record of administration and all of that. But there is -- I'd estimate that at least more than half of the time, about half of the time.
>
> And then when he was checked for his INR, it was subtherapeutic. He was supposed to get 7.5 milligrams, and he did not. And it took days until he could get the right dose.
>
> So some days were skipped. Some days were underdosed. So -- and that is the responsibility of the jail, because, as you know, when they're in jail, they -- they don't have their own medications. They are stripped from everything.

S.J.A. 2747, Laber Dep. 89:2-18. Generally, Dr. Laber relied on several factors in determining proximate cause, including the "documentation" he reviewed, the evidence of lack of proper care, and the risk posed to Gunter due to his MHV. *See generally* Laber Dep.

The district court found Dr. Laber's testimony concluding "the lack of anticoagulation for the [cardiac] valve" was the cause of Gunter's blood clots unpersuasive for three reasons. *Gunter*, 2021 WL 4255370, at *13. First, the district court found Dr. Laber was "unable to state to a reasonable degree of medical certainty when the blood clot that injured [Gunter] formed" and "could not quantify the increase in risk where a patient misses three consecutive days of Coumadin" and therefore, his testimony was "conjecture." *Id.* at *25. Second, the district court found Dr. Laber, "like Dr. Yoder, . . . assumed that [Gunter] was properly anticoagulated upon arrival at the jail and that he took his medication every day upon release from the jail." *Id.* Third, the district court found Dr. Laber "relied on the temporal connection between the blood clot and [Gunter's] incarceration as evidence of proximate cause." *Id.* at *26. Hence, the district court found Dr. Laber's testimony unpersuasive.

3.

The district court also ruled on Medical Appellees' motion to strike Dr. Laber's post-declaration deposition. In the post-declaration deposition, Dr. Laber declared, in relevant part:

> The records from the jails demonstrate that [Gunter] was not provided any medication for at least five of the fifteen days of his incarceration and was undermedicated with only a 5mg dose on seven other days of his incarceration. . . . In addition to my education, training and

> experience as a physician, I specifically base my opinions in this case upon . . . the records indicating that [Gunter] was either underdosed and/or not provided medication for nearly the entirety of his incarceration (twelve of fourteen days between November 7th through November 21, 2012)[.]

J.A. 1924-25, Laber Decl. ¶¶ 5, 7.

The district court granted Medical Appellees' motion to strike Dr. Laber's deposition finding, amongst other things, "Dr. Laber's commentary about there being an underdosing of medication [wa]s new testimony that expressly contradict[ed] his findings in his deposition about proximate cause being a lack of anticoagulation generally" and Dr. Laber was "proposing a new proximate cause" theory which is not allowed. *Gunter*, 2021 WL 4255370, at *12. Additionally, the district court found Gunter "offered no explanation for why this testimony was not offered previously, either in Dr. Laber's report or during his deposition." *Id.* Accordingly, the district court granted Medical Appellees' motion to strike Dr. Laber's deposition.

D.

In a separate, previous order, the district court also ruled on Gunter's motion to compel Medical Appellees to produce their expert witness Dr. Julie Sease for deposition, which Gunter filed eleven days after the close of discovery. J.A. 469-71, 1704. The district court denied

Gunter's motion to compel, finding it was untimely and not due to "excusable neglect." J.A. 1704. Additionally, the district court stated it had already extended the timeline for discovery on two prior occasions (February 25, 2020 and March 23, 2020) and "[h]ad [Gunter] filed his motion to compel within the designated discovery period, the [c]ourt may have decided differently." *Id.* at 1704-05. Accordingly, the district court denied Gunter's motion to compel.

III.

The granting of a summary judgment motion is reviewed de novo. *Shaw v. Stroud*, 13 F.3d 791, 798 (4th Cir. 1994). Thus, this Court "uses the same standard as the district court[,]" *id.*, and a moving party is entitled to summary judgment "if there is no genuine dispute as to any material fact," Fed R. Civ. P. 56(c).

Before us on appeal is the district court's dismissal of Gunter's (1) § 1983 claim for deliberate indifference under the Fourteenth Amendment Medical Appellees, (2) § 1983 *Monell* claim against Davie and Stoke Counties, and (3) medical malpractice claims against SHP, Jackson, and Maldonado. Such dismissals were errors. We address each error in turn.

A.

The district court erred in dismissing Gunter's § 1983 claim for deliberate indifference under the Fourteenth Amendment against Medical Appellees. The district court likewise erred in dismissing Gunter's § 1983 *Monell* claim

against Davie and Stoke Counties and medical malpractice claim against SHP.

1.

Starting with Gunter's § 1983 claim for deliberate indifference under the Fourteenth Amendment, we find that the district court erred in finding Gunter's evidence did not "create a genuine dispute of material fact" that Medical Appellees "were deliberately indifferent to [Gunter's] medical needs." J.A. 1845; *Gunter*, 2021 WL 4255370 at *31. Gunter, as a pre-trial detainee, need only show that the challenged government action was "not rationally related to a legitimate nonpunitive purpose or [wa]s excessive in relation to that purpose" to establish deliberate indifference. *Short v. Hartman*, 87 F.4th 593, 611 (4th Cir. 2023), *cert. denied*, ___ U.S. ___, 144 S. Ct. 2631, 219 L.Ed.2d 1269 (2024) (quoting *Kingsley v. Hendrickson*, 576 U.S. 389, 398, 135 S.Ct. 2466, 192 L.Ed.2d 416 (2015)). While the district court did not have the benefit of this Court's decision in *Short, Short* now governs our analysis here.

The record makes clear that Gunter has presented sufficient evidence to proceed beyond the summary judgment stage, and thus remand is unnecessary. Applying the test articulated in *Short*, we first ask whether Gunter had an objectively serious medical condition. *See id.* at 612. Gunter's heart condition qualifies as objectively serious.

The next step requires that the plaintiff show "that the defendant acted or failed to act in the face of an

unjustifiably high risk of harm that is either known or so obvious that it should be known." *Id.* at 611 (quoting *Farmer v. Brennan*, 511 U.S. 825, 836-37, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994)). Gunter need not prove that each defendant had "actual knowledge;" as *Short* clarified, he must show only "that the defendant[s] should have known of that condition and that risk," and acted objectively unreasonably. *Id.* Here, the record indicates that several SHP employees, including Jackson and Maldonado, had actual knowledge of Gunter's condition and medication needs, and that his medical requirements were reflected in Jackson's medical notes and the faxed medical record Jackson received from a clinic. A reasonable jury could therefore find that the available medical information put Medical Appellees on sufficient notice that depriving Gunter of Coumadin would incite acute health issues. That Gunter subsequently experienced blood clots satisfies the final prong of the *Short* test, which requires the plaintiff be harmed by the defendant's action or inaction. *Id.*

As we have frequently explained, "no legitimate nonpunitive goal is served by a denial or unreasonable delay in providing medical treatment where the need for such treatment is apparent." *Id.* at 606 (citing *Martin v. Gentile*, 849 F.2d 863, 870 (4th Cir. 1988)). Accordingly, the district court erred by dismissing this claim at the summary judgment stage.

2.

The district court further erred in dismissing Gunter's *Monell* claim against Davie and Stokes Counties pursuant

to 42 U.S.C. § 1983. To start, "[l]ocal governing bodies (and local officials sued in their official capacities) can . . . be sued directly under § 1983 for monetary, declaratory, and injunctive relief in those situations where, as here, the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted or promulgated by those whose edicts or acts may fairly be said to represent official policy." *Monell v. N.Y.C. Dep't of Soc. Servs.*, 436 U.S. 658, 659, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978).

> A policy or custom for which a municipality may be held liable can arise in four ways: (1) through an express policy, such as a written ordinance or regulation; (2) through the decisions of a person with final policymaking authority; (3) through an omission, such as a failure to properly train officers, that "manifests deliberate indifference to the rights of citizens"; or (4) through a practice that is so "persistent and widespread" as to constitute a "custom or usage with the force of law."

Lytle v. Doyle, 326 F.3d 463, 471 (4th Cir. 2003) (quoting Carter v. Morris, 164 F.3d 215, 218 (4th Cir. 1999). In addition, a plaintiff must show that a municipality's policies were "the moving force behind a deprivation of federal rights." *Washington v. Housing Auth. of Columbia*, 58 F.4th 170, 182 (4th Cir. 2023) (quotation omitted).

Gunter has brought a *Monell* claim against Davie and Stokes Counties, arguing that they contracted out their

authority and obligation to provide adequate medical care to inmates at their jails to SHP, whose decisions, a reasonable jury could find, resulted in his injuries. *See* Appellant's Opening Br. at 40-42. We agree.

"The Count[ies]' express policies as embodied in the[ir] contract[s] [with SHP] show that the Count[ies] delegated to . . . [SHP] final authority to make decisions about inmates' medical care." *King*, 680 F.3d at 1021; J.A. 566-77 (Davie County contracting with SHP "to provide for the delivery of all medical and dental services to inmates" at DCDC); J.A. 578-92 (Stokes County contracting with SHP "to provide for the delivery of all medical, dental and mental health services to inmates" at SCDC). As such, they may be held responsible for SHP's "decisions." *See Lytle*, 326 F.3d at 471; *see also King*, 680 F.3d at 1021; *Hunter v. Town of Mocksville, N. Carolina*, 897 F.3d 538, 554 (4th Cir. 2018) ("[A] 'governmental unit may create an official policy by making *a single decision* regarding a course of action in response to particular circumstances' so long as that governmental unit possessed 'final authority to create official policy.'" (quoting *Semple v. City of Moundsville*, 195 F.3d 708, 712 (4th Cir. 1999))); *West v. Atkins*, 487 U.S. 42, 56, 108 S.Ct. 2250, 101 L.Ed.2d 40 (1988) ("Contracting out prison medical care does not relieve the State of its constitutional duty to provide adequate medical treatment to those in its custody, and it does not deprive the State's prisoners of the means to vindicate their [] rights."). Drawing all inferences in Gunter's favor, we find that a genuine dispute of material fact exists as to whether SHP's decisions were the moving force behind Gunter not receiving adequate medical care and suffering serious injuries.

Evidence in the record suggests that SHP had a custom and practice of taking days to get inmates their medication, and of not having a medical professional available to treat inmates during weekends. *See* J.A. 634-35, 1295-97. A reasonable jury could find that these decisions were "the 'moving force'" behind Gunter not receiving adequate medical care and suffering serious injuries. *Washington*, 58 F.4th at 182.

Despite Gunter arriving to DCDC on November 7, 2012, and receiving Coumadin pills from his family on November 8, 2012, Gunter was unable to take Coumadin until November 9, 2012, and he did not receive an INR test until November 13, 2012. J.A. 605, Hunt Dep. 45:19-22; J.A. 540, Maldonado Dep. 1303-04, 1306. SHP also failed to make a nurse available for initial medical screening on the Friday afternoon Gunter arrived at SCDC, *see* J.A 634-35, 1287-93, Hunt Dep., and such failure resulted in Gunter going three days without adequate medical care, namely Coumadin and INR level testing. *See id.* A reasonable jury could therefore find that SHP's decisions resulted in Gunter being "off prescribed medications without appropriate oversight."[5] *King*, 680 F.3d at 1021.

5. While evidence indicates that SHP could have obtained same-day medication via emergency orders at local pharmacies, J.A. 634-35, 1296-97, it also shows that this was not standard procedure, J.A. 631, 634-35. And in any event, because no medical professional was available to place an emergency order none was ever placed—despite jail staff being aware that Gunter had a prescription for Coumadin. J.A. 634-35, 1297. Thus, as in *King v. Kramer*, 680 F.3d 1013 (7th Cir. 2012), a reasonable jury could conclude that SHP's decisions working together resulted in Gunter's deprivation of adequate care. *See id.* at 1021.

Accordingly, we vacate and remand Gunter's *Monell* claim for further proceedings.

3.

The district court similarly erred when it dismissed Gunter's medical malpractice claim against SHP. To prevail on a medical malpractice claim, a plaintiff must show "(1) the applicable standard of care; (2) a breach of such standard of care; (3) the injuries suffered by the plaintiff were proximately caused by such breach; and (4) the damages resulting to the plaintiff." *Weatherford v. Glassman*, 129 N.C. App. 618, 621, 500 S.E.2d 466 (1998). In addition, an employer may be liable under a respondeat superior theory if the employee's act is "expressly authorized" and "committed within the scope of the employee's employment" and in furtherance of the employer's business. *Medlin v. Bass*, 327 N.C. 587, 592, 398 S.E.2d 460 (1990) (internal brackets omitted). "Where the employee's actions conceivably are within the scope of employment and in furtherance of the employer's business, the question is one for the jury." *Id.* at 593, 398 S.E.2d 460.

As an initial matter, my colleague in concurrence finds that Gunter's medical malpractice claim premised upon respondeat superior against SHP is waived because "[s]uch a claim was not in Gunter's Second Amended Complaint[.]". *See* Richardson, J., concurring and dissenting at 464 n.5. But not so. Gunter explicitly alleged a medical malpractice claim against SHP in his Second Amendment Complaint. *See* J.A. 260-62. Gunter alleged that SHP "is authorized to transact business within the

State of North Carolina" and specifically, has contracted with Public Appellees to provide medical services at county jails. J.A. 224. Gunter further alleged that SHP operates pursuant to the contract and it committed actions within the scope of the contract—namely, providing substandard medical care—in furtherance of its contract to support county jails. *See* J.A. 240, 257. Hence, Gunter's medical malpractice claim is not waived.

Moreover, North Carolina courts agree that it is within a county's purview to provide adequate medical care for incarcerated persons. *See Medley v. N.C. Dep't of Corr.*, 330 N.C. 837, 841, 412 S.E.2d 654 (1992); *State v. Wilson*, 183 N.C. App. 100, 103, 643 S.E.2d 620 (2007). In addition, providing medical care to those incarcerated in county jails is a nondelegable duty of the county, and thus, any independent contractor hired to perform that duty is an agent of the state as a matter of law. *See Medley*, 330 N.C. at 844-45, 412 S.E.2d 654. Here, Public Appellees have a nondelegable duty to provide medical care to those incarcerated in DCDC and SCDC, and Public Appellees hired SHP as an independent contractor to perform that duty. Hence, SHP is an agent of the state as a matter of law. *See Medley*, 330 N.C. at 841, 412 S.E.2d 654; *Wilson*, 183 N.C. App. at 103, 643 S.E.2d 620. Therefore, Gunter has a medical malpractice claim against SHP. Accordingly, the district court erred in dismissing Gunter's medical malpractice claim against SHP.

B.

We now turn to Gunter's medical malpractice claim against Jackson and Maldonado. As mentioned previously, to prevail on a medical malpractice claim, a plaintiff must show "(1) the applicable standard of care; (2) a breach of such standard of care; (3) the injuries suffered by the plaintiff were proximately caused by such breach; and (4) the damages resulting to the plaintiff." *Weatherford*, 129 N.C. App. at 621, 500 S.E.2d 466.

The parties only dispute the third element. As relevant here, Gunter put forth the following pieces of evidence to demonstrate proximate causation: evidence related to Gunter's access to medication prior to incarceration, the testimony of Dr. Yoder, and the testimony of Dr. Laber.

The district court found these pieces of evidence put forth by Gunter were inadmissible and ultimately concluded that Gunter failed to present a genuine dispute of material fact as to whether his medical treatment in jail proximately caused his blood clots.

We review the district court's evidentiary rulings for abuse of discretion. *United States v. Johnson*, 617 F.3d 286, 292 (4th Cir. 2010). In addition, "[c]redibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions" and are not permitted by a district judge while ruling on a motion for summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); *see also Guessous v. Fairview Prop.*

Invs., LLC, 828 F.3d 208, 216 (4th Cir. 2016) (stating "[t]he court . . . cannot weigh the evidence or make credibility determinations." (quoting *Jacobs v. N.C. Admin. Off. of the Cts.*, 780 F.3d 562, 568-69 (4th Cir. 2015))).

We find that the district court abused its discretion by excluding Gunter's evidence related to his access to medication prior to incarceration, the testimony of Dr. Yoder, and the testimony of Dr. Laber. We address each error in turn.

1.

First, the district court improperly weighed evidence regarding Gunter's access to medication prior to incarceration. With respect to Gunter's pharmacy records which indicated Gunter received several "emergency" doses of Coumadin without a valid prescription from Dr. Yoder, the district court stated "[t]he evidence presented by [Gunter] does not reflect [Gunter] was therapeutically medicated when he was first arrested on November 6, 2012, as suggested by Dr. Sease's unrebutted affidavit." *Gunter*, 2021 WL 4255370 at *23. Here, the blatant weighing of the evidence is simple: the district court weighed the evidence of the parties and found Medical Appellees' expert witness, Dr. Sease, who suggested Gunter was not therapeutically medicated prior to incarceration, was more credible than the evidence put forth by Gunter. Such weighing of the evidence is error.

Second, the district court improperly resolved evidence related to Gunter's access to medication prior

to incarceration. Specifically, the district court found a medical record faxed to Jackson failed to establish proximate cause. The district court stated the medical record did not demonstrate the clinic "specifically communicated to Nurse Jackson that [] Gunter *should* take 7mg of warfarin per day, . . . the only mention of Coumadin or Warfarin in the visit summary is that [Gunter] reported taking 7mg of Warfarin Sodium by mouth daily." *Gunter*, 2021 WL 4255370 at *22 (emphasis in original). While the district court is correct that the faxed communication does not establish Gunter's prescribed dosage or serve to prove the clinic specifically communicated to Jackson about his daily dosage, the district court is incorrect in assuming this faxed medical record does not create a genuine dispute about proximate cause generally. For example, the medical record stated Gunter reported to the clinic that he took 7mg of Coumadin daily. Additionally, Jackson received this fax on November 8, 2012, the same day Jackson contacted Gunter's primary care physician and pharmacist about his condition. *See* J.A. 533. Therefore, drawing all inferences in favor of Gunter, a dispute of material fact remains whether Jackson was on notice that 7mg of Coumadin was a common daily dose for Gunter. This is significant because if Jackson was on notice, she could have communicated this with Maldonado, who she consulted with on the same day that she received the fax, and who subsequently ordered a prescription for 5mg of Coumadin for Gunter. *See* J.A. 1303, Maldonado Dep. 83:20-25. If Jackson chose to ignore the fax[6] and not

6. Gunter asserts this fax communication was not originally produced by Appellees, and only discovered by Gunter after the close of discovery. *See* Gunter's Corrected Opening Br. at 35. As

tell Maldonado, which subsequently led to Gunter not receiving the proper doses of Coumadin and subsequently sustaining an injury, Gunter could use this medical record as a way to show proximate cause with respect to Jackson. Accordingly, in light of the fact more than one inference could be drawn as to the proximate cause of Gunter's injury, the district court erred in resolving evidence at the summary judgment stage. *See Olds v. United States*, 473 F. App'x 183, 185 (4th Cir. 2012). Hence, the district court erred in determining the fax communication to Jackson did not establish proximate cause.

Accordingly, the district court improperly weighed or resolved evidence related to Gunter's access to medication prior to his incarceration. Such evidence should not have been excluded, and it was an abuse of discretion for the district court to conclude otherwise.

2.

The district court abused its discretion in finding Dr. Yoder failed to testify with a reasonable degree of medical certainty. To begin, the district court stated Dr. Yoder's testimony (1) "reflect[ed] impermissible speculation that [Gunter] had been properly anticoagulated prior to entering the jail"; (2) "could not assess the extent to which changing her underlying assumption about [Gunter's] compliance would change her assessment as to whether [Gunter] was liable for his injury" or give a percentage

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such, counsel for Gunter was not able to question Jackson about this document during her deposition. *Id.* Appellees' do not mention or otherwise dispute this fact. *See* Appellee's Response Br.

range with respect to fault when asked to do so by Appellee's counsel; and (3) only drew conclusions "from a temporal relationship." *Id.* at 23-24. But such findings are incorrect.

With respect to the district court's first finding, the district court improperly stated Dr. Yoder's testimony was speculation. Dr. Yoder's testimony that she assumed Gunter was properly anticoagulated before he was incarcerated is not based on speculation. This is because Gunter had been Dr. Yoder's patient for years and as such, Dr. Yoder was qualified to opine on Gunter's habits and compliance with Coumadin therapy based on her relationship with Gunter in her professional capacity. *See* S.J.A. 2515, Yoder Dep. 122:22-25. Specifically, Dr. Yoder testified, "the thing that I know about [Gunter] is that, regardless of how long it's been since he actually stepped foot in my office, he ha[s] always taken his medication" and "I've never known him to just be off of it just because." S.J.A. 2518, Yoder Dep. 125:5-10. Such testimony by Dr. Yoder is not speculation because it is grounded in her professional opinion based on what she has known about Gunter for years. *See id.*; *see also* Fed. R. Evid. 703, Advisory Comm. Note ("[A] physician in his own practice bases his diagnosis on information from numerous sources and of considerable variety, including statements by patients and relatives. . . . [Such] validation, expertly performed and subject to cross-examination, ought to suffice for judicial purposes.").

Additionally, it is unclear whether Dr. Yoder assumed Gunter was compliant with taking his medication or was

told in her deposition to assume Gunter was compliant. *See* S.J.A. 2604-06, 2759. But even assuming Dr. Yoder based her finding on an assumption, the district court improperly discredited her testimony. Even if Gunter was not properly anticoagulated when he entered the jail, evidence of the lack of care Gunter received while in jail creates a dispute of material fact as to whether his injuries were proximately caused by Jackson's and Maldonado's failure to provide said care.

With respect to the district court's second finding, the district court made an improper credibility determination regarding Dr. Yoder's testimony in which she stated that she did not know "how to assess" a numerical percentage in which Gunter was at fault for his injuries. *Gunter*, 2021 WL 4255370 at *24. While Dr. Yoder was unable to provide a percentage in which Gunter was at fault for his injuries, she did nonetheless state there was not a "50/50 split in blame" and "[t]hat's the problem with anticoagulation, is that one day, one week . . . it's all about trends[.]" S.J.A. 2605-06, Yoder Dep. 212-13. Dr. Yoder need not articulate a specific numerical percentage to assert an opinion with a reasonable degree of medical certainty. In addition, determining one's percentage of fault is a legal conclusion, and the district court erred in using Dr. Yoder's answer as a basis for judging her credibility.

With respect to the district court's third finding, the district court was incorrect in finding Dr. Yoder only drew her conclusions from a "temporal relationship." In fact, Dr. Yoder relied on several factors in determining proximate cause, including the (1) relationship she had with Gunter

and his history of always taking his medication, (2) number of Coumadin doses Gunter missed, (3) lack of monitoring Gunter's INR levels, (4) fact that Gunter was not administered a Lovenox bridge "to protect him against an event happening down the road[,]" (5) "consistency of inconsistent dosing," (6) timing of the missed doses, and (7) presentation of symptoms and subsequent admission. J.A. 1559-60.

In summary, Dr. Yoder testified with a reasonable degree of medical certainty, and it was an abuse of discretion for the district court to conclude otherwise.

3.

The district court likewise abused its discretion in finding Dr. Laber failed to testify with a reasonable degree of medical certainty. To begin, the district court stated Dr. Laber (1) was "unable to state to a reasonable degree of medical certainty when the blood clot that injured [Gunter] formed" and "could not quantify the increase in risk where a patient misses three consecutive days of Coumadin" and therefore, his testimony was "conjecture"; (2) "like Dr. Yoder, . . . assumed that [Gunter] was properly anticoagulated upon arrival at the jail and that he took his medication every day upon release from the jail"; and (3) "relied on the temporal connection between the blood clot and [Gunter's] incarceration as evidence of proximate cause." *Id.* at 25-26. But such findings are incorrect.

With respect to the district court's first finding, the district court made an improper credibility determination

with respect to Dr. Laber's assessment of clot formation. While Dr. Laber did not opine as to a specific moment when blood clotting occurred, Dr. Laber outlined a range of times in which clot formation was likely. Specifically, Dr. Laber testified the blood clot formed days or weeks before Gunter's hospitalization on November 29, 2012, and that based on "the medical record, we can imply" the blood clot formed more than two days before hospitalization. S.J.A. 2712-13, Laber Dep. Dr. Laber went on to explain the gradual process of clot formation and the accumulation of damage that occurs over time. *Id.* Such testimony is not "conjecture" as Dr. Laber was not required to fully explain with certainty the specific moment when blood clotting occurred; rather, he was permitted to express his conclusions in terms of reasonable probabilities, based on his expertise applied to the facts available to him. *DaSilva v. Am. Brands, Inc.*, 845 F.2d 356, 361 (1st Cir. 1988). Moreover, regarding risk quantification, the district court is incorrect that Dr. Laber did not quantify the risk associated with missed doses of Coumadin. Specifically, Dr. Laber testified "the risks go exponentially higher for each time [Gunter] remains below the therapeutic range" and "throughout the whole incarceration, there is not one INR that was therapeutic." S.J.A. 2782, Laber Dep. 124:1-11. Whether Dr. Laber might have done a better job explaining risk quantification is not the test, and such credibility determination is best reserved for a jury. *Kannankeril v. Terminix Int'l, Inc.*, 128 F.3d 802, 809 (3d Cir. 1997), *as amended* (Dec. 12, 1997). In addition, whether Dr. Laber might have done a better job at explaining risk quantification goes to the weight of the evidence, which is also best reserved for a jury.

With respect to the district court's second assertion, the district court improperly determined that Dr. Laber's testimony was speculation. Dr. Laber's testimony that he assumed Gunter was properly anticoagulated before he was incarcerated is not based on speculation, as Dr. Laber was familiar with Gunter's medical history and as such, was qualified to opine on Gunter's habits and compliance with Coumadin therapy. Specifically, Dr. Laber testified that he believed Gunter was anticoagulated before he was incarcerated because "[Gunter] sa[id] so" and "[Gunter] was taking his medication, and he ha[d] this valve replacement when he was a child . . . [s]o he knows this for many, many, many years." S.J.A. 2744, Laber Dep. 86:18-23. Such testimony by Dr. Laber is not speculation because it is grounded in his professional opinion based on what he knows about Gunter's medical history and the risks of not taking Coumadin consistently. *See id.* In addition, it was permissible for Dr. Laber to rely on patient history to make a finding. Patient history comes from the patient, and it is not unusual for a doctor to make findings and recommendations based on a patient's history to draw conclusions. *See* Fed. R. Evid. 703, Advisory Comm. Note ("[A] physician in his own practice bases his diagnosis on information from numerous sources and of considerable variety, including statements by patients and relatives. . . . [Such] validation, expertly performed and subject to cross-examination, ought to suffice for judicial purposes.").

As with Dr. Yoder's testimony, it is unclear whether Dr. Laber assumed Gunter was compliant with taking his medication or was told in his deposition to assume Gunter was compliant. *See* S.J.A. 2604-06, 2759. But as

we stated above, the district court improperly discredited his testimony regardless. Even if Gunter was not properly anticoagulated when he entered the jail, evidence of the lack of care Gunter received while in jail creates a dispute of material fact as to whether his injuries were proximately caused by Jackson's and Maldonado's failure to provide said care.

With respect to the district court's third finding, the district court was incorrect in finding Dr. Laber "relied on the temporal connection between the blood clot and [Gunter's] incarceration as evidence of proximate cause." *Gunter*, 2021 WL 4255370 at *26. In fact, Dr. Laber relied on several factors in determining proximate cause, such as (1) documentation he reviewed, (2) the evidence of lack of proper care, and (3) the risk posed to Gunter due to his MHV. *See* Laber Dep.

In summary, Dr. Laber testified with a reasonable degree of medical certainty, and it was an abuse of discretion for the district court to conclude otherwise.

C.

We now turn to the district court's grant of Medical Appellees' motion to strike and the district court's denial of Gunter's motion to compel, which we review for abuse of discretion. *United States v. Ancient Coin Collectors Guild*, 899 F.3d 295, 324 (4th Cir. 2018).

1.

Here, the district court abused its discretion in striking Dr. Laber's post-deposition declaration. While the district court found that "Dr. Laber's commentary about there being an underdosing of medication [wa]s new testimony that expressly contradict[ed] his findings about proximate cause being a lack of anticoagulation generally[,]" *Gunter*, 2021 WL 4255370, at *12, this is incorrect. Dr. Laber explicitly mentions "underdosing" as a proximate cause theory in his deposition which is consistent with his mentioning of "underdosing" in his post-deposition declaration. S.J.A. 2747, Laber Dep. 89:1-18 ("[I]t took days until [Gunter] could get the right dose. So some days were skipped. Some days were underdosed."); J.A. 1925-26, Laber Decl. ("I specifically base my opinions in this case upon . . . the records indicating that [Gunter] was either underdosed and/or not provided medication for nearly the entirety of his incarceration."); *see Spriggs v. Diamond Auto Glass*, 242 F.3d 179, 185 n.7, 189 n.13 (4th Cir. 2001) (explaining that the rule against contradictory affidavits only applies to "bona-fide inconsistenc[ies]" that are "clear-cut" without any "ambiguity"). In light of the fact that Dr. Laber's declaration did not put forth a new theory of proximate cause or expressly contradict his earlier testimony, it should have been admitted, and it was an abuse of discretion for the district court to conclude otherwise.

2.

The district court did not abuse its discretion when it denied Gunter's motion to compel Medical Appellees to produce their expert witness, Dr. Julie Sease, for deposition. The district court had previously extended the timeline for discovery on two prior occasions. *See* J.A. 1704. Additionally, Gunter filed his motion eleven days after the discovery deadline, and the district court found such timeliness was not due to "excusable neglect." *Id.* Accordingly, in light of these facts, the district court did not abuse its discretion when it denied Gunter's motion to compel. *See Spencer Med. Assocs. v. Comm'r*, 155 F.3d 268, 273 (4th Cir. 1998) ("the mere untimeliness of [a] motion supports the court's denial.").

IV.

For the foregoing reasons, we reverse the judgment below with respect to Gunter's (1) § 1983 claim for deliberate indifference under the Fourteenth Amendment against Medical Appellees, (2) § 1983 *Monell* claim against Davie and Stoke Counties and (3) his medical malpractice claims against SHP, Jackson and Maldonado, and remand for further proceedings. In addition, we reverse the district court's ruling granting Appellees' motion to strike and affirm the district court's ruling denying Gunter's motion to compel.

AFFIRMED IN PART, REVERSED IN PART AND REMANDED

RICHARDSON, Circuit Judge, concurring in the judgment in part and dissenting in part:

David Gunter had a mechanical heart valve put in back in 1990, when he was 15 years old. He has since been on a daily regimen of Coumadin, a blood thinner that prevents blood from clotting on the surface of the valve. Gunter suffered no clotting issues for 22 years. But for the two weeks between November 6 and November 21, 2012, Gunter was held as a pretrial detainee in three different North Carolina county jails, disrupting his daily regimen. Eight days after his release from jail, Gunter checked into the hospital. Doctors found a blood clot in his intestines that required surgical removal. Further intestinal blood clots were found months later.

Gunter blames his blood clots on the poor medical care he received in jail. He brought a litany of claims against the various parties who were involved in some way with his jail stint, including his medical providers and a slew of government entities. The district court granted summary judgment for all defendants below. But some of Gunter's claims were considered under an outdated legal standard. Other claims present factual questions best resolved by a jury. In these respects, I agree with the majority's conclusions. But we part ways on other claims, and I disagree with a few lines of reasoning. So I respectfully concur in the judgment in part and dissent in part.

Appendix A

I. BACKGROUND

A. Gunter's Medical History

Plaintiff David Gunter had a mechanical heart valve implanted when he was 15 years old. Patients with mechanical heart valves face a higher risk of blood clots, so they are treated with a daily dose of Coumadin (a brand of warfarin), a prescription blood thinner. Too much blood thinner, however, and the patient runs the risk of bleeding out. The goal of Coumadin treatment is to maintain the patient's International Normalized Ratio ("INR") level, which indicates the propensity of a patient's blood to clot, at a therapeutic range, defined as between 2.5 and 3.5 INR.[1] A patient with a mechanical heart valve risks dying from a blood clot when his INR remains below the therapeutic range—reflecting a higher propensity to clot—for too long.

Gunter saw Dr. Virginia Yoder at the Pharmacy Care Clinic—nicknamed the "Coumadin Clinic"—for regular appointments between 2010 and May 2012. A patient with a mechanical heart valve usually gets his INR checked roughly once a month, though the frequency depends on the general stability of his INR and his medical history.

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1. It is not necessary to know precisely how INR is calculated. In short, the number is derived from a ratio to a standardized "normal" amount of time it takes for blood to clot, called the prothrombin time. A normal INR for an unmedicated individual is around 1.0, representing, roughly, 1.0x the standard prothrombin time. An INR of 2.5 means the blood clots, roughly, 2.5x slower. The higher the number, the slower the blood clots, and vice versa.

Coumadin patients need checkups even when a patient's medication regimen remains unchanged because INR is sensitive to other factors, like diet and alcohol use. At his last two checkups on the record, Gunter had an INR of 2.7 on April 16, 2012, and an INR of 4.2 on May 17, 2012.

On May 31, 2012, Dr. Yoder discharged Gunter as a patient for no-showing too many appointments. Before she discharged him, however, she wrote him a three-month prescription for 6 mg per day of Coumadin. Between May 31 and November 6, 2012, Gunter had no primary-care physician and received no INR testing. But he filled his prescription from Dr. Yoder each month at his local Walgreens in June, July, and August. He also received several "emergency doses" of Coumadin from the same Walgreens in September, October, and November when he didn't have a prescription.[2] Gunter claimed that between 2010 and 2012, he also received a supply of Coumadin and sporadic INR testing from a neighbor, Dr. Oakowski, who worked at a local clinic.

B. Arrest, Jailtime, and Blood Clots

The key events underlying this case began when Gunter was arrested in Forsyth County, North Carolina

2. Because Coumadin is a common, non-abusable drug that some patients need to survive, pharmacies may dispense Coumadin for free, without a prescription, on an emergency basis at the pharmacy's discretion.

on November 6, 2012.[3] At his intake at Forsyth County jail, he reported that he took 6 mg of Coumadin daily. After one night in Forsyth County jail, he was transferred to the Davie County jail on November 7, 2012. He was medically screened upon his arrival at Davie County jail by Fran Jackson, a nurse and employee of Southern Health Partners, the contracted medical-care provider for the jail. Gunter told Nurse Jackson that he had a mechanical heart valve and took Coumadin for it, which she noted in his medical record. Gunter, however, asked Jackson not to contact his medical care provider since he thought he would be released later that day.

But Gunter was not released that day. So the next day, November 8, Jackson contacted Gunter's primary-care physician at Maplewood Clinic and his Walgreens pharmacy to verify his medications and conditions. Maplewood Clinic reported that they had last seen Gunter a few months prior, in June 2012, for an unrelated illness but had not managed his INR levels since 2010. A fax from Maplewood Clinic to Jackson shows that at the June visit, Gunter had self-reported that he took 7 mg of Coumadin daily. For unknown reasons, however, Gunter did not provide contact information for Dr. Yoder, who had actively managed his Coumadin therapy between 2010 and 2012.

Despite lacking a full medical history, Jackson spoke about Gunter's Coumadin situation with Manuel Maldonado, a physician's assistant and Southern Health

3. Gunter was arrested pursuant to a bench warrant for his failure to appear in court for a charge of Driving While License Is Revoked.

employee who oversaw medical care at the Davie jail. On the 8th, Maldonado prescribed 5 mg of Coumadin for five days starting the next day, running from November 9 to November 13, and ordered an INR test for November 13. He did not perform an INR test before writing the prescription to determine whether such a dose was appropriate. Gunter also contacted his family to get Coumadin, who brought him two 5 mg pills and four 1 mg pills. But he was not permitted to take these pills because they had expired and jail policy did not allow dispensing expired medication.

Gunter thus missed his Coumadin doses on November 7 and 8. He then received 5 mg of Coumadin on November 9, 10, 11, 12, and 13 on Maldonado's prescription. On November 13, 2012, Gunter underwent his first INR test since entering jail, which showed that his INR levels were at 1.07—subtherapeutic. Maldonado responded by ordering an increase of Gunter's Coumadin dosage to 7.5 mg per day, but only on the alternating days of November 15, 17, and 19, keeping his original dose of 5 mg per day for November 14, 16, and 18.

On November 16, 2012, Gunter was transferred from Davie County jail to Stokes County jail. The medical care at Stokes County Jail is also run by Southern Health and overseen by Maldonado. Before Gunter left, Jackson completed a transfer form, summarizing his medical condition and medical plan, though she erroneously recorded his November 13 INR as 1.7, not 1.07.

By the time Gunter arrived at Stokes County jail on Friday evening, Sandra Hunt, the Southern Health nurse responsible for Stokes County jail, had already left for the weekend. Following jail policy, an officer at Stokes County jail called Nurse Hunt to inform her of Gunter's arrival and his medical conditions. The officer also told her that Gunter had arrived with a bottle of Coumadin. That bottle appears to have been the expired Coumadin from Gunter's family, so Hunt directed the officer not to dispense it. Hunt was unable to get Coumadin over the weekend. So she did not direct the Stokes County jail officers to dispense any medication to Gunter. And without medical authorization, they could not do so of their own accord. Gunter thus did not take Coumadin on November 16, 17, or 18.

When Hunt returned on Monday, November 19, she dispensed 7.5 mg of Coumadin to Gunter according to Maldonado's alternating schedule. Gunter filed a grievance form that same day, stating, "I have heart trouble, I'm on warfarin and [I'd] like to move to A8 for the bottom bunk." Hunt dispensed another 5 mg of Coumadin the next day, November 20. Gunter was finally released from Stokes County jail on November 21. He still had all six pills (two 5 mg and four 1 mg) of expired Coumadin that his family brought him on November 8 when he was in Davie County jail.

Thursday, November 22, was Thanksgiving Day. A few days later, Gunter developed severe abdominal pain, fever, nausea, vomiting, and diarrhea. He was admitted to Wake Forest Baptist Medical Center on November 29. At the time of his admission, his INR level was 1.7 and he

stated that he was "off his Coumadin since earlier [in the] week." A CT scan revealed a blood clot in his abdomen, and Gunter underwent surgery to remove the clot the next day.

Gunter was released from the hospital over a week later on December 11, 2012. His INR was then tested five times, on December 14, 17, 20, 27, and January 2, with INRs of 1.6, 1.5, 2.0, 2.7, and 1.9, respectively—only one of five being within therapeutic range. However, despite the low INR, Gunter reported missing no Coumadin dosages between his discharge from the hospital on December 11 and his checkup on January 2. Unfortunately, Gunter fell ill again and was diagnosed with a second blood clot on January 18, 2013, which required a second surgery to resect portions of Gunter's bowel.

C. Lawsuit

Gunter filed suit in state court in November 2015. He alleged that two sets of defendants caused his abdominal blood clots: the "Medical Defendants" and the "Public Defendants."

The "Medical Defendants" are composed of: Southern Health Partners, the company that Davie and Stokes County hired to run medical services in their jails and which employs the rest of the medical defendants; Dr. Jason Junkins, the corporate medical director; Nurse Fran Jackson; Physician's Assistant Manuel Maldonado; and Nurse Sandra Hunt.

The "Public Defendants" are composed of: Davie County, where Davie County jail is; Stokes County, where Stokes County jail is; a slew of government employees, including Andy Stokes, Cameron Sloan, Mike Marshall, Eric Cone; and two insurance companies, the Western Surety Company and the Ohio Casualty Company.

The Defendants removed the case to federal court in April 2016. After various amendments to the complaint, Gunter eventually brought claims against the Medical Defendants for medical malpractice, violations of 42 U.S.C. § 1983, negligence, negligent supervision, false imprisonment, and intentional infliction of emotional distress, and against the Public Defendants for much the same, but with the medical-malpractice and negligence claims swapped for claims alleging violations of North Carolina state law and the North Carolina Constitution.

The federal district court first addressed the claims against the Public Defendants. As to the § 1983 claim, the district court held that pretrial detainees like Gunter—*i.e.*, individuals who have been arrested but not convicted—had to show that prison officials "knew of and disregarded an excessive risk to inmate health or safety." *Gunter v. S. Health Partners, Inc.*, 2021 WL 965035, at *7 (M.D.N.C. Mar. 15, 2021) (quoting *Scinto v. Stansberry*, 841 F.3d 219, 225 (4th Cir. 2016)). But the district court found that Gunter proffered no evidence that would make such a showing about the prison officials' mental states. As to the various state-law claims, the district court first recognized that Gunter had already conceded that there was insufficient support for any false-imprisonment

or emotional-distress claim. Then, for the negligent-supervision and state-statutory claims, the district court held that no facts supported such claims. Finally, the district court held that Gunter failed to sufficiently specify a claim under the North Carolina Constitution. With all claims addressed, the district court granted summary judgment to the Public Defendants across the board.

The Medical Defendants walked a longer path whose twists and turns are unnecessary to recount. Important for this case is the evidentiary dispute below between the parties. Gunter produced deposition testimony, affidavits, and declarations from several medical-expert witnesses to support his allegation that his lack of Coumadin treatment in prison caused his blood clots. The Defendants, in turn, moved to strike much of the material from consideration while alternatively arguing that even if admitted, the evidence did not support his claims. The district court ultimately sided largely with the Defendants in excluding the evidence.

Specifically, the district court made three evidentiary decisions central to this appeal. First, the district court excluded deposition testimony from Dr. Yoder because it found that her testimony was neither grounded in a justifiable factual basis nor possessed a reasonable degree of medical certainty. Second, the district court found that deposition testimony by another doctor, Dr. Damian Laber, suffered from the same two defects. Third, and finally, the district court struck a later-submitted declaration from Dr. Laber for "expressly contradict[ing]" his prior deposition testimony. *Gunter v. S. Health Partners, Inc.*,

2021 WL 4255370, at *12 (M.D. N.C. Sept. 17, 2021). Without competing evidence generating a genuine dispute of material fact, the district court granted summary judgment to the Medical Defendants on all claims.

Having granted summary judgment on all claims to all defendants, the district court dismissed the case. Gunter timely appealed.

II. DISCUSSION

On appeal, Gunter focuses on only two of his many claims, abandoning the rest.[4] First, he appeals the grant of summary judgment on his § 1983 claims against the Medical Defendants and Davie and Stokes Counties. Gunter claims that Medical Defendants Jackson and Maldonado were deliberately indifferent to his medical needs in failing to provide adequate paperwork and Coumadin during his transfer between Davie and Stokes

4. In his opening brief, Gunter does not present the other tort and state-law claims he raised below against the Defendants. He also does not raise his § 1983 claims against any of the individual public defendants. As a result, he has abandoned those claims on appeal. *See Grayson O Co. v. Agadir Int'l LLC*, 856 F.3d 307, 316 (4th Cir. 2017) ("A party waives an argument by failing to present it in its opening brief or by failing to develop its argument." (cleaned up)). Though Gunter cites North Carolina state law in his brief, he does so solely in the context of explaining his § 1983 argument and not as part of a distinct state-law claim. Similarly, he only mentions individual public defendants by name in the "Parties" section of his opening brief, then never again. His briefs do not allege any specific action or inaction by individual public defendants that caused him harm.

County jail. He further claims that those actions indicate the existence of harmful Davie and Stokes County policies, making the Counties directly liable under § 1983 per *Monell v. Department of Social Services of the City of New York*, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978). I agree that the district court's grant of summary judgment on the § 1983 claim against Jackson and Maldonado cannot stand in light of our intervening decision in *Short v. Hartman*, 87 F.4th 593 (4th Cir. 2023). Unlike the Majority, however, I would follow our direction in *Short* to send the case back to allow the district court to apply the correct standard in the first instance. I also disagree with the Majority on the § 1983 *Monell* claim against Davie and Stokes Counties and would affirm the district court's rejection of that claim.

Second, Gunter appeals the grant of summary judgment on his medical-malpractice claim just as to Jackson and Maldonado. Gunter argues that summary judgment was erroneous because the district court abused its discretion by excluding the evidence from Dr. Yoder and Dr. Laber that would have, if considered, created a genuine dispute of material fact as to the proximate cause of his blood clots.[5] I agree that we should reverse the district

5. Gunter nominally challenges the grant of summary judgment on his medical- malpractice claim to *all* Medical Defendants, including Southern Health, Nurse Hunt, and Dr. Junkins. But on appeal, Gunter only takes issue with the district court's ruling on proximate cause. And Gunter's failure to show proximate cause was the basis for granting summary judgment only to Nurse Jackson and Maldonado. The district court granted summary judgment to the other Medical Defendants on different

court's grant of summary judgment on the medical-malpractice claims against Jackson and Maldonado on account of Dr. Yoder and Dr. Laber's testimony, which should have been admitted as evidence. But I disagree with the Majority's explanation of why the district court erred. I also disagree with the decision to allow Gunter to raise a *respondeat superior* theory for the first time on appeal in his medical-malpractice claim against Southern Health Partners.

I'll start with Gunter's § 1983 claim before turning to his medical-malpractice claim.

A. Section 1983

Gunter's § 1983 claim differs between the two sets of Defendants. He alleges that Jackson and Maldonado's

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basis—because it concluded that Gunter had failed to plead facts showing any of them breached the proper standard of medical care. Gunter has not challenged this other basis.

Gunter has also made the novel argument that Southern Health can be found liable for medical malpractice because of Jackson's and Maldonado's actions, under a theory of *respondeat superior*. Such a claim was not in Gunter's Second Amended Complaint, nor did the district court address such an argument. The only respondeat superior argument made below was against the Public Defendants for Gunter's § 1983 claims, which the district court correctly rejected, as "the doctrine of *respondeat superior* has no application under § 1983." *Gunter*, 2021 WL 965035, at *7 (cleaned up) (quoting *Wright v. Collins*, 766 F.2d 841, 850 (4th Cir. 1985)). Having not made *respondeat superior* argument for medical malpractice against Southern Health below, Gunter cannot raise it now on appeal. *See*, *e.g.*, *Richardson v. Clarke*, 52 F.4th 614, 625 (4th Cir. 2022).

actions during his jail stint amount to deliberate indifference in violation of the Constitution. And he separately alleges that Davie and Stokes Counties have policies that, when followed, fail to provide adequate medical care and also violate the Constitution. I would vacate and remand the grant of summary judgment as to the former, but I would affirm the latter.

1. Deliberate Indifference from Jackson and Maldonado

Gunter claims that Jackson and Maldonado knew about his mechanical heart valve and his need for daily Coumadin but acted with deliberate indifference in failing to provide timely medication. In assessing Gunter's § 1983 claim, the district court applied an outdated standard for pretrial detainees' deliberate-indifference claims. That outdated standard was the same one applied to convicted prisoners, requiring a plaintiff to show that jail officials *subjectively* "knew of and disregarded an excessive risk to inmate health or safety." *Scinto*, 841 F.3d at 225 (cleaned up) (quoting *Farmer v. Brennan*, 511 U.S. 825, 837, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994)). Two years after the district court's decision, however, this Court decided *Short v. Hartman*, 87 F.4th 593 (4th Cir. 2023). *Short* clarified that the Supreme Court's decision in *Kingsley v. Hendrickson*, 576 U.S. 389, 135 S.Ct. 2466, 192 L.Ed.2d 416 (2015) distinguished pretrial detainees from prisoners, replacing the subjective standard with an *objective* standard for deliberate-indifference claims brought by the former. *Short*, 87 F.4th at 605-06. Thus, "[n]ow, it is sufficient that the [pretrial-detainee] show that

the defendant's action or inaction was, in *Kingsley*'s words, 'objectively unreasonable.'" *Id.* at 611 (citing *Kingsley*, 576 U.S. at 397, 135 S.Ct. 2466). No subjective intent or knowledge by the jail officials is needed.[6]

The district court granted summary judgment to Jackson and Maldonado on Gunter's § 1983 claim because Gunter could not show evidence of subjective intent or knowledge. Without the benefit of our decision in *Short*, the district court did not consider whether their actions were "objectively reasonable." I would thus "remand without considering anything further" and leave it to the district court to apply the proper standard in the first instance. *Short*, 87 F.4th at 612.

2. Davie and Stokes Counties

Gunter's second § 1983 claim is against Davie and Stokes Counties. Although municipalities like the

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6. Though the district court is not at fault, we nevertheless assess Gunter's claim under the new law. *See Henderson v. United States*, 568 U.S. 266, 271, 133 S.Ct. 1121, 185 L.Ed.2d 85 (2013) ("The general rule is that an appellate court must apply the law in effect at the time it renders its decision" (cleaned up) (quoting *Thorpe v. Housing Auth. of Durham*, 393 U.S. 268, 281, 89 S.Ct. 518, 21 L.Ed.2d 474 (1969))). The parties do not catch the intervening change in law and do not address it in their briefs. As such, Gunter still couches his objection as an Eighth Amendment claim, though as a pretrial detainee he's governed by the less demanding standard of the Fourteenth Amendment. Because the difference didn't matter in this circuit before *Short*, I agree with the Majority that we should construe Gunter's deliberate-indifference claim as properly arising under the Fourteenth Amendment.

Counties cannot be liable under § 1983 for the actions of their employees and agents, they can be independently liable for their own policies and customs. *See Los Angeles Cnty. v. Humphries*, 562 U.S. 29, 32-33, 131 S.Ct. 447, 178 L.Ed.2d 460 (2010) (citing *Monell*, 436 U.S. at 694, 98 S.Ct. 2018)). To prove this "*Monell* liability," plaintiffs must show that their harm was "caused by a constitutional violation," and that the municipality's policies were "the moving force" behind that violation. *Washington v. Housing Auth. of Columbia*, 58 F.4th 170, 177, 184 (4th Cir. 2023) (quotation omitted). Gunter challenges four sets of ostensible County policies: (1) the decision to enter a contract with SHP to provide medical care in county jails, (2) the decision to understaff the medical personnel at the county jails, (3) the failure to prepare adequate transfer and discharge paperwork, and (4) the failure to recognize anticoagulation therapy as a serious medical condition. Opening Br. at 47-48. The Majority addresses the alleged understaffing policy and invents an additional "custom," not included in the briefs, of "taking days to get inmates their medication." Maj. Op. at 453. None are sufficient for *Monell* liability here.

All of Gunter's *Monell* arguments rise and fall with his allegation that the Counties have a "policy" of contracting with SHP to provide medical care in county jails. Gunter argues that because the Counties hired SHP "to fulfill their duty to provide medical care to inmates, the policies of [SHP] became the policies of the Counties," and therefore, the Counties are "directly responsible" for them. Opening Br. at 40. This is simply *respondeat superior* liability in a poor disguise. And *Monell* itself

prohibits imposing such liability: "[A] municipality cannot be held liable *solely* because it employs a tortfeasor—or, in other words, a municipality cannot be held liable under § 1983 on a *respondeat superior* theory." *Monell*, 436 U.S. at 691, 98 S.Ct. 2018. The decision to hire an outside medical supplier, without more, does not render a county liable under *Monell* for an "injury inflicted solely by its employees or *agents*." *Id.* at 694, 98 S.Ct. 2018 (emphasis added).

Rather than being liable for its agent's actions, a municipality is responsible under § 1983 only for its own actions—"when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury." *Id.* at 694, 98 S.Ct. 2018. An actual county policy or custom may serve as the basis for a *Monell* claim. But simply hiring a third-party agent does not demonstrate a dereliction of duty if the agent fails to perform adequately. And the mere existence of a contract between the Counties and its agent does not suggest the Counties adopt as their own policy any error that the agent makes.[7]

7. The Majority relies on the Supreme Court's opinion in *West v. Atkins*, 487 U.S. 42, 108 S.Ct. 2250, 101 L.Ed.2d 40 (1988). But that case did not extend *Monell* liability. *Atkins* simply held that a "physician who is under contract with the State to provide medical services to inmates at a state-prison hospital on a part-time basis acts 'under color of state law,' within the meaning of 42 U.S.C. § 1983." *Id.* at 43, 108 S.Ct. 2250. In fact, the *Atkins* Court cites *Monell*'s rejection of *respondeat superior* § 1983 claims in its reasoning, noting that if it did not find prison physicians could be held personally liable under § 1983, "it would greatly diminish

Beyond gesturing at municipal responsibility for its agent's errors, Gunter does allege two plausible municipal policies. First, he alleges that the County decided, as a matter of policy, to understaff their jails. If true, that might be a cognizable municipal policy. But Gunter fails to show how such understaffing could possibly be the "moving force" behind his lack of Coumadin. As all agree, Nurse Jackson conducted his initial intake screening at Davie County. Indeed, a key part of Gunter's medical-malpractice claim centers on Jackson's actions at this screening and Maldonado's actions the next day. While Nurse Hunt had gone home for the weekend when Gunter arrived at Stokes County, she testified that it was part of her job to handle intake and medication for transfers even after she had left, and Gunter does not allege that her physical presence would have changed the availability of Coumadin. So neither Jackson and Maldonado's affirmative treatment nor Hunt's procurement difficulties were related to the level of staffing at the jails.

The second alleged policy, a failure-to-prepare-transfer-and-discharge-paperwork policy, suffers from the same problem. To the extent that the lack of paperwork during Gunter's transfer from Davie to Stokes County jail was indicative of a policy and not a one-off mistake, it was unrelated to his failure to receive Coumadin. Hunt testified that Gunter's lack of Coumadin his first weekend at Stokes County jail was due to her inability to procure

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the meaning of a prisoner's Eighth Amendment right, since few of those with supervisory and custodial functions are likely to be involved directly in patient care" and "§ 1983 liability is not available under the doctrine of *respondeat superior*." *Id.* at n. 12.

Coumadin from the pharmacy on short notice, not because of any missing paperwork.[8] And while the record does not show that Gunter received any discharge paperwork regarding his medication plan upon his release from Stokes County jail, such an event postdates Gunter's time in jail and therefore cannot be the "moving force" of any injuries sustained then.

There is also no evidence that the Counties adopted an official policy of not taking coagulation treatment seriously. Even assuming medical staff did not take Gunter's condition seriously in this case, those actions in isolation are not enough to show a County-wide policy of not taking these conditions and medications seriously. *See Est. of Jones v. City of Martinsburg*, 961 F.3d 661, 672 (4th Cir. 2020) ("Because *Monell* liability cannot be predicated on a theory of *respondeat superior*, a single incident is almost never enough to warrant municipal liability."). Gunter does not provide any evidence that failure to treat coagulation disorders seriously is widespread. Nor would it suffice to merely claim that the alleged medical error—taking several days to get medication to a patient—was somehow a "policy" or "custom" of the County. Yet even though Gunter never alleged that policy or custom, the Majority adopts it as the County's without any evidentiary

8. A separate and perhaps more fundamental flaw with Gunter's transfer paperwork argument is that the record actually contains the transfer form with Maldonado's prescribed Coumadin regimen prepared by Nurse Jackson. And Hunt confirmed that Stokes County jail should have received the transfer form when Gunter arrived. So it is implausible that the Counties have a no-transfer-paperwork policy in the first place.

support. We should not on appeal create a county policy that Gunter does not even allege existed. And we certainly should not do so when the alleged "policy" or "custom" is merely a restatement of the isolated medical error.

Without any plausible causal connection between any municipal policy and Gunter's injuries, I would affirm the grant of summary judgment as to the Counties.

B. Medical Malpractice

The second issue, Gunter's medical-malpractice claim, lies at the intersection of state and federal law. The medical-malpractice cause of action itself arises under state law. *See Fitzgerald v. Manning*, 679 F.2d 341, 346 (4th Cir. 1982); *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78, 58 S.Ct. 817, 82 L.Ed. 1188 (1938). So we look to North Carolina law for the substantive elements of his claim. In medical-malpractice actions, North Carolina requires the plaintiff to show: "(1) the applicable standard of care; (2) a breach of [the] standard of care by the defendant; (3) the injuries suffered by plaintiff were proximately caused by [the] breach; and (4) the damages result[ed] to the plaintiff." *Weatherford v. Glassman*, 129 N.C.App. 618, 500 S.E.2d 466, 468 (1998).

The sole issue on appeal is an aspect of the third element. Gunter attempted to prove proximate causation by proffering three pieces of evidence from two medical experts: the testimony of Dr. Yoder, the testimony of Dr.

Laber, and a follow-up declaration by Dr. Laber.[9] Though the element of proximate causation comes from North Carolina law, federal evidence law governs whether the expert evidence is admissible. *Owens by Owens v. Bourns, Inc.*, 766 F.2d 145, 149-50 (4th Cir. 1985). To be admissible, their opinions must be both "grounded in facts that justify" them and put forth with "a 'reasonable degree of medical certainty' that it was more likely that the defendant's [action] was the cause than any other cause." *Id.* (quoting *Fitzgerald*, 679 F.2d at 350); *see also* Fed. R. Evid. 702(a), (b), (d).[10] Without satisfying both requirements, the experts' statements will be excluded and cannot raise an issue for the jury. *Id.* at 150. The district court's evidentiary gatekeeping role thus exists even for state medical-malpractice claims.

The district court decided that all three pieces of evidence from Gunter's medical experts were inadmissible. Then, having excluded Gunter's evidence, the district court concluded that he had not presented a genuine dispute of material fact on the question of whether his medical treatment in jail proximately caused his blood clots. The

9. Gunter also alleges, as a separate, fourth evidentiary matter, that the district court abused its discretion by not permitting Gunter to depose Dr. Julie Sease, the Medical Defendants' expert witness. But Gunter's untimely motion to depose Dr. Sease, filed 11 days post-discovery, was reasonably denied. *See Spencer Med. Assocs. v. Comm'r*, 155 F.3d 268, 273 (4th Cir. 1998).

10. Though not the only requirements for admitting expert testimony, *see Daubert v. Merrell Dow Pharms.*, 509 U.S. 579, 592-94, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993); Fed. R. Evid. 702, they are the relevant two here.

district court's grant of summary judgment followed. The propriety of summary judgment thus depends on the upstream exclusion of Gunter's expert evidence. So we focus on the district court's evidentiary exclusion, which we review for abuse of discretion. *Wickersham v. Ford Motor Co.*, 997 F.3d 526, 531 (4th Cir. 2021).

I believe that all three pieces of evidence should have been considered. And once considered, the evidence creates a genuine dispute of material fact that precluded the grant of summary judgment. So like the Majority, I would reverse. But I would take a different path.

The evidentiary standard for expert testimony should be applied to the testimony at issue *before* the summary judgment standard. *See* Fed. R. Civ. P. 56(c)(2) (stating that evidence used to oppose summary judgment must be "presented in a form that that would be admissible in evidence"). So the district court first settles the universe of admissible facts, and then the district court decides the summary judgment motion on those facts.

The Majority instead immediately jumps to a summary judgment analysis, holding that the district court improperly weighed the evidence. This is the wrong approach. First, I would address the evidentiary standard, concluding that the district court incorrectly applied the "reasonable degree of medical certainty" evidentiary standard in excluding Dr. Yoder and Dr. Laber's testimony. Only then would I address the summary judgment standard, concluding that, based on the admissible testimony, a genuine dispute of material

fact exists regarding proximate cause. Following this path, I would conclude that the district court erred in granting summary judgment.

1. Dr. Yoder and Dr. Laber's Testimony

The district court excluded Dr. Yoder's and Dr. Laber's testimony on the same three grounds. First it believed that both doctors relied on an unjustified factual assumption that "Plaintiff had been properly anticoagulated prior to entering the jail" by consistently taking his medication. *Gunter*, 2021 WL 4255370, at *23. Second, the district court believed that the temporal proximity between the Medical Defendants' actions and Gunter's subsequent blood clots could not provide a justifiable factual basis for the doctors' causation conclusion. And third, the district court believed that both doctors' testimonies lacked specificity and were therefore "the product of conjecture," not reasonable medical certainty. *Id.* at *25. All three grounds are mistaken.

To begin with, on the first ground, it's not clear that either doctor's proximate-cause opinion relied on an assumption that Gunter took Coumadin consistently before entering jail.[11] But even if both doctors based their

11. During her deposition, Dr. Yoder was directly told to "assum[e] that [Gunter] wasn't compliant with his Coumadin dosages" prior to jail and was then asked whether she still believed that his jail stint proximately caused his injuries. J.A. 2605. She answered in the affirmative, stating that "it's the timing [of the jail stint] . . . that makes it suspect." J.A. 2607. And Dr. Laber was explicitly asked whether he attributed the proximate cause

proximate cause determination on the assumption that that Gunter consistently took his medication before his incarceration, they had justifiable—if disputed—factual bases to do so. Evidence, referenced by both doctors in their depositions, supports the assumption that Gunter consistently took his medication. Gunter filled a 30-day Coumadin prescription, written by Dr. Yoder, like clockwork on June 25, July 24, and August 23, 2012. That gave him adequate medication through September 22. The record does not show any further prescription refills, leaving a month-and-a-half gap before Gunter's arrest on November 6. But pharmacy records from a local Walgreens show that Gunter obtained multiple emergency Coumadin doses in September, October, and November, sufficient to cover his daily doses for a large portion of the gap. As for the rest of the gap, Gunter asserted that he had access to a stash of leftover Coumadin that he had accumulated over years and years of prescriptions.[12]

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of Gunter's blood clots to the Medical Defendants because he was "assuming that Mr. Gunter took his medication every day for the 30 days before he was incarcerated," and Dr. Laber responded, "No. I am not." J.A. 2759.

Admittedly, other aspects of the doctors' testimonies create some ambiguity as to their assumptions. Dr. Yoder's testimony in particular is potentially contradictory. "Q: Now, are you—are you assuming in your opinion that these missed dosages [in jail] caused his blood clot, that he took his prescribed dosages on all the other days in November that he's not incarcerated? A: That would be the assumption." J.A. 2604. This exchange occurs just before Dr. Yoder was told to assume Gunter did not consistently take his medication prior to incarceration.

12. Dr. Yoder's preexisting relationship with Gunter as his treating physician also supported a belief that Gunter told the

Taking Gunter's statements as true (as we must), there were ample reasons for Dr. Yoder and Dr. Laber to assume that Gunter was consistently taking his medication prior to his arrest.

On the second ground, I would find that the doctors could reasonably rely on temporal proximity as a factual basis to justify attributing the proximate cause of Gunter's injuries to his time in jail. Dr. Yoder stated that her proximate-cause determination was due to the "consistency of inconsistent dosing [in jail] and the timing of the missed doses and the presentation of symptoms." J.A. 2601. Dr. Laber said much the same, explaining that he attributed Gunter's injury to his time in jail "[b]ecause of the timing" of the two events. J.A. 2774. Regardless of their accuracy, which is not at issue on summary judgment, these were sensible answers.

The district court believed the doctors could not rely on temporal proximity because "the mere fact that two events correspond in time does not mean that the two

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truth about his medication compliance, particularly since Dr. Yoder had regularly checked Gunter's INR while treating him. And Dr. Laber, who specializes in hematology and treats patients with blood clots regularly, could draw upon his experience with patients who had mechanical heart valves installed when they were children to conclude that they consistently take their anticoagulation medication. *See* Fed. R. Evid. 703, Advisory Comm. Note ("[A] physician in his own practice bases his diagnosis on information from numerous sources and of considerable variety, including statements by patients and relatives. . . . [Such] validation, expertly performed and subject to cross-examination, ought to suffice for judicial purposes.").

necessarily are related in any causative fashion." *Gunter*, 2021 WL 4255370, at *24 (quoting *Westberry v. Gislaved Gummi AB*, 178 F.3d 257, 265 (4th Cir. 1999)). And it's true that mere temporal proximity between two events does not demand a causal relationship. After all, correlation is not causation. But that does not mean that the temporal proximity between two events is immaterial to medical causation.

A medically causal relationship can be established when temporal proximity exists between two events that in the abstract have an established causal relationship.[13] Consider a pair of examples. If I eat a burger, eat nothing else that day, and then a few hours later I'm hospitalized with a broken leg, it would be nonsensical to attest that my broken leg was caused by the burger. An expert would not be able to establish with a reasonable degree of medical certainty that the burger caused my broken leg; there is no causal relationship between eating food and breaking one's leg. But if I eat a burger, eat nothing else that day, and then a few hours later I'm hospitalized with *food poisoning*, suddenly it is quite reasonable to attest that my food poisoning was caused by the burger. An expert could justifiably testify with a reasonable degree of medical certainty that the burger caused the

13. In contrast, a causal relationship cannot be derived from temporal proximity when there is otherwise no apparent relationship between the two events. *See*, *e.g.*, *Rohrbough v. Wyeth Laboratories, Inc.*, 916 F.2d 970, 972-74 (4th Cir. 1990) (excluding medical-expert testimony grounded solely in temporal proximity where no causal relationship between the DTP vaccine and seizures was asserted).

food poisoning by explaining that food poisoning usually manifests itself within 24 hours. The difference, of course, is that the causal relationship between the two kinds of events—eating food and getting food poisoning—is known and obvious.

Here, it is known and obvious that a lack of anticoagulation medication in a patient with a mechanical heart valve has an established causal relationship with getting blood clots. On this point, abundant medical literature—as well as the parties—agree. Since that relationship is well-understood in the abstract, the temporal proximity between Gunter's jail stint and his blood clots gave Dr. Yoder and Dr. Laber a sufficient factual basis to causally connect the two events in this specific circumstance.

Turning to the third ground for excluding these experts' testimonies, the district court believed that their asserted medical opinions lacked the specificity required for medical certainty, describing both as "conjecture." *Id.* at *25. But this Court does not require "pinpoint" accuracy for a medical opinion to be asserted with a reasonable degree of medical certainty. *Large v. Bucyrus-Erie Co.*, 707 F.2d 94, 97 (4th Cir. 1983). True, Dr. Yoder could not specify the exact "percentage" that Gunter was "at fault" for his own injury, and Dr. Laber "could not quantify the increase in risk where a patient misses three consecutive days of Coumadin." *Gunter*, 2021 WL 4255370, at *24-25. But their inability to ascribe specific numbers to Gunter's situation is not fatal to their medical opinions—in fact, it is entirely expected. Determining the cause of a complex

medical event seldom admits of surgical exactitude. Giving any numerical answer—20%, 80%, 61.73%—would inherently have been an exercise in faux precision, and the doctors did not need to do so to assert their opinions with a reasonable degree of medical certainty. It was enough for them to express that they believed Gunter's jail stint was more likely than not the proximate cause of his blood clots.

There were no legally supported reasons to exclude Dr. Yoder and Dr. Laber's deposition testimonies. Their statements were grounded in facts that sufficiently justified their proximate cause determinations, and they asserted those determinations with a reasonable degree of medical certainty. By concluding otherwise, the district court abused its discretion.

2. Dr. Laber's Follow-Up Declaration

The district court also excluded Dr. Laber's follow-up declaration, which supplemented his deposition testimony, on the grounds that it "expressly contradict[ed] his findings in his deposition." *Id.* at *12. A court may strike an affidavit as creating a "sham issue of fact" when it contradicts earlier deposition testimony. *See Rohrbough*, 916 F.2d at 975. This prevents parties from manufacturing genuine issues of material fact through later-submitted documents. *Id.* at 976. While the district court's understanding of the sham affidavit rule is correct, it is mistaken to apply the rule to the Laber Declaration.

The district court understood the Laber Declaration to "put forth a *new theory* of proximate cause" for Gunter's injuries. *Gunter*, 2021 WL 4255370, at *12 (emphasis added). It believed that Dr. Laber stated in his deposition that Gunter's blood clots were caused by "a lack of anticoagulation generally," while it took the Laber Declaration to assert that the clots were caused by the "underdosing of medication" during Gunter's jail stint. *Id.* The district court found that the declaration's underdosing theory "[was] not explaining how lack of anticoagulation generally caused Plaintiff's injuries," but was instead a separate and contradictory theory. *Id.*

I see no contradiction; Dr. Laber's two theories appear to say the same thing. Even just taking both statements on their own, the "lack of anticoagulation" mentioned during the deposition most clearly refers to the lack of anticoagulation *medication.* Indeed, given that medication is the only method mentioned for anticoagulating Gunter's blood, it's unclear what else it could be referring to. And that fully aligns with the declaration's statement regarding the jail's "underdosing of *medication.*"

In context, it is even clearer that the phrase "lack of anticoagulation generally" referred to Gunter's insufficient medication during his time in jail. During his deposition, Dr. Laber made multiple comments explaining that he thought the Medical Defendants caused Gunter's blood clots by failing to give Gunter enough anticoagulation medication. He stated that "[Gunter] was supposed to get 7.5 milligrams, and he did not. And it took days until he could get the right dose. So some days were skipped. Some

days [were] underdosed. So—[] that is the responsibility of the jail." J.A. 2747. At another point, Dr. Laber ticked through the missed and low doses, identifying when the Medical Defendants failed to give Gunter medication. And Dr. Laber stated toward the end of the deposition that the Medical Defendants engaged in "inappropriate care" because "[Gunter] was not bridged [with Lovenox]. He was not tested immediately. He was not treated immediately." J.A. 2767. In light of these clarifications stating that Gunter's lack of anticoagulation was attributable to his lack of medication while incarcerated, the Laber Declaration did not put forth a new theory of proximate cause or otherwise contradicted his earlier testimony. So I agree with the Majority that the Laber Declaration should have been admitted.

3. Summary Judgment After Considering All Admissible Evidence

The district court granted summary judgment for Jackson and Maldonado after excluding the three pieces of evidence mentioned above. But once Dr. Yoder and Dr. Laber are understood to have proffered admissible testimony on the proximate cause of Gunter's injuries, a genuine dispute of material fact exists with each side's medical experts disagreeing with the other's.[14] When experts reasonably disagree about proximate cause, it is

14. This result is not affected by the district court's statements that the admission of the Laber Declaration would not change the district court's summary-judgment analysis. The deposition testimony alone is sufficient to create a genuine dispute of material fact. The declaration is simply confirmatory.

up to a jury to decide. *See Da Silva v. WakeMed*, 375 N.C. 1, 846 S.E.2d 634, 641 (2020). In the end, I agree with the Majority that the district court's grant of summary judgment to Jackson and Maldonado on Gunter's medical-malpractice claim must be reversed.

* * *

After being released from jail, David Gunter unfortunately suffered from two severe blood clots that required surgery. He subsequently sued a bevy of defendants who were involved in his medical treatment during his time in jail. The district court granted summary judgment to all defendants on all claims. But the district court never assessed Gunter's § 1983 claim under the proper legal standard. And the proximate cause of Gunter's blood clots is a matter of genuine dispute once all admissible medical-expert testimony is considered. I would thus vacate and remand the grant of summary judgment on the § 1983 claim as to Jackson and Maldonado, reverse the grant of summary judgment on the medical-malpractice claim as to Jackson and Maldonado, and affirm all other aspects of the district court's decisions.

APPENDIX B — MEMORANDUM OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA, FILED MARCH 15, 2021

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF
NORTH CAROLINA

1:16CV262

DAVID RAY GUNTER,

Plaintiff,

v.

SOUTHERN HEALTH PARTNERS, INC., *et al.*,

Defendants.

MEMORANDUM OPINION AND ORDER

OSTEEN, JR., District Judge

Presently before this court is a Motion for Summary Judgment filed by Defendants Davie County, Andy Stokes, Cameron Sloan, Stokes County, Mike Marshall, Eric Cone, Western Surety Company, and Ohio Casualty Company (collectively, the "Public Defendants"), (Doc. 125), to which Plaintiff has responded, (Doc. 138), and Public Defendants have replied, (Doc. 141).

Further, Plaintiff has filed a Surreply to Public Defendants' Motion for Summary Judgment. (Doc. 149.) Public Defendants have filed a Motion to Strike Plaintiff's Surreply, (Doc. 150), to which Plaintiff has responded, (Doc. 160), and Public Defendants have replied, (Doc. 162).

Finally, Public Defendants have filed a Motion for Expedited Ruling or, Alternatively, for Continuance of Trial or Enlargement of Time in which to Complete Final Pretrial Preparations. (Doc. 147.) Plaintiff did not file a reply. These motions are ripe for adjudication.

For the reasons stated herein, this court will grant Public Defendants' Motion for Summary Judgment. (Doc. 125.) This court will deny as moot Public Defendants' Motion for Expedited Ruling, (Doc. 147), and Motion to Strike, (Doc. 150).

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Parties

Plaintiff was incarcerated at the Davie County and Stokes County jails over fourteen consecutive days in November 2012. (Pub. Defs.' Mem. of Law. in Supp. of Mot. for Summ. J. ("Pub. Defs.' Br.") (Doc. 126) at 2.) Defendants Davie County and Stokes County are political subdivisions of the State of North Carolina. (Second Amended Complaint ("Second Am. Compl.") (Doc. 57) ¶¶ 6, 10.) Defendant Andy Stokes is Sheriff of Davie County. (*Id.* ¶ 8.) Defendant Sloan was appointed by Defendant Stokes to be responsible for operations of the Davie

County Local Confinement Facility. (*Id.* ¶ 9.) Defendant Marshall is Sheriff of Stokes County. (*Id.* ¶ 12.) Defendant Western Surety Company is the surety for the Sheriff's Bond required of Defendant Stokes. (*Id.* ¶ 17.) Defendant Ohio Casualty Company is surety for the Sheriff's Bond required of Defendant Marshall. (*Id.* ¶ 16.)

B. Procedural History

Plaintiff filed his original Complaint in Randolph County Superior Court of the State of North Carolina on November 25, 2015, and filed an Amended Complaint as of right on March 3, 2016. (Doc. 1-11; Doc. 26.) Public Defendants removed the case to this court on April 1, 2016. (Doc. 1 at 1.) Public Defendants answered Plaintiff's Amended Complaint on April 8, 2016. (Doc. 33.) After obtaining leave from this court, (Doc. 56), Plaintiff filed a Second Amended Complaint in this court on December 27, 2016, (Doc. 57). Public Defendants answered Plaintiff's Second Amended Complaint on January 5, 2017. (Doc. 59.) This court dismissed the Davie County Board of Commissioners and the Stokes County Board of Commissioners as defendants on March 22, 2017. (Doc. 70.) On November 2, 2018, Plaintiff voluntarily dismissed Wendell Sain, another defendant in this action. (Doc. 96.)

On July 6, 2020, Public Defendants filed the instant Motion and Memorandum for Summary Judgment, (Docs. 125, 126). Plaintiff filed a response on July 30, 2020, (Pl.'s Mem. of Law in Opp'n to Mot. for Summ. J. ("Pl.'s Resp.") (Doc. 138)), and Public Defendants filed a Reply on August 5, 2020, (Reply of Pub. Defendants in Supp. of Mot. for Summ. J. ("Pub. Defs.' Reply") (Doc. 141)).

Appendix B

On August 18, 2020, Public Defendants filed a Motion for Expedited Ruling or, Alternatively, for Continuance of Trial or Enlargement of Time in which to Complete Final Pretrial Preparations, (Doc. 147), and Memorandum, (Doc. 148). Plaintiff took no position as to the motion but advised Public Defendants and the court that Plaintiff intended to file a Surreply in opposition to Public Defendants' Motion for Summary Judgment. (Doc. 147 at 2.)

On August 24, 2020, Plaintiff filed a Surreply to Public Defendants' Motion for Summary Judgment. (Surreply Br. to Pub. Defs.' Mot. for Summ. J. ("Pl.'s Surreply") (Doc. 149).) Public Defendants filed a Motion to Strike Plaintiff's Surreply on August 25, 2020, (Doc. 150), and a Memorandum of Law in Support of the Motion to Strike, ("Pub. Defs.' Mot. to Strike Br.") (Doc. 151)). Plaintiff responded on September 15, 2020, (Doc. 160; Pl.'s Br. in Opp'n to Mot. to Strike ("Pl.'s Resp. to Mot. to Strike") (Doc. 161)), and Public Defendants replied on September 28, 2020, (Doc. 162).

On February 23, 2021, Public Defendants filed a Motion to Continue Trial, (Doc. 165), to which Plaintiff responded in opposition on March 1, 2021, (Doc. 168). On March 3, 2021, this court denied Public Defendants' motion as moot, as "[t]his court anticipate[d] issuing its ruling on the pending summary judgment motion[] in the near future." (Doc. 170 at 1.) This court ordered the parties to "stand down from the presently scheduled trial preparation deadlines," (*id.*), and ordered the Clerk to set a scheduling and status conference in this matter after April 1, 2021. (*Id.*) Moreover, this court ordered that the

trial not commence on April 5, 2021, as scheduled, but instead, for a date at least 30 days thereafter. (*Id.*)

C. Factual Background

The majority of facts are not disputed, and any material factual disputes will be specifically addressed in the relevant analysis. The facts described in this summary are taken in a light most favorable to Plaintiff. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

When Plaintiff was fifteen years old, he underwent surgery to install a mechanical heart valve. (Attachment 7—Excerpts from the Dep. of David Ray Gunter ("Gunter Dep.") (Doc. 126-9) at 4.)[1] He was placed on Warfarin, which is also known as Coumadin, a prescription blood thinner. (*Id.*)

Plaintiff was arrested in Forsyth County on November 6, 2012, (*id.* at 8), pursuant to a bench warrant for his failure to appear in court in Davie County, (*see id.* at 5-7). After spending the night in the Forsyth County Jail, Plaintiff was transferred to the Davie County Detention Center ("DCDC") on November 7, 2012. (*Id.* at 8-9.)

Plaintiff was screened upon his arrival at DCDC by Fran Jackson, (*id.* at 10), a nurse and the Davie

1. All citations in this Memorandum Opinion and Order to documents filed with the court refer to the page numbers located at the bottom right-hand corner of the documents as they appear on CM/ECF.

County Medical Team Administrator for Southern Health Partners, Inc. ("SHP")[2], the contracted medical care provider for both DCDC and the Stokes County Detention Center ("SCDC"). (Pl.'s Resp. (Doc. 138) Exs. 1, 2.) Plaintiff told Jackson that he would be released later that day and did not want her to contact his medical care providers. (Gunter Dep. (Doc. 126-9) at 14; Attachment 8—Excerpts from the Dep. of Francessia Robinson Jackson ("Jackson Dep.") (Doc. 126-10) at 4-6.) Plaintiff told Defendant Jackson that he had heart problems, a mechanical heart valve, that he took Coumadin, which she noted in his medical record. (Gunter Dep. (Doc. 126-9) at 11-14.) Plaintiff said he would have his medications brought to the jail if he was not released. (Jackson Dep. (Doc. 126-10) at 4.)

Plaintiff was not released on November 7, 2012, and on November 8, 2012, Jackson contacted Plaintiff's primary care physician and pharmacy to verify the information Plaintiff had provided about his medication and conditions. (*Id.* at 4, 6.) Defendant Jackson's notes in the medical records indicate that Plaintiff last filled his prescription for 1 mg of Coumadin on October 19, 2012, and that he did not have any refills remaining. (*Id.* at 4.) Defendant Jackson contacted Maplewood Family Practice, which Plaintiff had indicated was where his

2. Both parties address this fact as though it is not disputed, (*see* Pub. Defs.' Br. (Doc. 126) at 1, 4; Pl.'s Resp. (Doc. 138) at 4-5), although there is no citation to an affidavit, deposition, or other necessary evidentiary foundation as required by Rule 56. Nevertheless, in the absence of any dispute or objection, the court will treat the fact as undisputed.

primary care physician worked. (*Id.*) Maplewood Family Practice indicated that they had last seen Plaintiff in June 2012 for a sick visit, but they had last managed Plaintiff's INR levels in 2010. (*Id.*) Defendant Jackson's notes do not indicate that she was aware of any medical practitioner who had been managing Plaintiff's Coumadin medication between 2010 and 2012. (*Id.*)

On November 8, 2012, following her conversation with Plaintiff, Jackson consulted with Manuel Maldonado, (*id.* at 14), a Physician's Assistant with SHP who oversaw medical care at both DCDC and SCDC.[3] Maldonado ordered a prescription for 5 mg of Coumadin and for Plaintiff to have an INR check on November 13, 2012. (Attachment 10—Excerpts from the Dep. of Manuel F. Maldonado ("Maldonado Dep.") (Doc. 126-12) at 4-5.) Plaintiff received 5 mg of Coumadin each day on November 9 through November 14, 2012, but not on November 7 or 8.[4]

On Tuesday, November 13, 2012, Plaintiff underwent an INR test, which showed that Plaintiff's INR levels were sub-therapeutic at 1.07. (*Id.* at 6.) Maldonado ordered that Plaintiff's dosage be increased to 7.5 mg for November 15, November 17, and November 19, and remain at 5 mg on November 13, November 14, November 16, and November

3. As with certain other facts, the parties treat this fact as undisputed, (*see* Pub. Defs.' Br. (Doc. 126) at 5-6; Pl.'s Resp. (Doc. 138) at 3), and the court will, as well.

4. As with certain other facts, the parties treat this fact as undisputed, (*see* Pub. Defs.' Br. (Doc. 126) at 5; Pl.'s Resp. (Doc. 138) at 3), and the court will, as well.

18. (*Id.* at 6-7.) Jackson gave Plaintiff his medication according to this schedule on November 13-15.[5]

On November 16, 2012, a Friday afternoon, Plaintiff was transferred to SCDC. (Attachment 9—Excerpts from the Deposition of Sandra Hunt ("Hunt Dep.") (Doc. 126-11) at 4, 6, 8.) Prior to the transfer, Jackson completed a transfer form, summarizing Plaintiff's medical condition and indicating the medication plan. (Jackson Dep. (Doc. 126-10) at 7.) Plaintiff arrived at the jail after Sandra Hunt, a nurse and the Mechanical Team Administrator for SHP, had left for the weekend. (Hunt Dep. (Doc. 126-11) at 4-5.) In accordance with jail policy, a detention officer telephoned Hunt at home to notify her of Plaintiff's arrival and to answer her questions regarding Plaintiff's medication. (*Id.* at 5-6.) Hunt did not direct the SCDC detention staff to dispense any medication to Plaintiff, and without specific authorization from Hunt, SCDC staff were prohibited from dispensing medication to Plaintiff. (*Id.* at 9-10.) Plaintiff received Coumadin medication on November 19 and November 20. (*Id.* at 16.) Plaintiff was released from SCDC on Wednesday, November 21, 2012. (*Id.*)

Plaintiff did not interact with Defendants Stokes or Sloan while he was detained in the DCDC, or with Defendants Marshall or Cone while detained in the SCDC. (Gunter Dep. (Doc. 126-9) at 32-34, 39-40.) Defendant Stokes, Marshall, Cone, and Sloan did not have any

5. As with certain other facts, the parties treat this fact as undisputed, (*see* Pub. Defs.' Br. (Doc. 126) at 5; Pl.'s Resp. (Doc. 138) at 3), and the court will, as well.

personal knowledge of Plaintiff or any reason to believe that Plaintiff was not receiving adequate medical care. (Doc. 126-1 ¶¶ 7, 14; Doc. 126-2 ¶ 14; Doc. 126-3 ¶ 8; Doc. 126-4 ¶¶ 4-5.) Plaintiff did not submit any grievance forms or pursue any administrative remedies while he was detained in the DCDC. (Gunter Dep. (Doc. 126-9) at 35.) While he was detained in the SCDC, Plaintiff did not complain to anyone about his medical care or medication. (*Id.* at 36.) On November 19, 2012, Plaintiff submitted a single grievance form to the staff at SCDC, in which he wrote that he had a heart condition, and he would like to move to a lower bunk. (Gunter Dep. (Doc. 126-9) at 46-49.) Plaintiff's request was granted. (*Id.*)

On November 29, 2012, Plaintiff was admitted to Wake Forest Baptist Medical Center for a blood clot. (Doc. 124-17 at 2.) Plaintiff was discharged from the hospital on December 11, 2012. (*Id.* at 4.) At that time, the clot had been surgically removed, his organs were viable, and there was no medical need for a bowel resection. (*Id.* at 3-4.) On January 18, 2013, Plaintiff was diagnosed with a second blood clot, which required surgeons to resection part of Plaintiff's bowel. (Second Am. Compl. (Doc. 57) ¶¶ 118-19.)

II. STANDARD OF REVIEW

Summary judgment is appropriate when "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). This court's summary judgment inquiry is whether the evidence "is so one-sided that one party must prevail

as a matter of law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986). The moving party bears the initial burden of demonstrating "that there is an absence of evidence to support the nonmoving party's case." *Celotex Corp.*, 477 U.S. at 325. If the "moving party discharges its burden . . . , the nonmoving party must come forward with specific facts showing that there is a genuine issue for trial." *McLean v. Patten Cmtys., Inc.*, 332 F.3d 714, 718-19 (4th Cir. 2003) (citing *Matsushita Elec. Indus. Co.*, 475 U.S. at 586-87). Summary judgment should be granted "unless a reasonable jury could return a verdict in favor of the nonmoving party on the evidence presented." *Id.* at 719 (citing *Liberty Lobby*, 477 U.S. at 247-48).

When considering a motion for summary judgment, courts must "construe the evidence in the light most favorable to . . . the non-moving party. [Courts] do not weigh the evidence or make credibility determinations." *Wilson v. Prince George's Cnty.*, 893 F.3d 213, 218-19 (4th Cir. 2018) (internal citations omitted).

III. ANALYSIS

A. Public Defendants' Motion to Strike

As an initial matter, this court considers Public Defendants' Motion to Strike Plaintiff's Surreply Brief to Public Defendants' Motion for Summary Judgment. (Doc. 150; Pl.'s Surreply (Doc. 149).) Public Defendants argue that courts in this district "generally 'allow a party to file a surreply only when fairness dictates based on new arguments raised in the previous reply,'" (Pub. Defs.' Mot.

to Strike Br. (Doc. 151) at 4 (citing *DiPaulo v. Potter*, 733 F. Supp. 2d 666, 670 (M.D.N.C. 2010)). Public Defendants argue that Plaintiff "neither sought nor obtained leave from the Court to file his Surreply," nor has he "shown, nor even attempted to show, that based on new arguments raised in the previous reply, fairness dictates that he be allowed to file a surreply." (*Id.* (internal quotations omitted).)

Plaintiff argues that because Public Defendants' opening brief addresses municipal liability under the standard established in *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978) in a "cursory and superficial way, merely offering conclusory statements and essentially no analysis," (Pl.'s Resp. to Mot. to Strike (Doc. 161) at 2), Public Defendants' reply brief is the first time Public Defendants address Plaintiff's argument that "Public Defendants' policies, customs and practices caused or contributed to the failure to administer medication to plaintiff as prescribed." (*Id.* at 3.) Plaintiff argues that his Surreply Brief "primarily responds" to Public Defendants' "new" municipal liability arguments, and thus, the brief was "filed in harmony with the purposes recognized by this Court as the proper function of a Surreply Brief." (*Id.*)

This court disagrees. The Rules of Practice and Procedure of the United States District Court for the Middle District of North Carolina ("Local Rules") allow only for the filing of a motion, a single response to a motion, and a single reply brief, *see* LR7.3, including Motions for

Summary Judgment, *see* LR56.1(d).[6] Although courts in this district "[g]enerally allow a party to file a Surreply only when fairness dictates based on new arguments raised in the previous reply," *DiPaulo*, 733 F. Supp. 2d at 670, this court finds Plaintiff's arguments that his brief responds to new arguments raised in Public Defendants' Reply Brief unpersuasive.

First, contrary to Plaintiff's assertions, this court finds that Public Defendants did raise municipal liability issues under *Monell* in their opening brief. In a section of their Brief entitled, "The Moving Defendants are Entitled to Summary Judgment as to Any Section 1983 Municipal Liability Claims," Public Defendants stated the law regarding municipal liability and provided an application of the evidence in this matter to the law, including citing to *Monell*. (Pub. Defs.' Br. (Doc. 126) at 15-16.) This court finds that Public Defendants' argument was sufficient for them to meet their initial burden of demonstrating "that there is an absence of evidence to support the nonmoving party's case," *Celotex Corp.*, 477 U.S. at 325, and to provide notice to Plaintiff of their arguments.

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6. The Local Rules address Surreply Briefs in only one instance, stating that, "[i]f an evidentiary objection is raised by the moving party in its reply memorandum, the non-moving party *may* file a surreply memorandum pursuant to [Local Rule 7.6] within seven (7) days addressing only the evidentiary objection." LR7.6 (emphasis added). The parties agree that this exception does not apply in this matter. (*See* Pub. Defs.' Mot. to Strike Br. (Doc. 151); Pl.'s Resp. to Mot. to Strike (Doc. 161).)

Plaintiff may characterize this section of Public Defendants' Brief as a "cursory," "superficial," "conclusory," discussion of *Monell* and municipal liability with "essentially no analysis," (Pl.'s Resp. to Mot. to Strike (Doc. 161) at 2), but Plaintiff was able to respond, generating more than five pages of analysis describing law and evidence to support his position on municipal liability, (*see* Pl.'s Resp. (Doc. 138) at 5-11, 17). For this reason, this court finds that Plaintiff understood that Public Defendants had raised *Monell* and municipal liability in their opening brief, and thus, it was not a new argument when Public Defendants addressed it for a second time in their Reply Brief.

Moreover, this court finds that Public Defendants' discussion of municipal liability under *Monell* in their Reply Brief is consistent with the Local Rules, which permit a reply that "address[es] matters newly raised in [Plaintiff's] response." LR56.1(e). In a single paragraph in their Reply Brief, Public Defendants quote factual statements from Plaintiff's response and briefly offer an argument in reply. (*See* Pub. Defs.' Reply (Doc. 141) at 9.) This is the very purpose of a Reply under the Local Rules. *See* LR56.1(e). To allow Plaintiff to file a Surreply in this instance would be to open the door to an endless barrage of briefing any time a party exercises their right to file a Reply that conforms to the Local Rules.

Finally, as Plaintiff recognizes, Plaintiff's Surreply Brief does more than respond to any allegedly new municipal liability arguments raised in Public Defendants' Reply Brief. (*See* Pl.'s Resp. to Mot. to Strike (Doc. 161)

at 3 ("Plaintiff *primarily* responds to the new arguments relating to the *Monell* claims, *and* offers direct authority under North Carolina law. . . ." (emphasis added)).) In one section, Plaintiff argues why he believes his claims under N.C. Gen. Stat. § 162-55 are "viable." (Pl.'s Surreply (Doc. 149) at 7.) In another, Plaintiff cites two additional North Carolina state court cases in support of his argument that Public Defendants waived governmental immunity by contracting with SHP. (*Id.* at 8.) This court does not see a reason why Plaintiff could not have identified these additional authorities prior to submitting his Response, (*see* Pub. Defs.' Br. (Doc. 126) at 21-23), and Plaintiff does not offer one, (Pl.'s Surreply (Doc. 149) at 8; Pl.'s Resp. to Mot. to Strike (Doc. 161) at 3).[7] If Plaintiff became aware after filing his Response that he had not presented this court with complete case law supporting his position, he should have requested leave of this court to file additional briefing, rather than submitting a Surreply without permission.

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7. This court notes, as Public Defendants argue, (Pub. Defs.' Mot. to Strike Br. (Doc. 151) at 4), that Plaintiff's original deadline to file his Response was July 20, 2020, and he failed to comply. (*See* Text Order 03/23/2020.) On July 23, 2020, Plaintiff filed a Motion for Extension of Time to File Opposition Briefs to Defendants' Motions for Summary Judgment. (Doc. 130.) When this court granted Plaintiff's motion and allowed Plaintiff until July 30, 2020, to file his response, (Doc. 135 at 2), this court noted that Plaintiff had been aware of the deadline for responses to any motions for summary judgment since March 23, 2020, (*id.* at 1), and of Public Defendants' intent to file a Motion for Summary Judgment since June 25, 2020, (*id.* at 2). Given this notice, this court finds that Plaintiff had ample time in which to research these legal issues and identify these authorities.

For these reasons, this court does not find that "fairness dictates" that Plaintiff be permitted to file a Surreply. *See DiPaulo*, 733 F. Supp. 2d at 670. Nevertheless, this court has reviewed Plaintiff's Surreply and will decline to consider Plaintiff's arguments, as this court will grant Public Defendants' Motion for Summary Judgment on other grounds and need not reach the arguments raised in Plaintiff's Surreply. *See* discussion *infra* Section III.B. For this reason, this court will deny Public Defendants' Motion to Strike, (Doc. 150), as moot.

B. Public Defendants' Motion for Summary Judgment

Having considered Public Defendants' Motion to Strike, this court now considers Public Defendants' Motion for Summary Judgment. (Doc. 125.)

1. Plaintiff's Claim under 42 U.S.C. § 1983

Public Defendants first move for summary judgment on Plaintiff's claim under 42 U.S.C. § 1983. (Pub. Defs.' Br. (Doc. 126) at 9-16.)

a. Parties' Arguments

Public Defendants argue that Plaintiff's claims "are premised entirely upon his contention that SHP failed to provide him with proper medical care" for his mechanical heart valve, (*id.* at 10), a contention that Plaintiff does not contest, (*see* Pl.'s Resp. (Doc. 138) at 7-9). Public Defendants make several arguments for why

Plaintiff's claim fails. First, Public Defendants argue that no violation of Plaintiff's constitutional rights occurred, as "[m]ere negligence or medical malpractice does not rise to a constitutional violation." (Pub. Defs.' Br. (Doc. 126) at 10.) Second, they argue that the evidence does not show that Public Defendants acted with deliberate indifference to Plaintiff's constitutional rights. (*Id.* at 11.) Third, Public Defendants argue that they are entitled to qualified immunity. (*Id.* at 13.) Fourth, Public Defendants argue that Plaintiff failed to exhaust his administrative remedies before filing suit. (*Id.* at 13-14.) Fifth, Public Defendants argue that municipal liability bars Plaintiff's claims. (*Id.* at 15-16.)

In response, Plaintiff argues that "[d]eprivation of coumadin for a day or two is sufficient to create a substantial risk of harm for a patient with a mechanical heart valve," (Pl.'s Resp. (Doc. 138) at 7), such that Public Defendants violated Plaintiff's constitutional rights by failing to provide him with adequate Coumadin therapy, (*id.* at 7-9). Plaintiff also argues that Defendants Davie County and Stokes County are liable as municipalities because SHP's policies "resulted in [Plaintiff] not receiving doses of his critical anticoagulant medication," (*id.* at 10), and SHP established medical policy for the Counties and Sheriffs, (*id.* at 6). Moreover, Plaintiff argues that Defendants Stokes, Sloan, Marshall, and Cone are not entitled to qualified immunity because they have a nondelegable duty to provide medical care to detainees. (*See id.* at 12.) Finally, Plaintiff argues that he was not required to exhaust his administrative remedies. (*Id.* at 13-17.)

b. A Reasonable Jury could not find that a Constitutional Violation Occurred

This court finds that there is not a genuine dispute of material fact as to whether a violation of Plaintiff's constitutional rights occurred.

In *Estelle v. Gamble*, the Supreme Court held that prison officials violate the Eighth Amendment's prohibition against "cruel and unusual punishment" when they are deliberately indifferent to the serious medical needs of their prisoners. 429 U.S. 97, 104-05 (1976). "Pretrial detainees are entitled to at least the same protection under the Fourteenth Amendment as are convicted prisoners under the Eighth Amendment." *Young v. City of Mount Ranier*, 238 F.3d 567, 575 (4th Cir. 2001) (footnote omitted).

Pretrial detainees alleging they have been subjected to unconstitutional conditions of confinement must satisfy a two-pronged test: First, they must allege that the deprivation alleged was "objectively, sufficiently serious." *Scinto v. Stansberry*, 841 F.3d 219, 225 (4th Cir. 2016) (citing *Farmer v. Brennan*, 511 U.S. 825, 834 (1994) (internal quotations omitted)). "To be sufficiently serious, the deprivation must be extreme—meaning that it poses a serious or significant physical or emotional injury," *id.* (internal quotations omitted), and be "so obvious that even a lay person would easily recognize the necessity for a doctor's attention." *Iko v. Shreve*, 535 F.3d 225, 241 (4th Cir. 2008) (internal quotations omitted).

Second, pretrial detainees must show that prison officials acted with deliberate indifference, meaning that "the official knew of and disregarded an excessive risk to inmate health or safety." *Scinto*, 841 F.3d at 225 (citing *Farmer*, 511 U.S. at 837) (internal quotations, and modifications omitted). Prison officials must have "personal knowledge of and involvement in the alleged deprivation of [the prisoner's] rights in order to be liable," as "[t]he doctrine of *respondeat superior* has no application" under § 1983. *Wright v. Collins*, 766 F.2d 841, 849-50 (4th Cir. 1985) (internal quotations omitted). For example, in *Sosebee v. Murphy*, the Fourth Circuit found that prison guards were deliberately indifferent to an inmate's medical needs where the record was "replete with evidence from which a jury could rationally find that the guards on duty were aware of [the plaintiff's] serious condition and intentionally abstained from seeking medical help." 797 F.2d 179, 182 (4th Cir. 1986). This evidence included testimony that prison guards joked about the plaintiff's visibly poor physical state for several hours and threatened all prisoners with solitary confinement if they continued to request that the plaintiff receive medical assistance. *Id.*

Moreover, "an inadvertent failure to provide adequate medical care" does not satisfy the standard, and thus, mere negligence in diagnosis or treatment is insufficient. *Estelle*, 429 U.S. at 105-06; *see also Farmer*, 511 U.S. at 835 (holding that deliberate indifference requires a showing of "more than mere negligence," but "is satisfied by something less than acts or omissions for the very purpose of causing harm or with knowledge that harm

will result"). "Disagreements between an inmate and a physician over the inmate's proper medical care do not state a § 1983 claim unless exceptional circumstances are alleged." *Wright*, 766 F.2d at 849. Instead, "officials evince deliberate indifference by acting intentionally to delay or deny the prisoner access to adequate medical care or by ignoring an inmate's known serious medical needs." *Sharpe v. S.C. Dep't of Corr.*, 621 F. App'x 732, 733 (4th Cir. 2015) (citing *Estelle*, 429 U.S. at 104-05).

For example, in *Smith v. Smith*, 589 F.3d 736 (4th Cir. 2009), the Fourth Circuit held that a plaintiff had stated a claim for deliberate indifference where the complaint alleged that a nurse had destroyed the order which would have enabled a patient to receive necessary medical treatment. *Id.* at 739. By contrast, in *Wright*, the Fourth Circuit held that, where a doctor and others "provided [the inmate] with medical treatment on numerous occasions," the "allegation that [the inmate's] medical care was inadequate would, at most, constitute a claim of medical malpractice." 766 F.2d at 849.

Even if this court assumes, as Plaintiff argues, that "[d]eprivation of coumadin for a day or two is sufficient to create a substantial risk of harm for a patient with a mechanical heart valve" under the first prong of the analysis for constitutional claims, (*see* Pl.'s Resp. (Doc. 138) at 7), this court finds that, based on the evidence presented, Plaintiff's evidence does not create a genuine dispute of material fact that Public Defendants were deliberately indifferent to Plaintiff's medical needs.

First, this court finds that Plaintiff received medical treatment from SHP personnel while incarcerated at DCDC and SCDC. (*See* Pl.'s Resp. (Doc. 138) at 3-4.) Plaintiff was evaluated upon arrival at the DCDC, (*see id.* at 3), was prescribed Coumadin after he signed a medical authorization, (*see id.*; Pub. Defs.' Br. (Doc. 126) at 4-5), was transported off-site for medical testing, (Pub. Defs.' Br. (Doc. 126) at 5), and received Coumadin on seven of the nine days he was detained at the DCDC. (*Id.*) While at SCDC, Detention Center staff notified Nurse Hunt that Plaintiff had arrived. (*Id.* at 5-6; Pl.'s Resp. (Doc. 138) at 4.) When Nurse Hunt returned to work on Monday, she provided Coumadin to Plaintiff. (Pub. Defs.' Br. (Doc. 126) at 6.)

Unlike the guards in Sosebee, who "intentionally abstained from seeking medical help" for the inmate, 797 F.2d at 182, or the nurse in Smith, who deliberately prevented the patient from receiving medical treatment, 589 F.3d at 739, there is no evidence on the record that Public Defendants intended to prevent or delay Plaintiff from receiving medical treatment or that Public Defendants ignored his medical needs. That Plaintiff disagrees with the treatment he received or that a different course of treatment might have led to a better medical outcome, (*see* Pl.'s Resp. (Doc. 138) at 7-8), is not evidence of a subjective intent by Public Defendants to deprive Plaintiff of medical treatment, which is necessary to state a constitutional violation. "Medical malpractice does not become a constitutional violation merely because the victim is a prisoner." *Estelle*, 429 U.S. at 106.

Second, Plaintiff has not presented evidence that Defendants Sloan, Stokes, Marshall, or Cone had any personal knowledge or involvement regarding Plaintiff's detention or medical care. (*See* Pl.'s Resp. (Doc. 138) at 5-17.) Even if the medical staff were negligent or committed medical malpractice, Plaintiff's arguments that Public Defendants had a non-delegable duty to provide medical care to Plaintiff, (*id.* at 12-13), are, at best, an argument that Public Defendants are liable under a respondeat superior theory, which is not permitted in § 1983 claims, *Wright*, 766 F.2d at 850. In the absence of evidence that Public Defendants had personal knowledge of Plaintiff's need for medical treatment, *see id.*, a reasonable jury cannot find that Public Defendants "*knew of and disregarded* an excessive risk to inmate health or safety." *Scinto*, 841 F.3d at 225 (citing *Farmer*, 511 U.S. at 837) (internal quotations and modifications omitted) (emphasis added).

Finally, contrary to Plaintiff's assertions, (Pl's Resp. (Doc. 138) at 12), prison officials are entitled to rely on the opinions, judgment, and expertise of medical personnel in determining appropriate treatment for inmates because they may expose themselves to liability if they interfere with medical personnel's medical judgment. *See, e.g.*, *Shakka v. Smith*, 71 F.3d 162, 167 (4th Cir. 1995) (finding that, if prison officials had contradicted the medical professional's instructions, "they might have incurred liability for interfering with [the inmate's] treatment"); *Miltier v. Beorn*, 896 F.2d 848, 854-55 (4th Cir. 1990) (stating that supervisory prison officials are entitled to rely on professional judgment of trained medical personnel

and may be found to have been deliberately indifferent by intentionally interfering with a prisoner's medical treatment ordered by medical personnel); *Pickens v. Lewis*, No. 1:15-cv-275-FDW, 2018 WL 2187051, at *10 (W.D.N.C. May 11, 2018) (holding that prison officials without medical training are "not responsible for determining the course of treatment or for overruling the opinions of those professionals") (internal quotations and citations omitted); *Tate v. Alamance Cnty. Jail*, No. 1:06CV246, 2007 WL 2156319, at *2 (M.D.N.C. July 26, 2007) ("An officer fulfills his duty by notifying medical personnel. He is not personally responsible to provide medical care."). Plaintiff has not presented evidence that Public Defendants had the medical training necessary to make decisions regarding Plaintiff's care, (*see* Pl.'s Resp. (Doc. 138) at 4-11), and as such, this court does not find that Public Defendants should have understood whether Plaintiff's medical care was proper or that it would have been appropriate for Public Defendants to intervene in Plaintiff's medical care.

For these reasons, a reasonable jury could not find that Public Defendants violated Plaintiff's constitutional rights, and this court will grant Public Defendants' Motion for Summary Judgment as to Plaintiff's § 1983 claims.[8]

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8. Because questions of qualified immunity and municipal liability are relevant only where there is a constitutional violation, *see Pearson v. Callahan*, 555 U.S. 223, 236 (2009) (describing the two-part inquiry for qualified immunity claims); *Belcher v. Oliver*, 898 F.2d 32, 36 (4th Cir. 1990) (in a municipal liability case, holding that "[b]ecause it is clear that there was no constitutional violation we need not reach the question of whether a municipal

2. Plaintiff's State Law Claims

a. Injunction

Public Defendants move for summary judgment on Plaintiff's "Injunction" claim. (Pub. Defs.' Br. (Doc. 126) at 16.) Plaintiff "concedes that since [he] is no longer confined, he cannot benefit from an injunction" and therefore, he withdraws his claim. (Pl.'s Resp. (Doc. 138) at 17.) Accordingly, this court will grant Public Defendants' motion regarding Plaintiff's claim for an injunction.

b. Claim under N.C. Gen. Stat. § 162-55

Public Defendants also move for summary judgment as to Plaintiff's claim under N.C. Gen. Stat. § 162-55 against Defendants Stokes, Marshall, Sloan, and Cone. (Pub. Defs.' Br. (Doc. 126) at 17-18.) The statute states, "[i]f the keeper of a jail shall do, or cause to be done, any wrong or injury to the prisoners committed to his custody, contrary to law, he shall not only pay treble damages to the person injured, but shall be guilty of a Class 1 misdemeanor." N.C. Gen. Stat. § 162-55.

Citing *Letchworth v. Gay*, 874 F. Supp. 107 (E.D.N.C. 1995), Public Defendants argue that a claimant must establish criminal conduct on the part of the jail keeper in order to recover under the statute, and at worst, any

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policy was responsible for the officers' actions"), this court declines to consider these issues. This court will also decline to consider whether Plaintiff failed to exhaust his administrative remedies. (*See* Pub. Defs.' Br. (Doc. 126) at 13-14.)

failure by SHP's medical staff to provide Warfarin to Plaintiff "constitutes medical malpractice, *not* criminal conduct." (Pub. Defs.' Br. (Doc. 126) at 17.) Moreover, Public Defendants argue that Plaintiff's claim fails as a matter of law because "none of the moving defendants engaged in any criminal conduct, nor is there [] any evidence that the moving defendants intended to cause Plaintiff any harm." (*Id.* at 17-18 (footnote omitted).)

In response, Plaintiff argues that Public Defendants' citation of *Letchworth* is insufficient, as the facts of the case are "readily, and easily distinguishable from the claims Gunter makes in this cause." (Pl.'s Resp. (Doc. 138) at 18.) Plaintiff further argues that the *Letchworth* court concluded that the plaintiff had not established that the jailer had acted with the requisite intent for criminal negligence under the statute, and that "[n]umerous federal authorities have equated the federal threshold for § 1983 violations, deliberate indifference, with criminal negligence." (*Id.*) Plaintiff argues that he has "proven" in "other sections of [his] Brief" that Public Defendants acted with this intent. (*Id.*)

There are relatively few reported cases in which North Carolina or Federal courts have interpreted the language of N.C. Gen. Stat. § 162-55. *See Letchworth*, 874 F. Supp. at 108-09 (explaining that, as of 1995, "this statute has been cited in reported cases only three times" during the statute's "entire two hundred year history"). However, courts interpreting the statute have held that, to be liable for a violation of N.C. Gen. Stat. § 162-55, a jailer must have acted with "criminal negligence," meaning "such

recklessness or carelessness, resulting in injury or death, as imports a thoughtless disregard of consequences, or a heedless indifference to the safety and rights of others." *See, e.g.*, *Stockton v. Wake Cnty.*, 173 F. Supp. 3d 292, 319 (E.D.N.C. 2016) (internal quotations omitted); *Layman v. Alexander*, 294 F. Supp. 2d 784, 796 (W.D.N.C. 2003); *Letchworth*, 874 F. Supp. at 109. The level of intent for criminal negligence is similar to that for § 1983 actions for deliberate indifference to an inmate's medical needs. *Stockton*, 173 F. Supp. 3d at 319. ("Thus, while mere negligence is not sufficient to subject a defendant jailer to liability under § 162-55, reckless indifference to an inmate's safety, resulting in injury or death, is sufficient.") (internal quotations and citations omitted).

This court finds that the evidence does not create a genuine dispute of material fact that Public Defendants acted with this criminally negligent intent. As this court found in its analysis of Plaintiff's claims under 42 U.S.C. § 1983, SHP medical personnel's actions could be construed, at best, as negligence or medical malpractice, and Public Defendants did not have personal knowledge of Plaintiff or intend to injure him by depriving him of medical care. *See* discussion *supra* Section III.B.1. Because "mere negligence is not sufficient to subject a defendant jailer to liability under § 162-55," *Stockton*, 173 F. Supp. 3d at 319 (internal quotations omitted), a reasonable jury could not find based on the evidence that Public Defendants are liable for a violation of N.C. Gen. Stat. § 162-55. Accordingly, this court will grant Public Defendants' motion for summary judgment as to this claim.

c. Negligent Supervision

Public Defendants also move for summary judgment as to Plaintiff's negligent supervision claim. (Pub. Defs.' Br. (Doc. 126) at 18-19.)

North Carolina recognizes a claim of negligent supervision against an employer where the plaintiff establishes: (1) "the specific negligent act on which the action is founded"; (2) "incompetency, by inherent unfitness or previous specific acts of negligence, from which incompetency may be inferred"; (3) "either actual notice to the master of such unfitness or bad habits, or constructive notice, by showing that the master could have known the facts had he used ordinary care in oversight and supervision"; and (4) "that the injury complained of resulted from the incompetency proved." *Medlin v. Bass*, 327 N.C. 587, 591, 398 S.E.2d 460, 462 (1990) (internal citations, quotations, and emphasis omitted).

Public Defendants argue that this court should grant summary judgment in favor of Public Defendants because Plaintiff cannot establish the elements of a negligent supervision claim. (Pub. Defs.' Br. (Doc. 126) at 19.) Citing Plaintiff's deposition testimony, Public Defendants argue that all of Plaintiff's claim solely concerns conduct by SHP's medical personnel, and that "Plaintiff readily admits that no member of the detention staff at either the DCDC or the SCDC acted improperly in any way." (*Id.* at 18 (citing Gunter Dep. (Doc. 126-9) at 36, 39, 41-42).) Public Defendants argue that the SHP personnel were not employees of Public Defendants and that Plaintiff

cannot show evidence that any of the Public Defendants knew or had reason to know that the SHP personnel were incompetent. (*Id.* at 19.)

In response, Plaintiff argues that "[a] contractor has a duty to supervise its independent contractors," (Pl.'s Resp. (Doc. 138) at 18), and that "[e]ven taking as true that the Public Defendants had not experienced imcompetence [sic] of SHP in their facilities prior to Mr. Gunter's injuries," there are "hundreds of civil actions for malpractice and negligent medical care which have been filed against SHP throughout its operating areas" and these "constitute[] sufficient notice to the Public Defendants" of SHP personnel's negligence, (*id.* at 18-19). Plaintiff further argues that "relying blindly on SHP meant that sooner or later [negligence] would happen at [DCDC and SCDC] if they took no steps to monitor and supervise SHP, which they admit that they did not do." (*Id.* at 19.)

This court finds Plaintiff has not created a genuine dispute of material fact that Public Defendants are liable for negligent supervision. Plaintiff concedes that there were no known complaints or deficiencies that would have put Public Defendants on notice that SHP's medical personnel working at DCDC and SCDC were providing inadequate medical care to inmates housed at those facilities. (*See* Pl.'s Resp. (Doc. 138) at 18-19.) Under the elements of a negligent supervision claim, Plaintiff is required to present evidence that, "prior to the act, [Public Defendants] knew or had reason to know of [SHP medical personnel's] incompetency." *Hogan v. Forsyth Country Club Co.*, 79 N.C. App. 483, 495, 340 S.E.2d 116, 124 (1986); *see also Medlin*, 327 N.C. at 591, 398 S.E.2d at 462

(holding that a plaintiff must demonstrate "either actual notice to the master of such unfitness or bad habits, or constructive notice, by showing that the master could have known the facts had he used ordinary care in oversight and supervision"). By conceding that Public Defendants did not have notice of SHP personnel's incompetence, Plaintiff has not "come forward with specific facts showing that there is a genuine issue for trial." *McLean*, 332 F.3d at 718-19 (internal citations omitted).

Moreover, this court finds Plaintiff's argument that the "hundreds of civil actions for malpractice and negligent medical care which have been filed against SHP throughout its operating areas constitutes sufficient notice to the Public Defendants," (Pl.'s Resp. (Doc. 138) at 19), unconvincing, as Plaintiff offers no evidence that these claims exist or that Public Defendants were aware of them. (*See id.* at 18-19.) Unsupported allegations may not form the basis of a court's considerations at summary judgment. *Celotex Corp.*, 477 U.S. at 323-24 ("One of the principal purposes of the summary judgment rule is to isolate and dispose of factually unsupported claims. . . .").

Because Plaintiff has not presented evidence that Public Defendants knew or should have known that SHP personnel at SCDC or DCDC were negligent prior to Plaintiff's incarceration, this court finds that the evidence presented is "so one-sided" that Public Defendants "must prevail as a matter of law." *Anderson*, 477 U.S. at 252. Accordingly, this court will grant Public Defendants' Motion for Summary Judgment as to Plaintiff's negligent supervision claim.

d. False Imprisonment

Public Defendants move for summary judgment as to Plaintiff's claim of False Imprisonment. (Pub. Defs.' Br. (Doc. 126) at 19-20.) Plaintiff "concedes that the facts in this instance are not sufficiently strong to advocate" that Plaintiff's medical treatment "constitutes false imprisonment." (Pl.'s Resp. (Doc. 138) at 19.) Accordingly, this court will grant Public Defendants' motion regarding Plaintiff's claim of False Imprisonment.

e. Intentional Infliction of Emotional Distress

Public Defendants also move for summary judgment on Plaintiff's claim of Intentional Infliction of Emotional Distress. (Pub. Defs.' Br. (Doc. 126) at 20-21.) Plaintiff "concedes that in the absence of a diagnosis of mental or emotional condition, this claim cannot be supported." (Pl.'s Resp. (Doc. 138) at 19.) Accordingly, this court will grant Public Defendants' motion as to Plaintiff's claim of Intentional Infliction of Emotional Distress.

f. Claim under N.C. Gen. Stat. § 58-76-5

Public Defendants also move for summary judgment as to Plaintiff's claims against the sheriffs' official bonds of Defendants Stokes and Marshall under N.C. Gen. Stat. § 58-76-5. (Pub. Defs.' Br. (Doc. 126) at 24-25.) The statute provides plaintiffs with a statutory cause of action against sheriffs, in addition to a common law cause of action. N.C. Gen. Stat. § 58-76-5.

Public Defendants argue that, to raise a claim against a sheriff's official bond, Plaintiff must be able to prove every element of an underlying common law tort claim. (Pub. Defs.' Br. (Doc. 126) at 24-25.) Public Defendants argue that Plaintiff's state common law tort claims all fail as a matter of law, and thus, there is not an underlying state law claim which can serve as the basis for Plaintiff's claim under N.C. Gen. Stat. § 58-76-5. (*Id.* at 25.)

Plaintiff argues that the evidence on the record establishes Public Defendants' negligence, namely that Plaintiff failed to receive at least two doses of coumadin while housed at DCDC, and three doses of coumadin while housed at SCDC. (Pl.'s Resp. (Doc. 138) at 21.) Plaintiff argues that because Public Defendants "do not deny that Gunter required daily doses of coumadin because of his serious medical condition," and that Plaintiff's "expert witnesses establish that the failure to provide coumadin . . . caused the severe medical injuries that [Plaintiff] suffered shortly after his release," that Plaintiff has stated a claim for negligence. (*Id.* at 21-22.)

North Carolina courts have interpreted N.C. Gen. Stat. § 58-76-5 to create a statutory right of action, in addition to a common law cause of action, against a sheriff who either "intentionally engaged in misconduct and misbehavior while performing his custodial duties" or who "acted negligently in the performance of those duties, despite his duty to do otherwise." *Stafford v. Barker*, 129 N.C. App. 576, 585, 502 S.E.2d 1, 6 (1998). To prevail, a plaintiff must prove every element of a common law negligence claim, as well as every element of the claim brought

under N.C. Gen. Stat. § 58-76-5. *Id.*; *Sellers v. Rodriguez*, 149 N.C. App 619, 624, 561 S.E.2d 336, 339-40 (2002) (holding that the statute "only gives [the plaintiff] a right of action; it does not relieve [the plaintiff] of the burden of proving that defendants either intentionally engaged in neglect, misconduct or misbehavior while performing their custodial duties"). Where a plaintiff's underlying common law claim is dismissed for failure to assert that defendants acted negligently in the performance of their duties, a plaintiff's claim under N.C. Gen. Stat. § 58-76-5 should also be dismissed. *Sellers*, 149 N.C. App. at 625, 561 S.E.2d at 340 (granting defendant's motion for summary judgment on these grounds); *Stafford*, 129 N.C. App. at 585, 502 S.E.2d at 6 (same).

This court finds that Plaintiff has not asserted a common law negligence claim that could support Plaintiff's claim under N.C. Gen. Stat. § 58-76-5. Plaintiff's Second Amended Complaint does not allege a negligence claim against Public Defendants. (*See* Second Am. Compl. (Doc. 57).) Plaintiff's state law claims for injury by jailer pursuant to N.C. Gen. Stat. § 162-55 cannot serve as the underlying common law claim, as this court has found that Plaintiff has not created a genuine dispute of material fact as to these claims. *See* discussion *supra* Section III.B.2.b. Similarly, although Plaintiff may assert that there is evidence on the record that SHP medical personnel were negligent, (*see* Pl.'s Resp. (Doc. 138) at 21-22), this court has already found that a reasonable jury could not find on the evidence presented that Public Defendants were negligent in their supervision of SHP medical personnel, *see* discussion *supra* Section III.B.2.c. Accordingly,

Plaintiff's negligent supervision claim cannot serve as the underlying cause of action.

Finally, Plaintiff's citation of *Myers v. Bryant*, 188 N.C. App. 585, 655 S.E.2d 882 (2008) is inapposite and does not raise a common law negligence claim. (Pl.'s Resp. (Doc. 138) at 22.) The allegations against the officers in *Myers* concerned the officers' decisions to deny medical care to the inmate, 188 N.C. App. at 586, 655 S.E.2d at 884, whereas Plaintiff argues that SHP medical personnel denied medical care to Plaintiff, (Pl's Resp. (Doc. 138) at 21-22), and there is no evidence on the record that Public Defendants had any direct interaction or knowledge of Plaintiff while he was incarcerated in their facilities. (*See id.* at 4, 21-22; Pub. Defs.' Br. (Doc. 126) at 6.) For this reason, this court does not find Plaintiff's recitation of the evidence against SHP medical personnel to state a common law negligence claim against Public Defendants.

For these reasons, this court will grant Public Defendants' motion for summary judgment as to Plaintiff's claim under N.C. Gen. Stat. § 58-76-5.

g. Claims under the North Carolina Constitution

Public Defendants also move for summary judgment as to any claims "Plaintiff purports to assert . . . under the North Carolina Constitution," arguing that Plaintiff has adequate remedies at law available. (Pub. Defs.' Br. (Doc. 126) at 25 (footnote omitted).)

Public Defendants argue, (*id.* n.6), and this court agrees, that, at times, Plaintiff's Second Amended Complaint fails to identify the nature of Plaintiff's claims or to articulate the legal theory upon which they are based. For example, Plaintiff's Fifth Claim for Relief asserts a "Direct Claim Against Sheriffs and Jailers," (Second Am. Compl. (Doc. 57) ¶¶ 153-58), but Plaintiff does not identify whether the basis for that claim is grounded in statute or the North Carolina Constitution. (*Id.*) Similarly, the text of Plaintiff's Third Claim for Relief is generally titled as "Claims Against Davie County . . . Stokes County," but the body of the claim alleges that Defendants Davie County and Stokes County "refused to perform their oversight and policy-making duties to assure that plaintiff and other prisoners and detainees . . . receive adequate medical care, and have failed and refused to provide medical care to plaintiff and others as directed by . . . the North Carolina Constitution." (*Id.* ¶¶ 139-45.) Similarly, Plaintiff's Fourth Claim for Relief is generally titled as "Claims Against Defendant Sheriffs and their Deputies," yet the allegations contained therein assert that the conduct violated the North Carolina Constitution. (*Id.* ¶¶ 146-52.)

In response, Plaintiff states only that he "recognizes that North Carolina attempts to harmonize its Due Process jurisprudence with that of the United States Due Process jurisprudence" and that "[t]his issue is for preservation only." (Pl.'s Resp. (Doc. 138) at 23.)

Because this court finds that Public Defendants, as the moving party, have discharged their initial burden of demonstrating "that there is an absence of evidence to

support" any claims brought under the North Carolina Constitution, *Celotex Corp.*, 477 U.S. at 325, and Plaintiff has not "come forward with specific facts showing that there is a genuine issue for trial," *McLean*, 332 F.3d at 718-19, this court will grant summary judgment for Public Defendants as to Plaintiff's purported claims under the North Carolina Constitution.

h. Governmental and Public Officer's Immunity Defenses

In addition to their arguments as to liability for Plaintiff's state law claims, Public Defendants argue that Plaintiff's official capacity state law tort claims are barred by governmental immunity, (Pub. Defs.' Br. (Doc. 126) at 21-23), and public officer's immunity, (*id.* at 23-24). These are affirmative defenses which serve as a complete bar to liability. *Lambert v. Town of Sylva*, 259 N.C. App. 294, 301, 816 S.E.2d 187, 193 (2018) (discussing governmental immunity); *Mabrey v. Smith*, 144 N.C. App. 119, 124, 548 S.E.2d 183, 187 (2001) (discussing public officer immunity). Because this court will grant Public Defendants' Motion for Summary Judgment as to all state law claims on other grounds, this court need not consider whether these affirmative defenses apply.

C. Public Defendants' Motion for Expedited Ruling

Finally, this court considers Public Defendants' Motion for Expedited Ruling or, Alternatively, for Continuance of Trial or Enlargement of Time in which

to Complete Final Pretrial Preparations, (Doc. 147), and accompanying brief, (Doc. 148).

Public Defendants filed this motion on August 18, 2020, at which time this matter was set for trial on the October 5, 2020 calendar. (*Id.* at 2.) In their motion, Public Defendants request that this court rule on their Motion for Summary Judgment on or before September 4, 2020, which was the deadline for the parties to serve and file their pre-trial disclosures, (*id.* at 1-2), that this court continue the trial, (*id.* at 2), or that this court issue an order allowing the parties fourteen days from the date this court issued its ruling on the Motion for Summary Judgment to finalize pretrial preparations. (*Id.*)

On September 14, 2020, this court entered a text order directing the parties to stand down from trial preparation until further notice due to concerns presented by the ongoing COVID-19 pandemic about whether cases set for jury trial would be reached during the October Master Trial Calendar. (Text Order 09/14/2020.) This court held a status conference on September 22, 2020, in which counsel for the parties were present via telephone and in the courtroom. This court addressed options and considerations for proceeding to trial given the COVID-19 pandemic, and the parties did not object to continuing the trial to the April 2021 Master Calendar, subject to completing summary judgment in 2020. (Minute Entry 09/22/2020.) This matter is now set for trial commencing at least thirty days after April 5, 2021. (Doc. 170 at 1.)

Given the changes to the trial calendar, and this court's finding that Public Defendants' Motion for Summary Judgment will be granted as to all claims, *see* discussion *supra* Section III.B., this court finds that the urgent circumstances described in Public Defendants' Motion for Expedited Hearing, (Doc. 147), and brief, (Doc. 148), no longer exist. Accordingly, this court will deny Public Defendants' Motion for Expedited Hearing as moot.

IV. CONCLUSION

For the reasons set forth above,

IT IS HEREBY ORDERED that Public Defendants' Motion for Summary Judgment, (Doc. 125), is **GRANTED** as to all claims.

IT IS FURTHER ORDERED that Public Defendants' Motion for Expedited Hearing, (Doc. 147), and Motion to Strike, (Doc. 150), are **DENIED AS MOOT.**

This the 15th day of March, 2021.

/s/ William L. Osteen, Jr.
United States District Judge

APPENDIX C — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT, FILED DECEMBER 16, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-2183
(1:1 6-CV-00262-WO-JLW)

JUILIANA SWINK, ADMINISTRATRIX OF THE ESTATE OF DAVID RAY GUNTER

Plaintiff-Appellant

v.

SOUTHERN HEALTH PARTNERS INC.; JASON JUNKINS, MEDICAL DIRECTOR; DAVIE COUNTY; ANDY STOKES; CAMERON SLOAN; STOKES COUNTY; MIKE MARSHALL; ERIC CONE; SANDRA HUNT; FRAN JACKSON; WESTERN SURETY COMPANY; MANUEL MALDONADO; DOE DEFENDANTS; OHIO CASUALTY INSURANCE COMPANY

Defendants-Appellees

and

DR. MANDY K. COHEN, SECRETARY OF DHHS; DEPARTMENT OF HEALTH AND HUMAN SERVICES

Defendants

Appendix C

Filed: December 16, 2025

ORDER

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 40 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Gregory, Judge Richardson, and Judge Benjamin.

For the Court

/s/ Nwamaka Anowi, Clerk