No. 25-____

IN THE

Supreme Court of the United States

RANDALL WILLIAMS, PERSONAL REPRESENTATIVE OF THE ESTATES OF SHANICE R. DANTZLER-WILLIAMS AND MIRANDA R. DANTZLER-WILLIAMS; BETTY SIMMONS, PERSONAL REPRESENTATIVE OF THE ESTATE OF STEPHANIE DANTZLER,

Petitioners,

v.

CHARLESTON COUNTY SHERIFF'S OFFICE,

Respondent,

AND

CHARLESTON COUNTY; EMILY PELLETIER; CLINTON SACKS,

Defendants.

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

In *Hess v. Port Auth. Trans-Hudson Corp.*, 513 U.S. 30 (1994), the Court held that "the vulnerability of the State's purse is the most salient factor" in Eleventh Amendment arm-of-the-state immunity analysis. *Id.* at 48.

Respondent Charleston County Sheriffs' Office (CCSO) is a department of Charleston County, and the County budgets, funds, insures, and indemnifies CCSO solely with County funds. The State of South Carolina is legally prohibited from paying any judgments against any county office, including CCSO. Nonetheless, the decision below held that CCSO was an arm of the state, yet did not consider this 'most salient factor' in its analysis.

The questions presented are:

1. When the State is not liable for a judgment against an entity, what weight should this fact be given in the arm-of-the-state immunity analysis of that entity.
2. Whether the Charleston County Sheriff's Office is an arm of the State of South Carolina for sovereign immunity purposes.

PARTIES TO THE PROCEEDING BELOW

Petitioners are plaintiff-appellants Randall Williams, Personal Representative of the Estates of Shanice R. Dantzler-Williams and Miranda R. Dantzler-Williams and Betty Simmons, Personal Representative of the Estate of Stephanie Dantzler below.

Respondent Charleston County Sheriff's Office is a defendant-appellee below. Defendants Charleston County, Emily Pelletier, and Clinton Sacks, are defendants below in the district court, but did not participate in the proceedings in the court of appeals.

STATEMENT OF RELATED PROCEEDINGS

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii).

United States District Court (S.C.):

> *Williams, et al. v. Pelletier, et al.* 2:23-cv-02149-DCN (memorandum opinion granting motion to dismiss issued Dec. 13, 2023; order certifying judgment per Fed. R. Civ. P. 54(b) Mar. 12, 2024).

United States Court of Appeals (4th Cir.):

> *Randall Williams, et al. v. Charleston County Sheriff's Office, et al.* No. 24-1238, (per curiam opinion affirming, decided February 25, 2025; en banc denial Sept. 2, 2025)

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PETITION FOR WRIT OF CERTIORARI

Petitioners Randall Williams, Personal Representative of the Estates of Shanice R. Dantzler-Williams and Miranda R. Dantzler-Williams, and Betty Simmons, Personal Representative of the Estate of Stephanie Dantzler, respectfully petition the Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS AND ORDERS BELOW

The Fourth Circuit's per curiam unpublished decision is reported at 2025 U.S. App. LEXIS 4341 and reproduced at Pet. App. 2a-6a.

The district court's order granting Respondent's motion to dismiss on Eleventh Amendment immunity grounds is at 2023 U.S. Dist. LEXIS 221804 and reproduced at Pet. App. 26a-43a. The district court's subsequent order entering judgment under Fed. R. Civ. P. 54(b) and granting a stay of proceedings is at 2024 U.S. Dist. LEXIS 43220 and reproduced at Pet. App. 7a-25a.

JURISDICTION

The Fourth Circuit Court of Appeals entered judgment on September 2, 2025 with its denial of en banc review that is reported at 2025 U.S. App. LEXIS 22614 and reproduced at Pet. App. 1a.

This Court has jurisdiction to review the Fourth Circuit's decision under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Eleventh Amendment of the Constitution, 42 U.S.C. § 1983, and excerpts of the South Carolina Constitution and South Carolina Code of Laws are reproduced at Pet. App. 44a-52a.

INTRODUCTION

The questions presented in this case are already pending before the Court and reflect the same dispute over core Eleventh Amendment principles in arm-of-the-state immunity analyses that are dividing the circuits.[1]

Critically, the circuits are interpreting and applying *Hess* with widening variability and an array of different arm-of-the-state tests and factors have developed where the weight (or non-weight) given to the State's liability for a judgment against that entity vary widely from circuit to circuit. *See*, Sec. I, *infra*; *See*, *Kohn v. State Bar of California*, 87 F.4th 1021, 1027 n.5 (9th Cir. 2023) (listing and describing each circuit's arm-of-the-state immunity analyses, factors considered, and relative weighting, or non-weighting, of the State treasury liability factor).

That is what is at the heart of the case before this Court—Respondent Charleston County Sheriff's Office, (CCSO) as its name states, is a department of Charleston County—nothing more.[2]

The South Carolina Constitution and South Carolina Code of Laws establish: (a) the State of South Carolina treasury is prohibited from paying the judgment against, or insurance premiums of, CCSO; (b) CCSO is one of many departments of Charleston County that is

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[1] This Court recently granted certiorari to decide "Whether the New Jersey Transit Corporation is an arm of the State of New Jersey for interstate sovereign immunity purposes." *Galette v. N.J. Transit Corp.,* 145 S. Ct. 2870, 2870 (2025); *NJ Transit Corp. v. Colt*, 145 S. Ct. 2871, 2871 (2025). *See*, Sec IV *infra*.

[2] *Mt. Healthy City School District Board of Education v. Doyle*, 429 U.S. 274, 280 (1977). (Arm-of-the-state status "does not extend to counties and similar municipal corporations.")

budgeted, funded, insured, and indemnified solely by County funds; (c) the County alone purchases liability insurance for all of its departments and the risk for its automobiles used by CCSO are ultimately held by American Southern Insurance (NASDAQ:AAME). CA4 JA7-192.

These inarguable points of law and public facts should have easily ended any inquiry that the Charleston County Sheriff's Office is entitled to assert the State's sovereign right of Eleventh Amendment immunity. "Where, as here, the States are neither legally nor practically obligated to pay the entity's debts, the Eleventh Amendment's core concern is not implicated." *Hess*, 513 U.S. at 31.

Illustrative of the widening circuit split and disconnect with this Court's precedent, the Fourth Circuit here widened that split further and disregarded *Hess* by not giving any consideration to the fact that the State of South Carolina has no liability for a judgment against CCSO, yet determined CCSO was an arm of the state—embracing an arm-of-the-state analysis in circuit precedent, *Cromer v. Brown*, 88 F.3d 1315 (4th Cir. 1996) that also did not give any consideration to the absence of State liability for paying a judgment against a County Sheriff (Office). *Id.* at 1332. Pet. App. 5a-6a. *See*, Sec. III, *infra*.

This case is of exceptional importance and will allow this Court the opportunity to bring much-needed clarity to Eleventh Amendment immunity jurisprudence by restoring core constitutional principles and giving clear direction to the circuit courts—State liability for judgments against an entity must be considered in arm-of-the-state immunity analysis and given most important weight. *Hess*, 513 U.S. at 31.

More importantly as to Petitioners, it will end Respondent's patently unjust claim of the State's sovereign immunity that protects only a county treasury, and a publicly traded insurer, while ensuring the absence of civil rights accountability.

STATEMENT OF THE CASE

1. Respondent Charleston County Sheriff's Office, as its name states, is a department of Charleston County. Counties in South Carolina are financially and operationally structured as a single political subdivision with subordinate departments for the purposes of budgeting and accounting and the State is not involved. S.C. Code Ann. §§ 4-9-30; 4-9-140; CA4 JA15, 49-53.

CCSO is funded, budgeted, insured, (via a publicly traded private insurer) and indemnified solely by the County using County funds—the same as all the other departments of Charleston County. S.C. Code Ann. §§ 4-1-80; 4-9-30; 4-9-140; CA4 JA15, 51-57.[3]

The South Carolina State Constitution and Code of Laws expressly forbid the State treasury from paying the judgments against, or insurance premiums of, any County office, including CCSO. See S.C. Const. art. X §§ 7(a); 7(b); 8; S.C. Code Ann. §§ 1-11-140(A); 1-11-445(A); 15-78-30; 15-78-140.

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[3] See Finance Department, County of Charleston, South Carolina, *County of Charleston, South Carolina, Annual Comprehensive Financial Report for the Fiscal Year Ended June 30, 2022*, 46-47, 112 (2022), https://https://www.charlestoncounty.gov/departments/finance/files/FY22Acfr/ACFR2022.pdf?v=608 (In 2022, Charleston County budgeted, funded, and expended roughly $76.6 million county dollars appropriated to the operations of its CCSO including the purchase of insurance for its personnel and vehicles).

Even when Charleston County elects to purchase liability insurance from the State Insurance Reserve Fund ("IRF") to cover its departments, including CCSO, there are no State funds liable for the claims, as the IRF is a self-insurance mechanism, collecting premiums, making investments, and paying claims only from the fund and can only use these funds (and reinsurance) to pay claims. S.C. Code Ann. §§ 1-11-140(A); 15-78-150(b). CA4 JA53-58, 78-140.

South Carolina law requires Counties to budget and fund the operations of the County, including their County Sheriff's Offices. S.C. Code Ann. §§ 4-9-30; 4-9-140; 4-1-80. CA4 JA15, 49-53.

County Sheriff's Offices lack the authority to levy taxes or establish their own budget and must submit their proposed budget for approval and vote to their respective County Councils—not the State of South Carolina. S.C. Code Ann.§§ 4-9-30; 4-9-140. CA4 JA15, 49-53.

The State of South Carolina has no involvement in the County's budget process—the State provides no input, approval, veto power, or funding of any County budget. S.C. Code Ann. §§ 4-9-30; 4-9-140. CA4 JA15, 49-53; *See supra* note 3.

County Sheriff's Offices in South Carolina, hold no title to any land, property, buildings, vehicles, or otherwise, and all County assets used by them are titled, owned, and furnished to them by the County, not the State. S.C. Code Ann. §§ 4-9-30; 4-9-140; 4-1-80; CA4 JA15, 49-53; *See supra* note 3.

Additionally, Charleston County Council and its citizens, by statute, control who exercises law enforcement authority in their county (Respondent or County

Police) with that authority, including the power to arrest, limited by law to within the county and adjacent county only. S.C. Code Ann. §§ 4-9-33; 17-13-40; 23-13-60; 23-13-70. CA4 JA 49-51, 59-60.

The Code of Laws of South Carolina refer to County Sheriffs as County Officers, (*See e.g.,* S.C. Code Sec. Ann. § 4-11-10 *et seq.*) who are paid from their County treasury, along with the Deputies. CA4 JA15, 49-51, 59-60; *See supra* note 3.

2. On Mother's Day, May 8, 2022, defendant Emily Pellitier of Respondent Charleston County Sheriff's Office ("CCSO") was racing with another Deputy to a non-emergency, using neither lights nor sirens, and went through a stop sign at 82 mph, (37 mph over the limit) crossed two lanes of traffic, and struck and killed mother Stephanie, and her two daughters, Shanice and Miranda. CA4 JA30-34.[4]

Petitioners, the Personal Representatives of the deceased, thereafter brought state and federal claims, including 42 U.S.C. § 1983 municipal liability claims ("*Monell* Claims") against Respondent CCSO. CA4 JA16-43. CCSO moved to dismiss Petitioners' *Monell* Claims asserting Eleventh Amendment immunity as an arm of the state. CA4 JA7-12.

The District Court granted CCSO's motion to dismiss finding arm-of-the-state immunity based on *stare decisis* considerations that the court was bound to follow *Cromer*. Pet. App. 26a-43a.

Petitioners had argued to the District Court that *Cromer* was not binding precedent in accord with this Court's arm-of-the-state jurisprudence, especially,

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[4] On April 21, 2025, Defendant Pelletier was found guilty of 3 counts of reckless homicide.

Hess, as the *Cromer* court's analysis (1) did not consider the fact that there was no State liability for a judgment against any County Sheriff's Office; and (2) did not know that the State of South Carolina was legally prohibited from paying any insurance premiums of any county office.[5] *Cromer*, 88 F.3d. at 1332.

Petitioners thereafter moved to certify the issue for immediate appeal per Fed. R. Civ. P. 54(b) reiterating these defects in *Cromer*. CA4 JA297-304.

In granting certification, the District Court found the argument "well-taken" that the *Cromer* panel did not consider, and was unaware of, the absence of State liability from any judgment from *Monell* Claims brought against another County Sheriff (Office) in South Carolina, nor the absence of State treasury payment of its insurance premiums. Pet. App. 24a n.9. Petitioners immediately appealed.

3. In its brief unpublished per curiam opinion, the Fourth Circuit took a unique approach to arm-of-the-state immunity and did not mention or consider the absence of state liability for a judgment against CCSO (or the absence of any state treasury impacts) as required by *Hess*, did not weigh any factors, and

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[5] "[I]t is unclear whether the state treasury would be partially liable for a judgment in this case." *Cromer*, 88 F.3d at 1332. The *Cromer* court was concerned that there was "state treasury liability" if the State was paying the insurance premiums of the County Sheriff (Office) at issue. Unfortunately, the *Cromer* panel was unaware that state law prohibited that arrangement, and was also unaware the State was likewise prohibited from paying the judgment of any entity other than a state entity, including the Sheriff at issue. See S.C. Const. art. X, §§ 7(a); 7(b); 8; S.C. Code Ann. §§ 1-11-140(A); 1-11-445(A); 15-78-30; 15-78-140.

declined to conduct any formal analysis of CCSO. Pet. App. 2a-6a.

Instead, the Fourth Court embraced the unique one-sentence arm-of-the-state analysis in *Cromer* wherein that panel: (1) did not consider, and was unaware of, the absence of State liability for a judgment; and (2) did not itself conduct any formal analysis or weighing of factors as was required by both *Hess* and then circuit precedent.[6]

The *Cromer* panel's arm-of-the-state analysis:

> Judgments against the Greenville County Sheriff are paid by the South Carolina State Insurance Reserve Fund. However, we are unable to discern from the record in this case whether the state pays any premiums on behalf of Greenville County. (citations omitted). Compare *Bockes v. Fields*, 999 F.2d 788, 790 (4th. Cir. 1993) (record demonstrated that state paid 80 percent of premiums on behalf of the subscribing agencies). Thus, it is unclear whether the state treasury would be partially liable for a judgment in this case. However, we have considered the remaining factors relevant to the immunity analysis and conclude that, in his official capacity, Sheriff Brown is an arm of the state. *See Gulledge v. Smart*, 691 F. Supp. 947 (D.S.C. 1988) (holding

[6] *See Ram Ditta ex rel. Ram Ditta v. Maryland Nat'l Cap. Plan. Comm'n*, 822 F.2d 456, 457-60 (4th Cir. 1987) (requiring the *Cromer* panel to consider to determine an arm of the state: (1) state treasury liability (most important factor); (2) autonomy from the State; (3) local or statewide concerns; and (4) state law treatment, but factors 2, 3, and 4 could overcome factor 1).

> that South Carolina sheriffs are state officials for Eleventh Amendment purposes), *aff'd mem.*, 878 F.2d 379 (4th Cir. 1989).

Cromer, 88 F.3d. at 1332.[7]

As to Sheriffs and the CCSO, neither the Fourth Circuit below, nor the precedent the court relied upon, *Cromer* (and *Gulledge*) (1) ever considered that there was no State treasury liability from claims brought against a County Sheriff, despite it being the 'most salient consideration' per *Hess*; and (2) none of those Fourth Circuit courts conducted the complete *Ram Ditta* arm-of-state analysis, nor weighing of its factors, as set forth in circuit precedent. Pet. App. 5a-6a; *Cromer*, 88 F.3d at 1332.

The court of appeals also denied Petitioners' Motion for Judicial Notice as moot.[8] Pet. App. 5a-6a.

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[7] The *Gulledge* district court decision, cited within *Cromer*, also did not consider the absence of the State's liability for a judgment in its arm-of-the-state analysis either. See *Gulledge*, 691 F.Supp at 951-52.

[8] Petitioners also submitted a Motion for Judicial Notice and to Supplement the Appendix with audited governmental financial statements and public documents that provided additional conclusive factual proof that Petitioners' claims against Respondent (and its publicly traded insurer) did not implicate the State treasury in any way. CA4 ECF Dkt. 20.

REASONS FOR GRANTING THE WRIT

I. CIRCUITS ARE DEEPLY DIVIDED IN THEIR TESTS USED TO DETERMINE IF AN ENTITY IS AN ARM OF THE STATE, ESPECIALLY AS TO THE WEIGHT GIVEN TO THE ABSENCE OF STATE TREASURY LIABILITY FOR JUDGMENTS.

This Court has never espoused a uniform test for circuits to follow in determining whether an entity is an arm of the state for purposes of sovereign immunity. *Kohn v. State Bar of Cal.*, 87 F.4th 1021, 1026 (9th Cir. 2023) quoting *Fresenius Med. Care Cardiovascular Res., Inc. v. Puerto Rico & Caribbean Cardiovascular Ctr. Corp*., 322 F.3d 56, 61 (1st Cir. 2003) ("The arm of the state analytical doctrine has moved freely ... applying common principles.").

Despite not espousing a universal test, what this Court has made very clear is that a State's legal liability to satisfy a judgment from its treasury must be considered and is of "considerable importance" at a minimum in determining arm-of-the-state status. *Regents of the University of California v. Doe*, 519 U.S. 425, 430 (1997); *Hess*, 513 U.S. at 45-51; *Edelman v. Jordan*, 415 U.S. 651, 663 (1974); *Ford Motor Company v. Department of Treasury of Indiana*, 323 U.S. 459, 464 (1945).

As to this appeal, and the Fourth Circuit's decision and analysis, this Court has never said the absence of the State's legal liability for a judgment could be ignored in Eleventh Amendment immunity analysis, demonstrating just how far arm-of-the-state immunity determinations have strayed from these core constitutional principles upheld in *Hess* and *Regents*.

There are arguably nine unique approaches in the circuits (listed below) as to arm-of-the-state immunity

analysis. The Fourth Circuit's approach in this case as to County Sheriff's Offices is indicative of the problem as the circuits are now mired in conflict as (1) they are no longer giving state liability for satisfying a judgment primacy in their analysis; and (2) are instead, considering whatever factors they deem relevant and then weighing them with whatever weighting each deems appropriate:

> The District of Columbia, Third, and Ninth circuits all use, generally, the same three-factor test of arm of the state immunity: (1) the state intent in creating the entity; (2) state control over the entity; and (3) effects on the state treasury, with each factor given equal weighting. *Puerto Rico Ports Auth. v. Fed. Mar. Comm'n,* 531 F.3d 868, 874 (D.C. Cir. 2008); *Bowers v. Nat'l Collegiate Athletic Ass'n*, 475 F.3d 524, 546 (3d Cir. 2007); *Kohn v. State Bar of Cal.*, 87 F.4th 1021, 1031 (9th Cir. 2023).
>
> The First Circuit only gives the 'state responsibility for the judgment' factor primary consideration if its first seven-factor test that encompasses other state treasury concerns is inconclusive.[9]

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[9] *Fresenius Med. Care Cardiovascular Res., Inc. v. Puerto Rico & the Caribbean Cardiovascular Ctr. Corp.*, 322 F.3d 56, 62 fn.6, 68 (1st Cir. 2003) (A two-stage analysis that asks first, whether the state has "clearly structured the entity to share its sovereignty" considering a non-exclusive list of seven areas of inquiry: (1) whether the agency has the funding power to enable it to satisfy judgments without direct state participation or guarantees; (2) whether the agency's function is governmental or proprietary; (3) whether the agency is separately incorporated; (4) whether the state exerts control over the agency, and if so, to what extent; (5) whether the agency has the power to sue, be sued, and enter contracts in its own name and right; (6) whether the agency's property is subject to state taxation; and (7) whether the state has immunized itself from responsibility for the agency's acts or

The Second Circuit only gives the factor of state treasury responsibility for a judgment consideration if its first six-factor test that encompasses other state treasury concerns is inconclusive.[10]

The Fourth Circuit (at issue in this appeal) has a four-factor test of immunity with the impact on the state treasury stated as the 'most important factor' however, that factor is weighed against the other factors and can be ignored and/or overcome as was done in *Cromer* and the case before the Court.[11]

The Fifth Circuit uses a six-factor test that encompasses various state treasury concerns with who funds the entity as a factor of "considerable importance" and

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omissions, and if this test is inconclusive, then, a two-factor test considering (1) extent of state responsibility for judgment and (2) state supervision of the entity, with state treasury impact as the "most important factor").

[10] *Leitner v. Westchester Cmty. Coll.,* 779 F.3d 130, 135 (2d Cir. 2015) (A two-stage analysis: (1) how the entity is referred to in the documents that created it; (2) how the governing members of the entity are appointed; (3) how the entity is funded; (4) whether the entity's function is traditionally one of local or state government; (5) whether the state has a veto power over the entity's actions; and (6) whether the entity's obligations are binding upon the state with each factor equally weighted. If this test is inconclusive, then, a two-factor test considering (1) extent of state responsibility for judgment and (2) state supervision of the entity with state treasury impact the "most important" factor).

[11] *Ram Ditta ex rel. Ram Ditta v. Maryland Nat'l Cap. Park & Plan Comm'n,* 822 F.2d 456, 457-58 (4th Cir. 1987); *Maryland Stadium Auth. v. Ellerbe Becket Inc.,* 407 F.3d 255, 260-61 (4th Cir. 2005) (modifying the second *Ram Ditta* factor) ((1) effect on state treasury of judgment against entity; (2) entity's independence from the state considering (a) control of budgeting; (b) who appoints its directors, and (c) state veto power over the entity's decision; (3) entity's involvement in statewide concerns; and (4) state-law treatment of entity).

within that factor, if the State is directly liable for the judgment, becomes the most important factor.[12]

The Sixth Circuit uses a four-factor test with the factor of state treasury responsibility for a judgment as the "foremost factor" but not determinative, and even if the State is not liable for the judgment, the entity may still be an arm of the state.[13]

The Seventh Circuit uses two different tests: public entities are subjected to a two-factor test: (1) the extent of the entity's financial autonomy from the state; and (2) the general legal status of the entity with the entity's financial autonomy as the most important factor. *Burrus v. State Lottery Comm'n of Ind.*, 546 F.3d 417, 420 (7th Cir. 2008); and hybrid public-private entities face a three-factor test: (1) the extent of state control; (2) whether the entity was acting as the state's agent; and (3) state treasury impact while "highly

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[12] *Phillips v. Elec. Reliability Council of Tex., Inc. (In re Entrust Energy, Inc.)*, 101 F.4th 369, 383-84 (5th Cir. 2024) ("(1) whether the state statutes and case law view the entity as an arm of the state; (2) the source of the entity's funding (separately considering direct state liability for any judgment as most important); (3) the entity's degree of local autonomy; (4) whether the entity is concerned primarily with local, as opposed to statewide, problems; (5) whether the entity has the authority to sue and be sued in its own name; and (6) whether it has the right to hold and use property).

[13] *Waskul v. Washtenaw Cnty. Cmty. Mental Health*, 979 F.3d 426, 443 (6th Cir. 2020) ("(1) the [s]tate's potential liability for a judgment against the entity; (2) the language by which state statutes and state courts refer to the entity and the degree of state control and veto power over the entity's actions; (3) whether state or local officials appoint the board members of the entity; and (4) whether the entity's functions fall within the traditional purview of state or local government").

relevant" is less important. *Takle v. Univ. of Wis. Hosp. & Clinics Auth.*, 402 F.3d 768, 772 (7th Cir. 2005).

The Eighth Circuit uses a three-factor test with the state liability for the judgment as the 'most salient factor.'[14]

The Tenth Circuit, *Good v. Dept. of Educ.*, 121 F. 4th 772, 792-795 (10th Cir. 2024), Case No. 24-992, certiorari petition docketed March 12, 2025, first uses a four-factor test of equal weights, that encompasses state treasury concerns, then, if that test is inconclusive, the twin aims of protecting a state's dignitary interests and the state treasury are equally considered.[15]

The Eleventh Circuit stands alone in its approach as there is a four-factor test with various state treasury concerns of equal weighting, but may establish arm-of-the-state immunity even if there is no treasury impact, and then adds a function inquiry thereafter asking for whom is the authority exercised.[16]

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[14] *Thomas v. St. Louis Bd. of Police Comm'rs*, 447 F.3d 1082, 1084 (8th Cir. 2006) (the provisions of state law that define the agency's character, the agency's degree of autonomy and control over its own affairs, and whether a money judgment against the agency will be paid with state funds).

[15] Clarifying a two-step process that first considers four equally weighted factors: (1) the characterization of the entity under state law; (2) the entity's autonomy; (3) the entity's finances and financial independence; and (4) whether the entity is concerned with state or local affairs; then, if the factors are not conclusive, considers the twin aims of protecting a state's dignitary interests and protecting a state treasury. *Good at* 792-795.

[16] *Pellitteri v. Prine,* 776 F.3d 777, 781-82 (11th Cir. 2015) (The four factors are: (1) how the state law defines the entity; (2) the degree of state control over the entity; and (3) where the entity derives its funds; and (4) who is responsible for judgments

The pronouncements in *Hess* and *Regents* are both clear as to the primary consideration that needs to be given to the impact on the state treasury from any judgment in any arm-of-the-state immunity analysis. *Hess*, 513 U.S. at 31; *Regents*, 519 U.S. at 430-31.

Nonetheless, on the question of the weight given to the 'State liability for paying the judgment of an entity' and its weight in that circuit's arm-of-the-state immunity analysis, there is a wide variance and disconnect from this Court's precedent:

- no consideration initially, and then the least important consideration in the Seventh Circuit;
- an equally weighted consideration as other factors in the District of Columbia, Third, Ninth, and Eleventh circuits with the Eleventh Circuit then adding a separate function inquiry;
- an important factor in the Eighth Circuit;
- the most important factor, in the Second, Fourth, Fifth, and Sixth circuits but not determinative, and can be overcome; and
- the determinative factor if the entity structure is inconclusive in the First Circuit.

The circuit split here from this Court's precedent, and circuit-to-circuit, is profound, multi-faceted, and involves each circuit not only defining state treasury considerations differently, but also weighting them vastly differently in their analyses.

As shown by the Fourth Circuit's decision at issue, and the above, there is a troubling lack of uniformity amongst the federal courts in analyzing a core

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against the entity, but then adds an additional function-by-function inquiry as to whom the authority is being exercised for).

constitutional question. Without the Court's review, this disparity will only persist and grow.

II. RECONCILING THE CIRCUIT SPLIT IS AN IMPORTANT AND RECURRING QUESTION.

A. The Circuit Split Is Widening as Circuits Are Varying the Weight of State Treasury Liability In Their Analyses.

Recently, in late 2023, the Ninth Circuit sitting en banc in *Kohn*, changed its arm-of-the-state immunity analysis to move away from considering 'the impact on the State treasury from a judgment' as the primary consideration in its analysis, citing to *Hess* by stating:

> "Therefore, we read *Hess* for what it says: that state dignity and solvency are the Eleventh Amendment's "twin reasons for being" and entitled to equal weight." *Kohn,* 87 F.4th at 1028 (citing *Hess*, 513 U.S. at 47, 52).

Prior to *Kohn,* the Ninth Circuit had previously used a five-factor analysis of Eleventh Amendment immunity that placed the greatest weight on whether a money judgment would be satisfied out of state funds. *Kohn*, 87 F. 4th at 1027.

In rejecting 'liability of the state treasury' as the most important factor, the *Kohn* court also noted that post-*Hess* and post-*Regents*, the District of Columbia, First, and Third circuits had made the express decisions to move away from "an excessive emphasis on the treasury factor" in their respective circuit's arm-of-the-state immunity analysis. *Id.* at 1027 fn.6.[17]

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[17] "*See*, *e.g., Bowers,* 475 F.3d at 546 ("[W]e can no longer ascribe primacy to the first factor" of "whether payment comes

The *Kohn* court then adopted the three-factor equal weighting test of arm-of-the-state immunity used in the D.C. Circuit. *Id.* at 1030.

The trend noted in *Kohn* should be of critical concern to this Court as circuits are now diverging even further apart and deeper into their own interpretations of *Hess* in arm-of-the-state immunity tests without any new precedent from this Court.

Representing the most extreme departure from *Hess*, in the case before the Court—where the Fourth Circuit held that it did not need to even consider the absence of State liability for the judgment in evaluating the arm-of-the-state claim of CCSO—demonstrates just how far the circuit split has become and is becoming.

This trend undermines Eleventh Amendment immunity jurisprudence, is inconsistent with this Court's precedent, and betrays the historical and core constitutional principles of the Eleventh Amendment. This Court should grant this petition to stabilize and harmonize Eleventh Amendment immunity jurisprudence.

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from the state treasury." (citation omitted)); *Fresenius Med. Care Cardiovascular Res., Inc.,* 322 F.3d at 65-66 (holding that, "[i]n the aftermath of *Hess,*" "potential payment from the state treasury is the most critical factor" *only if* "there is an ambiguity about the direction in which the *structural analysis* points" (emphasis added)); *cf. Duke v. Grady Mun. Schs.,* 127 F.3d 927, 978 (10th Cir. 1997) ("[E]ven after *Hess* and [*Regents*], which emphasized the primacy of the impact on the state treasury as a factor in determining immunity, other factors remain relevant")." *Kohn*, 87 F.4th at 1027 fn.6

B. Similar Entities Are The Subject Of Inconsistent Immunity Determinations Between the Circuits

1. Presently, there is widening variability, unpredictability, and even direct circuit conflict in arm-of-the-state jurisprudence such that the exact same entity enjoys immunity in one circuit, but not in another, depending solely upon which circuit decided the question. *Compare Puerto Rico Ports Auth. v. Fed. Mar. Comm'n (Ports Auth.)*, 531 F.3d 868 (D.C. Cir. 2008) (PRPA qualified for sovereign immunity), *with Grajales v. Puerto Rico Ports Auth*., 831 F.3d 11, 30 (1st Cir. 2016) (PRPA not entitled to sovereign immunity).

Pending consideration by this Court, state loan servicers also have conflicting determinations. *See Good v. Dept. of Educ.*, 121 F. 4th 772, 792-795 (10th Cir. 2024), Case No. 24-992, certiorari petition docketed March 12, 2025 (circuit split over Missouri's Higher Education Authority as an arm-of-the-state).

Other loan servicers are also subject to disparate immunity status conclusions. *Compare Skidmore v. Access Grp., Inc.*, 149 F. Supp. 3d 807 (E.D. Mich. 2015) (entity is an arm of the state), *with Gaffney v. Ky. Higher Educ. Student Loan Corp*., No. 3:15-cv-01441, 2016 WL 3688934 (M.D. Tenn. July 12, 2016) (entity is not an arm of the state); *Berg v. Access Grp., Inc.*, No. 13-5980, 2014 WL 4812331 (E.D. Pa. Sept. 26, 2014) (same).

There is also conflicting treatment of other state loan agencies. *See, e.g*., *U.S. ex rel. Oberg v. Pa. Higher Educ. Assistance Agency*, 804 F.3d 646 (CA4 2015), *cert. denied,* 580 U.S. 1047 (Jan. 9, 2017) (Pennsylvania Higher Education Assistance Agency is not an arm of the state); *Owens v. TransUnion, LLC*, No. 4:20-CV-

665-SDJ, 2021 WL 4501595 (E.D. Tex. Sept. 30, 2021) (Michigan Guaranty Agency is an arm of the state).

As to School Districts, *compare*, *Duke v. Grady Mun. Sch.*, 127 F.3d 972, 978-81 (10th Cir. 1997) (New Mexico school district and their governing boards are not arms of the state emphasizing the State is not legally liable for a judgement against a school district) *with Sato v. Orange Cnty. Dep't of Ed.*, 861 F.3d 923, 929-30 (9th Cir. 2017) (California school district is an arm of the state due to the per pupil funding formula as the source of funds ultimately making the state liable for judgments against a school district despite not being primarily liable) *with Black v. North Panola School District,* 461 F.3d 584, 597 (5th Cir. 2006) (School district not an arm of the state as any judgment against a school district would be paid through the Tort Claims Fund and excess liability insurance and would not burden the State).[18]

2. Post *Hess*, even entities are being recharacterized within circuits (and a State) and former immunity determinations are now being reconsidered. *Compare*, *Keene v. Prine*, 477 F. App'x. 575, 579 (11th Cir. 2012) (Georgia County Sheriff was not an arm of the state entitled to Eleventh Amendment immunity due to the absence of state treasury impact) *with Pellitteri v.*

[18] These cases as to school boards and their funding demonstrate the wide range of meanings in state treasury considerations by the circuits that are not looking directly at state liability for judgments in their analyses. *See, also*, *Green v. Clarendon Cnty. Sch. Dist. Three*, 923 F. Supp. 829, 849-50 (D.S.C. 1996), (a school district in South Carolina tried to claim arm-of-the-state status because it purchased its insurance from the state Insurance Reserve Fund—a position rejected by the court as the fund places no state treasury funds at risk and is funded only from premiums).

Prine, 776 F.3d 777, 783 (11th Cir. 2015) (In conflict with *Hess*, Georgia County Sheriff is an arm of the State despite the state treasury not paying any judgment because the other factors weighed in favor of immunity).

3. As to this appeal, this inconsistency as to the application of *Hess*, also as to Sheriffs, is now within the Fourth Circuit as to nearly identical County Sheriffs' Offices. *Compare*, *Harter v. Vernon*, 101 F.3d 334, 340-43 (4th Cir. N.C. 1996) (County Sheriffs' Office in N.C. is not an arm of the state as there is no liability of the State for any judgment and there are primarily county concerns with near complete autonomy from State) with *Cromer,* 88 F.3d at 1332 (County Sheriffs' Office in South Carolina is an arm of the state even though there is no liability of the State for any judgment and there are primarily county concerns with near complete autonomy from State).

There is even logically irreconcilable inconsistency within all the county offices in the same state that despite being structured, funded, and operated as the same county departments, in each of South Carolina's forty-six counties, they are treated the opposite of each other for Eleventh Amendment immunity purposes: *Compare Lawson v. Gault,* 828 F.3d 239 (4th Cir. 2016) (County Clerk's Office in South Carolina is not entitled to arm-of-the-state immunity) *with Cromer*, 88 F.3d at 1332 (County Sheriff's Office in South Carolina is entitled to arm-of-the-state immunity).

This case presents exceptionally important questions, and an opportunity, for this Court to bring much-needed clarity and harmony to a growing body of arm-of-the-state status determinations that have become unmoored from this Court's pronouncement in *Hess* and the core constitutional principles of the Eleventh Amendment.

III. THE DECISION BELOW IS WRONG—THE CHARLESTON COUNTY SHERIFF'S OFFICE IS NOT ENTITLED TO ASSERT THE STATE'S SOVEREIGN IMMUNITY.

A. The Charleston County Sheriff's Office Is a County Office

In the exhaustive record presented by Petitioners to the court of appeals below, and recited previously: (1) the State has no liability for CCSO's judgments; (2) no State funds are implicated in the CCSO or Petitioner's claims; (3) CCSO is a county department; (4) the Charleston County Council has considerable and near exclusive control, including over who exercises the county's law enforcement authority (CCSO or a county police department); (5) that law enforcement authority including the power to arrest, is limited to within the County and adjacent county only; and (6) the State has remote connections to CCSO, but CCSO and Charleston County operate with near complete autonomy from the State as the State has no budgetary, supervisory, or veto power over a County Sheriff's Office. *See*, discussion *supra* text and notes 4-6.

B. The Charleston County Sheriff's Office Is Not an Arm of The State.

The Eleventh Amendment's passage in 1788, occurred quickly in reaction to a South Carolina resident who successfully sued the State of Georgia for seizing his property during the Revolutionary War. See *Chisholm v. Georgia*, 2 US (2 Dall) 419 (1793). Congress then recognized the core principle of federalism that would be defeated if States did not retain control over their

treasuries and within two years Congress passed, and the States ratified, the Eleventh Amendment.[19]

Beginning with *Lincoln County v. Lunning*, 133 U.S. 529, 530 (1890), this Court has recognized that municipalities do not possess these State rights and thereafter, took a state treasury centered approach in denying them arm-of-state immunity due to the absence of impact on the state treasury.

Consistent with the history and purpose of the Eleventh Amendment, CCSO is a county department—and a county is not a State. *Lake Country Ests., Inc. v. Tahoe Reg'l Plan. Agency*, 440 U.S. 391, 401 (1979) "Political subdivisions such as counties and municipalities are not entitled to Eleventh Amendment immunity even though such entities exercise a "slice of state power"; *Mt. Healthy City Sch. Dist. v. Doyle*, 429 U.S. 274, 280 (1977) (arm-of-the-state status does "not extend to counties and similar municipal corporations."); *Edelman v. Jordan*, 415 U.S. 651, 667 n.2 (1974) citing *Lincoln*, 133 U.S. at 530 (1890) ("a county does not occupy the same position as a State for Eleventh Amendment purposes").

The decision below ignored the absence of any State liability to satisfy a judgment against CCSO, disregarding long-standing critical Eleventh Amendment immunity precedent that holds that the state liability for a judgment (1) must be considered; and (2) is at least a considerably important factor in arm-of-the-state analysis. *Regents*, 519 U.S. at 430 (1997); *Hess*, 513 U.S. at 45-51 (1994)*; Edelman*, 415

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[19] An account of the history of the passage of the Eleventh Amendment can be found in John Gibbons, *The Eleventh Amendment and State Sovereign Immunity: A Reinterpretation*, 83 Colum. L. Rev. 1889, 1926-33 (1983).

U.S. at 663 (1974); *Ford Motor Co. v. Dept. of Treas. of Indiana*, 323 U.S. 459, 464 (1945).

This Court has never embraced the Fourth Circuit's view here that 'state treasury liability for an entity can be ignored,' as that would defeat the core purpose of the Eleventh Amendment. This is precisely the reason why the District Court Judge certified his own order of dismissal for appellate review as the court recognized there can't be valid Eleventh Amendment immunity analysis if a court doesn't consider the absence of state treasury for a judgment. Pet. App. 24a n.9.

All the above demonstrates that the decision of the Fourth Circuit is wrong and CCSO is not entitled to claim the State's sovereign immunity as an arm of the state.

The court of appeals distorted the Eleventh Amendment far beyond its limits in granting arm-of-the-state-immunity to CCSO—a county department—and demonstrates that circuits are undertaking analyses and immunity determinations that are desperately in need of this Court's clarity.

IV. THE PETITION SHOULD BE HELD PENDING THE *NJ TRANSIT CASES* GIVEN THE SIMILARITY OF QUESTIONS.

This Court recently granted certiorari to decide "Whether the New Jersey Transit Corporation is an arm of the State of New Jersey for interstate sovereign immunity purposes." *Galette v. New Jersey Transit Corp.*, 145 S. Ct. 2870, 2870 (2025); *New Jersey Transit Corp. v. Colt*, 145 S. Ct. 2871, 2871 (2025) (consolidated) (oral argument scheduled for Jan. 24, 2026) (hereinafter collectively "*NJ Transit Cases*")

At the heart of the conflict in the *NJ Transit Cases* are competing lower court considerations and interpretations of the weight to be given to the financial impact of a judgment on the state treasury in arm-of-the-state immunity determinations. *Compare Galette v. New Jersey Transit Corp*., 332 A.3d 776, 787-88 (2025) (Pennsylvania Supreme Court holding that New Jersey's classification description was the dispositive factor in finding arm-of-the-state status) *with Colt v. New Jersey Transit Corp.*, 43 N.Y.3d 463, 476 (2024) (New York Court of Appeals gave the absence of New Jersey's liability for the judgment enhanced weighting in accord with *Hess*, and denied arm-of-the-state status).

As this case presents near identical arm-of-the-state immunity analysis considerations, Petitioners respectfully suggest that the Court hold this case pending the outcome of the *NJ Transit Cases* to promote consistency and judicial efficiency.

The existence of a profound and growing circuit split over the appropriate weight to be given state liability for judgments against an entity in arm-of-the-state immunity analysis is at the heart of this appeal—the same considerations this Court is poised to address in the New Jersey Transit cases. The Fourth Circuit's erroneous decision to ignore this consideration as to CCSO's spurious arm-of-the-state immunity claim, violated this Court's long-standing precedent, core Eleventh Amendment principles, and provides further support in favor of certiorari review.

CONCLUSION

The petition for a writ of certiorari should be granted. At minimum, the petition should be held for the *NJ Transit Cases*, and then granted and disposed of as appropriate in light of this Court's decision in those cases.

Respectfully submitted,

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December 1, 2025

APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

[Filed: September 2, 2025]

No. 24-1238
(2:23-cv-02149-DCN)

RANDALL WILLIAMS, Personal Representative of the Estates of Shanice R. Dantzler-Williams and Miranda R. Dantzler-Williams; BETTY SIMMONS, Personal Representative of the Estate of Stephanie Dantzler

Plaintiffs - Appellants

v.

CHARLESTON COUNTY SHERIFF'S OFFICE

Defendant - Appellee

and

CHARLESTON COUNTY; EMILY PELLETIER; CLINTON SACKS

Defendants

ORDER

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 40. The court denies the petition for rehearing en banc.

For the Court

/s/ Nwamaka Anowi, Clerk

APPENDIX B

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-1238

RANDALL WILLIAMS, Personal Representative of the Estates of Shanice R. Dantzler-Williams and Miranda R. Dantzler-Williams; BETTY SIMMONS, Personal Representative of the Estate of Stephanie Dantzler,

Plaintiffs - Appellants,

v.

CHARLESTON COUNTY SHERIFF'S OFFICE,

Defendant - Appellee,

and

CHARLESTON COUNTY; EMILY PELLETIER; CLINTON SACKS,

Defendants.

Appeal from the United States District Court for the District of South Carolina at Charleston.
David C. Norton, U.S. District Court Judge.
(2:23-cv-02149-DCN)

Submitted: November 14, 2024
Decided: February 25, 2025

Before HARRIS, HEYTENS, and BERNER,
Circuit Judges.

Affirmed by unpublished per curiam opinion.

ON BRIEF: Richard A. Hricik, LAW OFFICES OF RICHARD A. HRICIK, PA, Mount Pleasant, South Carolina; Clifford Bush, III, THE LAW OFFICE OF CLIFFORD BUSH, III, LLC, Beaufort, South Carolina, for Appellants. Elloree A. Ganes, Evan M. Sobocinski, Deborah Harrison Sheffield, HOOD LAW FIRM, LLC, Charleston, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

This appeal arises from a heartbreaking accident. On Mother's Day in 2022, Stephanie Dantzler and her adult daughters, Shanice and Miranda Dantzler-Williams, were driving in Charleston County, South Carolina. Nearby, two Charleston County sheriffs, Deputies Emily Pelletier and Clinton Sacks, were responding to a non-emergency report of a stalled vehicle. Without activating her car's emergency lights or sirens, Pelletier sped through a stop sign, crossed multiple lanes of traffic, and struck the women's car. Dantzler and her daughters suffered catastrophic injuries, and died shortly after.

The plaintiffs in this action are Randall Williams, representing the estate of his daughters Shanice

and Miranda, and Betty Simmons, representing the estate of her daughter Dantzler. In their complaint, the plaintiffs brought multiple claims against Deputies Pelletier and Sacks, in both their individual and official capacities; Charleston County; and the Charleston County Sheriff's Office. This appeal involves only some of the plaintiffs' claims against one of the defendants, the Charleston County Sheriff's Office.[1]

The County Sheriff's Office filed a motion to dismiss the plaintiffs' "*Monell*" claims against it, in which the plaintiffs sought to hold the Sheriff's Office liable under 42 U.S.C. § 1983 as a municipality. *See Monell v. Dep't of Soc. Servs. of City of N.Y.*, 436 U.S. 658 (1978). The Sheriff's Office invoked the state's Eleventh Amendment immunity from suit, contending that is not a municipality but instead an "arm of the state" for purposes of the Eleventh Amendment.

The district court agreed and dismissed the § 1983 claims against the Sheriff's Office. *Williams v. Pelletier*, No. 2:23-CV-02149-DCN, 2023 WL 8627812, at *5 (D.S.C. Dec. 13, 2023). In *Cromer v. Brown*, 88 F.3d 1315 (4th Cir. 1996), as the district court explained, the Fourth Circuit had already considered the Eleventh Amendment status of South Carolina's county sheriff's offices, and determined that they are agents of the state protected from suit by Eleventh Amendment immunity. *See Williams*, 2023 WL

[1] The plaintiffs' many other claims will proceed before the district court, and we of course express no view as to their merits. We may review the district court's ruling as to this subset of the plaintiffs' claims because the district court certified its order as a final judgment under Rule 54(b) of the Federal Rules of Civil Procedure. *See Williams v. Pelletier*, No. 2:23-CV-02149-DCN, 2024 WL 1075444, at *1 (D.S.C. Mar. 12, 2024).

8627812, at *3. The court rejected the plaintiffs' argument that an analysis under the factors laid out in an earlier Fourth Circuit case pointed in a different direction, indicating that the Sheriff's Office should be treated as a municipality rather than a state entity. *See id.* at *5 (discussing *Ram Ditta ex rel. Ram Ditta v. Md. Nat'l Cap. Park & Plan. Comm'n*, 822 F.2d 456 (4th Cir. 1987)). Those factors, the court reasoned, were incorporated into the Fourth Circuit's subsequent decision in *Cromer*, and that decision remained "controlling precedent" that foreclosed the plaintiffs' position. *Id.*

We review the district court's judgment de novo, *see Hutto v. S.C. Ret. Sys.*, 773 F.3d 536, 542 (4th Cir. 2014), and we affirm for substantially the reasons given by the district court.

The Eleventh Amendment immunizes "unconsenting State[s]" from suit in federal court, and its protections extend to "agencies that may be properly characterized as 'arm[s] of the State.'" *Harter v. Vernon*, 101 F.3d 334, 337 (4th Cir. 1996) (quoting *Mt. Healthy City Bd. of Educ. v. Doyle*, 429 U.S. 274, 280 (1977)). To determine whether an entity like the County Sheriff's Office is an arm of the state entitled to Eleventh Amendment immunity, this court employs a well-established four-factor balancing test. *See Ram Ditta*, 822 F.2d at 457–58. And in *Cromer*, we held, after considering the "factors relevant to the immunity analysis," that a South Carolina county sheriff is an "arm of the state" protected from suit by the Eleventh Amendment. 88 F.3d at 1332. That is enough to resolve this case.

On appeal, as before the district court, the plaintiffs argue that an independent analysis of the *Ram Ditta* factors would show that the County Sheriff's

Office is *not* a state agency for these purposes, and that *Cromer* should not be followed because it pays insufficient attention to those factors. It is true that *Cromer*'s analysis is brief and does not expressly address *Ram Ditta*, instead invoking generally the "relevant factors." But *Cromer* is directly on point, and its binding effect does not turn on the length or even the persuasiveness of its reasoning. *Cromer* has not been abrogated by statute or superseded by an en banc or Supreme Court decision, which means that we – like the district court – are bound to follow it. *See United States v. Ruhe*, 191 F.3d 376, 388 (4th Cir. 1999) (setting out general rule that a "simple panel" is bound by prior Fourth Circuit precedent "absent contrary law from an *en banc* or Supreme Court decision"); *Payne v. Taslimi*, 998 F.3d 648, 654 & n.2 (4th Cir. 2021) (describing duty to follow prior circuit precedent as "mechanical mandate").[2]

Accordingly, we affirm the judgment of the district court.

AFFIRMED

[2] In support of their argument under the *Ram Ditta* factors, the plaintiffs have asked us to take judicial notice of certain publicly available facts about the fiscal workings of Charleston County and the State of South Carolina Insurance Reserve Fund, through which the County Sheriff's Office is insured. Because we now hold that we are bound by *Cromer* and not at liberty to undertake a new and independent analysis, we deny that motion as moot.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

No. 2:23-cv-02149-DCN

RANDALL WILLIAMS, *Personal Representative of the Estates of Shanice R. Dantzler-Williams and Miranda R. Dantzler-Williams*; and BETTY SIMMONS, *Personal Representative of the Estate of Stephanie Dantzler*;

Plaintiffs,

vs.

EMILY PELLETIER; CLINTON SACKS; CHARLESTON COUNTY SHERIFF'S OFFICE; and CHARLESTON COUNTY,

Defendants.

ORDER

The following matter is before the court on plaintiffs Randall Williams ("Williams") and Betty Simmons ("Simmons") (together, "plaintiffs") motion for entry of judgment under Fed. R. Civ. P. 54(b) so that they can proceed in appealing the court's earlier dismissal of plaintiffs' 42 U.S.C. § 1983 claims against defendant Charleston County Sheriff's Office ("CCSO"), ECF No. 47. ECF No. 48. For the reasons set forth below, the court grants the motion and certifies the order as a final judgment. The court stays proceedings in this case pending resolution of the appeal.

I. BACKGROUND

This case arises from a car accident which resulted in the deaths of Shanice R. Dantzler-Williams ("Shanice"), Miranda R. Dantzler-Williams ("Miranda"), and Stephanie Dantzler ("Stephanie") (together, the "decedents"). ECF No. 29, Amend. Compl. ¶¶ 79–86. Deputy Emily Pelletier ("Deputy Pelletier") and Deputy Clinton Sacks ("Deputy Sacks") (together, "Deputies") of the CCSO were responding to a non-emergency stalled vehicle and, in so doing, greatly exceeded the speed limits, failed to abide by traffic laws, and failed to engage their respective emergency lights or audible sirens in violation of CCSO policy. *Id.* ¶¶ 38–86. Deputy Pelletier sped past a stop sign and crossed multiple lanes of traffic on Highway 17, ultimately striking a vehicle driven southbound by Shanice at a speed of 73 miles-per-hour. *Id.* ¶ 79. Shanice and Miranda were celebrating Mother's Day with their mother Stephanie. *Id.* ¶ 80. Shanice and passengers Stephanie and Miranda all sustained catastrophic injuries because of the crash and died shortly thereafter. *Id.* ¶¶ 80–86. It is alleged that this incident was not a one-off but rather that CCSO deputies have a history of dangerous driving and misuse of county vehicles, which neither CCSO nor Charleston County (the "County") have adequately addressed. *Id.* ¶¶ 93–98.

Plaintiffs filed this action in the Charleston County Court of Common Pleas on May 15, 2023. *Williams v. Pelletier,* No. 2023-CP-1002308 (Charleston Cnty. Ct. C.P. May 15, 2023), ECF No. 1-1, Compl. On May 19, 2023, Deputy Pelletier removed the action to federal court pursuant to 28 U.S.C. §§ 1441 and 1446. ECF No. 1. On October 4, 2023, plaintiffs filed an amended

complaint, now the operative complaint, on behalf of the estates of the decedents, with Williams representing his daughters Shanice and Miranda and with Simmons representing her daughter Stephanie. Amend. Compl. Plaintiffs bring ten causes of action.[1] *Id.* ¶¶ 126–247.

On December 13, 2023, this court issued an order granting defendant CCSO's motion to dismiss for failure to state a claim and dismissed plaintiffs' 42 U.S.C. § 1983 claims as asserted against CCSO upon finding CCSO entitled to Eleventh Amendment immunity. ECF No. 47 (the "December Order"). On December 22, 2023, plaintiffs filed a motion for Rule 54(b) certification of the December Order and to stay further proceedings. ECF No. 48. On January 5, 2024, Deputy Sacks and CCSO filed a response in opposition, ECF No. 49, to which plaintiffs replied on February 16, 2024, ECF No. 51. As such, the motion has been fully briefed and is now ripe for review.

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[1] Plaintiffs allege: (1) negligence/negligence *per se* by all defendants, Compl. ¶¶ 126–31; (2) negligent training by CCSO of Deputies Pelletier and Sacks, *id.* ¶¶ 132–35; (3) negligent supervision by CCSO and the County of Deputies Pelletier and Sacks, *id.* ¶¶ 136–44; (4) violation of the decedents' civil rights pursuant to 42 U.S.C. § 1983 by Deputies Pelletier and Sacks, *id.* ¶¶ 145–49; (5) municipal liability for an unconstitutional official policy pursuant to 42 U.S.C. § 1983 by CCSO and the County, *id.* ¶¶ 227–30; (6) municipal liability for an unconstitutional unofficial policy or custom pursuant to 42 U.S.C. § 1983 by CCSO and the County; *id.* ¶¶ 231–34; (7) municipal liability for inadequate training and supervision pursuant to 42 U.S.C. § 1983 by CCSO and the County, *id.* ¶¶ 235–40; (8) survival action and damages pursuant to S.C. Code Ann. § 15 5-90, *id.* ¶¶ 241–42; (9) wrongful death action and damages pursuant to S.C. Code Ann. § 15-51-10, *id.* ¶¶ 243–45; and (10) entitlement to reasonable costs and attorney's fees pursuant to 42 U.S.C. § 1988, *id.* ¶¶ 246–47.

II. STANDARD

Rule 54(b) provides, "[w]hen an action presents more than one claim for relief . . . or . . . when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay." Fed. R. Civ. P. 54(b). The chief purpose of a Rule 54(b) certification is to prevent piecemeal appeals when multiple claims are resolved in the course of a single lawsuit. *Braswell Shipyards, Inc. v. Beazer E., Inc.,* 2 F.3d 1331, 1335 (4th Cir. 1993). The Rule also allows the district court to provide relief to litigants that would suffer undue hardship if final judgment were not entered on the adjudicated claim prior to the resolution of the unadjudicated claims. *Id*. Rule 54(b) certification is recognized as the exception rather than the norm. *Braswell Shipyards,* 2 F.3d at 1335. "It should neither be granted routinely, . . ., nor as an accommodation to counsel." *Id.* (internal citations omitted).

The court's determination of whether to enter final judgment involves two steps. *Curtiss-Wright Corp. v. Gen. Elec. Co.,* 446 U.S. 1, 7–8 (1980). First, the court must determine whether the judgment is final with respect to the relevant claims or parties. *Id.* at 7. Second, the court must determine whether there is any "just reason for delay" in entering a judgment. *Id.* at 8. In this step, the court considers "judicial administrative interests as well as the equities involved." *Id.* The burden to persuade the court that entry of final judgment is appropriate rests with the moving party. *Id.* at 1335. Where the district court is persuaded that Rule 54(b) certification is app-

ropriate, it must state those findings on the record or in its order. *Id.* at 1336.

III. DISCUSSION

Plaintiffs move for an order certifying the December Order and to stay further proceedings pending that appeal. ECF No. 48 at 1. Plaintiffs indicate that they consulted with the defendants regarding this motion, with the following results: CCSO opposes Rule 54(b) certification, the County and Deputy Sacks do not consent, but Deputy Pelletier does not oppose. *Id.*

The court finds that its previous conclusions reached in its December Order bear repeating because plaintiffs now seek to stay litigation to appeal that decision to the Fourth Circuit. *See* ECF Nos. 48; 47. The December Order resolved a motion to dismiss plaintiffs' 42 U.S.C. § 1983 *Monell* [2] liability causes of action as asserted against CCSO. ECF No. 47 at 14. In short, this court found that South Carolina sheriff's offices are arms of the state and thereby are entitled to Eleventh Amendment immunity. *Id.* at 9–14 ("[P]laintiffs face a Sisyphean battle to demonstrate that the large body of cases that have found sheriffs and sheriff's offices to be arms of the state of South Carolina do not apply to the instant facts.").

In reaching this conclusion, the court evaluated, and ultimately rejected, plaintiffs' arguments that a Fourth Circuit decision analyzing North Carolina law and determining that North Carolina sheriffs are county actors, not state actors, should be read to overrule or abrogate a Fourth Circuit case finding

[2] *Monell v. N.Y. Dep't of Soc. Servs.,* 436 U.S. 658, 701 (1978).

South Carolina sheriffs to be state actors. *Id.* at 12–13 (first citing *Harter v. Vernon,* 101 F.3d 334, 340–41 (4th Cir. 1996) (finding North Carolina sheriffs to be county actors); then citing *Cromer v. Brown,* 88 F.3d 1315 (4th Cir. 1996) (finding South Carolina sheriffs to be state actors); and then citing *Gulledge v. Smart,* 691 F. Supp. 947 (D.S.C. 1988), *aff'd,* 878 F.2d 379 (4th Cir. 1989) (same)). To reiterate, this court found that *Harter* did not abrogate or overrule *Cromer* because the Fourth Circuit expressly considered the differences in North Carolina and South Carolina statutes when it reached differing conclusions in *Harter* versus *Cromer. Id.* at 13 (citing *Harter,* 101 F.3d at 341 n.2). Consequently, binding Fourth Circuit law required the court to find that CCSO was a state actor entitled to Eleventh Amendment immunity. *Id.* Having set forth the relevant procedural and substantive history, the court turns to the two-step standard of review for deciding whether to direct entry of final judgment.

A. Final Judgment

"A 'final decision' generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *Kinsale Ins. Co. v. JDBC Holdings, Inc.,* 31 F.4th 870, 873 (4th Cir. 2022) (quoting *Catlin v. United States,* 324 U.S. 229, 233 (1945)). "Accordingly, a final judgment is certifiable under Rule 54(b) and appealable under § 1291 if the judgment is 'final in the sense that it is an ultimate disposition of an individual claim entered in the court of a multiple claims action.'" *Id.* (quoting *MCI Constructors, LLC v. City of Greensboro,* 610 F.3d 849, 855 (4th Cir. 2010)).

Plaintiffs assert that the December Order is an ultimate disposition and final judgment of all *Monell*

liability claims asserted against CCSO as defined in Rule 54(b). ECF No. 48 at 3 (citing Fed. R. Civ. P. 54(b)). Defendants do not challenge that the December Order was an ultimate disposition and final judgment on those claims under this first step. *See* ECF No. 49. The court likewise finds that the December Order qualifies as a final judgment on those claims and turns to the second step of the analysis.

B. Just Reason for Delay

In this step, the court considers "judicial administrative interests as well as the equities involved." *Curtiss-Wright Corp.,* 446 U.S. at 8. "In determining whether there is no just reason for the delay in the entry of judgment, the district court is instructed to conduct a 'case-specific' inquiry, keeping in mind that this inquiry is 'tilted from the start against [the] fragmentation of appeals.'" *Kinsale Ins. Co.,* 31 F.4th at 874 (quoting *Braswell Shipyards,* 2 F.3d at 1335) (alteration in original quotation)). The Fourth Circuit has identified five factors which speak to the equities:

> (1) the relationship between the adjudicated and unadjudicated claims; (2) the possibility that the need for review might or might not be mooted by future developments in the district court; (3) the possibility that the reviewing court might be obliged to consider the same issue a second time; (4) the presence or absence of a claim or counterclaim which could result in a set-off against the judgment sought to be made final; [and] (5) miscellaneous factors such as delay, economic and solvency considerations, shortening the time of trial, frivolity of competing claims, expense, and the like

Braswell Shipyards, 2 F.3d at 1335–36 (quoting *Allis-Chalmers Corp. v. Phila. Elec. Co.,* 521 F.2d 360, 364 (3d Cir. 1975)).

Plaintiffs contend that there is no just reason for the delay of the entry of judgment. ECF No. 48 at 3. They argue that the issue of Eleventh Amendment immunity's impact on the municipal liability causes of action "are purely questions of law and are in no way connected to the merits of the remaining unadjudicated claims." *Id.* at 4. Plaintiffs cite to *Pratt-Miller v. Arthur,* 701 F. App'x 191, 192 (4th Cir. 2017) (per curiam), and argue that it demonstrates that the first factor weighs in favor of certification.[3] *Id.* Accordingly, under the first factor, plaintiffs conclude that the relationship between the adjudicated and unadjudicated claims favors certifying the judgment. *Id.* Moreover, plaintiffs emphasize that the Supreme Court and the Fourth Circuit have both held that the *denial* of a motion to dismiss based on Eleventh Amendment immunity is immediately appealable, even where claims against other defendants remain pending in the district court, and plaintiffs urge the court to extend that logic to scenarios where courts *grant* a motion to dismiss on those same

[3] In *Pratt-Miller,* the District Court for the Eastern District of Virginia granted Rule 54(b) certification on its summary judgment order dismissing *Monell* Claims against a deputy sheriff in her official capacity on Eleventh Amendment immunity grounds. 701 F. App'x at 192–93. In light of the resulting opinion, plaintiffs argue that the Fourth Circuit presumably concluded it had jurisdiction to consider the appeal despite the other pending claims which remained against that deputy in the district court. *See id.*

grounds.[4] *Id.* at 5–6 (citing *Mitchell v. Forsyth,* 472 U.S. 511, 530 (1985)).

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[4] The denial of Eleventh Amendment sovereign immunity is immediately appealable through an interlocutory appeal under the collateral order doctrine. *P.R. Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.,* 506 U.S. 139, 141 (1993). In *P.R. Aqueduct,* the Supreme Court explained the rationale behind the rule was that upon the denial of immunity, "the central benefits of qualified immunity—avoiding the costs and general consequences of subjecting public officials to the risks of discovery and trial—would be forfeited," absent immediate appeal. *Id.* at 144–45. The Court clearly defined that where a district court denies a claim of Eleventh Amendment immunity, states and state entities that claim to be "arms of the State" may take advantage of the collateral order doctrine to appeal that order. *Id.* at 147.

Plaintiffs in this case ask the court to find the inverse to be equally true and that granting Eleventh Amendment immunity should qualify as a final judgment and merit an interlocutory appeal to the Fourth Circuit. ECF No. 48 at 5–6. Fourth Circuit precedent indicates that the collateral order doctrine does *not* confer appellate jurisdiction where a court grants immunity from suit, but where other claims remain pending in the district court, because that grant of immunity may be fully and effectively reviewed after final judgment. *Baird v. Palmer,* 114 F.3d 39, 43 (4th Cir. 1997). The Fourth Circuit expressly considered whether an order granting summary judgment based on qualified immunity should permit the immediate appeal under *Cohen v. Beneficial Indus. Loan Corp.,* 337 U.S. 541, 546 (1949), and found that a non-final order granting qualified immunity may not be immediately appealed as a collateral order. *Baird,* 114 F.3d at 43. To be clear, plaintiffs are not seeking to appeal the December Order under the collateral order doctrine. *See generally* ECF No. 48. Instead, they ask the court to certify the December Order as final pursuant to Fed. R. Civ. P. 54(b) so that it becomes immediately appealable. *Id.* That determination rests within the sound discretion of the district court. *See Braswell Shipyards,* 2 F.3d at 1335–36.

In reference to the second factor, plaintiffs note that appellate review of CCSO's entitlement to Eleventh Amendment immunity cannot be mooted by any further developments in the district court and no further factual questions or findings are germane to the appeal of that question. *Id.* at 6 (citing *Fox v. Balt. City Police Dep't,* 201 F.3d 526, 531–32 (4th Cir. 2000)). Similarly, and in reference to the third factor, plaintiffs emphasize that there is no chance that the reviewing court will consider CCSO's Eleventh Amendment immunity twice. *Id.* at 6–7. That is because CCSO is purportedly the only named party that can assert that immunity and the court dismissed all the municipal liability claims asserted against CCSO in its December Order. *Id.* Plaintiffs contend that the fourth factor is irrelevant to this case. *Id.* In reference to the fifth factor, plaintiffs claim that if they are forced to wait until all the remaining claims in this case are litigated before an appeal is allowed, there is a strong possibility that plaintiffs, if successful on appeal, would be forced to relitigate the entire case. *Id.* at 7. Further, plaintiffs inversely note that "if the appeal is unsuccessful, the remaining issues for trial become narrowed and the trial ultimately shortened." *Id.* Given the importance of the claims against CCSO and the foregoing considerations, plaintiffs believe that failure to certify the December Order "would result in unreasonable cost and not serve judicial economy." *Id.* Moreover, plaintiffs indicated at the hearing the Deputy Pelletier is facing a criminal case in addition to this civil case. [5] ECF No. 52. They suggested that this

[5] The court has identified three criminal prosecutions for reckless homicide brought by the state of South Carolina against Deputy Pelletier, presumably based on the same fatal car crash that forms a basis for the instant civil action. *See State v. Emily*

civil case may be stayed pending disposition of the parallel criminal proceedings, such that a delay and certification of the immunity question would not prejudice the defendants. *See id.*

Finally, plaintiffs filed a one-page brief identifying a recently decided case from the Fourth Circuit in which the court considered a 42 U.S.C. § 1983 claim brought against a South Carolina sheriff's office. ECF No. 51 at 1 (citing *English v. Clark,* 90 F.4th 636, 649–50 (4th Cir. 2024)). Plaintiffs cite that case to assert that South Carolina sheriffs' entitlement to Eleventh Amendment immunity is not well-settled law and the Fourth Circuit has indicated, through *English,* that it is open to the parties' arguments as to South Carolina sheriffs' immunity. *Id.; see also* ECF No. 52. In relevant part, plaintiffs claimed that the Insurance Reserve Fund ("IRF") that the County used to purchase its County Automobile Policy and County Tort Policy insurance does not use any state funds, and consequently Charleston County functionally self-insures, much like Richland County—the defendant in *English.* ECF No. 52; *see also* Amend. Compl. ¶¶ 150–221. Plaintiffs set forth those allegations in their amended complaint and asserted that the attachments to the complaint, ECF Nos. 29-5 (IRF Audit); 29-6 (American Southern Insurance Company Policy), and their response brief to the motion to dismiss, ECF No. 34, sufficiently establish the record—consisting of certified public records cap-

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Nicole Pelletier, Case No. 2022A1011400016 (Charleston Cnty. Ct. Gen. Sess. indicted June 13, 2023); *State v. Emily Nicole Pelletier,* Case No. 2022A1011400017 (Charleston Cnty. Ct. Gen. Sess. indicted June 13, 2023); *State v. Emily Nicole Pelletier,* Case No. 2022A1011400018 (Charleston Cnty. Ct. Gen. Sess. indicted June 13, 2023).

able of judicial notice[6]—such that the Fourth Circuit could meaningfully rule on the question of Eleventh Amendment immunity in relation to the factors identified by *Ram Ditta ex rel. Ram Ditta v. Md. Nat'l Cap. Park & Plan. Comm'n,* 822 F.2d 456, 457 (4th Cir. 1987).[7]

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[6] While additional discovery may prove helpful to determine the question of state funding, plaintiffs indicated at the hearing that they are confident the current record is sufficient to rule on the question of Eleventh Amendment immunity. ECF No. 52.

[7] The Fourth Circuit enumerated a four-factor test to determine whether an entity, other than the state itself, is eligible for Eleventh Amendment immunity:

> While many factors must be considered in determining whether an entity is the *alter ego* of the state, it is generally held that the most important consideration is [1] whether the state treasury will be responsible for paying any judgment that might be awarded. . . . Other important inquiries underlying our consideration of eleventh amendment immunity include, but are not necessarily limited to, [2] whether the entity exercises a significant degree of autonomy from the state, [3] whether it is involved with local versus statewide concerns, and [4] how it is treated as a matter of state law.

Ram Ditta, 822 F.2d at 457–58; *see also S.C. Dep't of Disabilities & Special Needs v. Hoover Universal, Inc.,* 535 F.3d 300, 303 (4th Cir. 2008). The original *Ram Ditta* analysis has been adapted consistent with the Supreme Court's decision in *Hess v. Port Auth. Trans-Hudson Corp.,* 513 U.S. 30 (1994). The Court considered how to resolve the primary question where the four factors do not lead to a single conclusion and declared that two considerations remain paramount: (1) to prevent federal court judgments from depleting a state's treasury and (2) to preserve the dignity of the states. *Id.* at 39, 47. "Under this sovereign dignity inquiry, a court must, in the end, determine whether the governmental entity is so connected to the State that the legal action against the entity would, despite the fact that the judgment will not be paid from the State treasury, amount to

Deputy Sacks and CCSO disagree and claim that "the requested certification will not serve to settle novel legal questions, resolve conflicting decisions, or materially advance the progress of the case." ECF No. 49 at 4. In other words, they focus on the fifth factor which provides for miscellaneous considerations such as delay, economic and solvency considerations, shortening the time of trial, and frivolity of competing claims. *See Braswell Shipyards,* 2 F.3d at 1335–36. First, Deputy Sacks and CCSO contend that plaintiffs have not demonstrated that this court's December Order resolved an issue on "a novel question that requires immediate consideration and adjudication by the Fourth Circuit." ECF No. 49 at 3. Given the well-settled precedent, Deputy Sacks and CCSO emphasize that for plaintiffs to be successful on appeal, the Fourth Circuit would need to agree to hear the interlocutory appeal *en banc* "which would be unprecedented." *Id.* Second, Deputy Sacks explains that he "strongly opposes any stay of the district court proceedings" because he intends to seek his own dismissal from this action and "would be prejudiced by a lengthy delay that would result from an interlocutory appeal." *Id.* He foreshadows his argument for dismissal of the claims because "the theory of liability against [him], who was not involved in the collision, is without precedent and is extremely weak, at best." *Id.* Finally, Deputy Sacks and CCSO claim that plaintiffs cannot show that they need the inclusion of CCSO as a defendant to be "made whole" at trial or by settlement, because

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the indignity of subjecting a State to the coercive process of judicial tribunals at the instance of private parties." *Cash v. Granville Cnty. Bd. of Educ.,* 242 F.3d 219, 224 (4th Cir. 2001) (quoting *Seminole Tribe of Fla. v. Florida,* 517 U.S. 44, 58 (1996)).

numerous claims against numerous defendants remain even after the December Order. *Id.* at 3–4. In sum, they conclude that plaintiffs "have not shown that this case is an appropriate candidate for Rule 54(b) certification." *Id.* at 4. At the hearing, defendants argued that *English,* 90 F.4th at 649–50, is readily distinguishable from the instant case because Richland County self-insures the sheriff's office whereas Charleston County does not. *ECF No. 52.*

The court considers the parties' arguments with respect to the Rule 54(b) factors identified by the Fourth Circuit. It finds that the first two factors weigh in favor of finding no just reason for delay. *See Braswell Shipyards,* 2 F.3d at 1335–36. The first factor weighs in favor because the question of whether CCSO is a state actor entitled to Eleventh Amendment immunity is purely a question of law, which does not impact the unadjudicated claims. *See Fox,* 201 F.3d at 531–32 (observing that an interlocutory appeal of a pure question of law does not counsel against Rule 54(b) certification because nothing could emerge from further district court proceedings that could alter the analysis of the question or render it moot).

The second factor also weighs in favor of certification because appellate review of CCSO's entitlement to Eleventh Amendment immunity cannot be mooted by any further developments in the district court and no further factual questions or findings are germane to the appeal of that question. *See Washington v. Balt. Police Dep't,* 2023 WL 3504202, at *2 (D. Md. May 16, 2023) (finding that the district court had fully resolved all questions as to the officer defendants' liability and therefore no future action in district court would moot appellate review).

The third and fourth factors favor neither party. The third factor—the possibility that the reviewing court might be obliged to consider the same issue a second time—is unclear because even if the court were to consider the same issue a second time, its decision would not change without a change to binding precedent from the Fourth Circuit. *See, e.g., Cromer,* 88 F.3d at 1332. Plaintiffs claim that no other parties in this case are state actors that could assert Eleventh Amendment immunity, meaning it is extremely unlikely that the court would be obliged to consider the same issue twice. ECF No. 48 at 6–7. CCSO and Deputy Sacks are silent as to this factor. *See* ECF No. 49. Initially, the court notes that since the Deputies are sued in both their official and individual capacities, there is a strong likelihood that they will assert Eleventh Amendment immunity for those claims brought against them in their official capacities. *See* Amend. Compl. ¶¶ 3–4 (suing Deputy Pelletier and Deputy Sacks in their official and individual capacities).

Under South Carolina law, a suit against an officer in his or her official capacity as a deputy sheriff is the same as a suit against the State. *See McCall v. Williams,* 52 F. Supp. 2d 611, 615 (D.S.C. 1999) (citing *Cromer,* 88 F.3d at 1332). As an arm of the State, a deputy sheriff is entitled to Eleventh Amendment immunity from civil damages suits in federal court unless the State expressly waived this immunity. *See id.* (first citing U.S. Const. XI; and then citing *Pennhurst State Sch. & Hosp. v. Halderman,* 465 U.S. 89, 99–100 (1984)). At the hearing, the court confirmed that there are pending § 1983 claims against the Deputies in their official capacities. ECF No. 52. In response, counsel for the Deputies indicated that the deputies will likely assert Eleventh

Amendment immunity in response to those claims, though they have not done so yet.[8] *Id.* Thus, the third factor weighs in favor of neither party because, on the one hand, the court may confront the same question of Eleventh Amendment immunity as to the § 1983 claims against the Deputies in their official capacities, but, on the other hand, the conclusion would almost certainly parallel that of the December Order due to binding Fourth Circuit law. *See* ECF No. 48; *Cromer,* 88 F.3d 1315 (finding South Carolina sheriffs to be state actors); *Gulledge,* 878 F.2d 379 (same); *cf. Harter,* 101 F.3d at 340–41. The fourth factor is mostly irrelevant to this inquiry, as there is no claim or counterclaim that could result in a set-off against the court's December Order granting Eleventh Amendment immunity to CCSO for plaintiffs' 42 U.S.C. § 1983 *Monell* claims.

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[8] The court observes that counsel initially indicated at the hearing that Deputies Pelletier and Williams are only being sued in their individual capacities. ECF No. 52. However, a review of the amended complaint indicates that the Deputies are being sued in their individual and official capacities. Amend. Compl. ¶¶ 3–4 ("Defendant Emily Pelletier . . . was acting under color of law and within the course and scope of her employment with Charleston County and agency as a Deputy of the [CCSO]. She is also sued in her individual capacity for compensatory and punitive damages under federal law."). To be sure, the causes of action do not specify whether they are brought against the Deputies in their individual or official capacities. *Id.* ¶¶ 126–247. However, when the complaint is read in full, the Deputies are sued in both capacities as is made clear by plaintiff's stipulation that each deputy is "also sued in his [or her] individual capacity." *See id.* ¶¶ 3–4. Upon that clarification at the hearing, counsel for the Deputies indicated they would seek Eleventh Amendment immunity for those claims brought against the Deputies in their official capacities. ECF No. 52.

Finally, there is a dispute over who the fifth factor favors. Upon review of the arguments, the court concludes that it favors finding no just reason for delay. Plaintiffs argue that failure to certify will result in financial hardship and not serve judicial economy because having the Fourth Circuit hear the appeal will either narrow the issues if they are unsuccessful or enable plaintiffs to avoid re-litigation of their entire case if they are successful. *See id.* at 7. In contrast, CCSO and Deputy Sacks emphasize the hardship that staying the case and delaying further proceedings will cause to Deputy Sacks and further highlight the futility of the appeal to the Fourth Circuit on well-settled law. ECF No. 49 at 3–4. Plaintiffs' reply seeks to undercut CCSO and Deputy Sacks's futility argument by citing to *English.* ECF No. 51 at 1 (citing *English,* 90 F.4th at 649–50). However, this new authority does not expressly overturn older, binding precedent. Therefore, the defendants' arguments as to the appeal's futility remain relevant to the inquiry.[9] However, at the

[9] *English* concerned the arrest, coerced false confessions, and year-plus detainment of Kewon English and Earl Powell before their cases were *nolle prossed* and they were released. *English,* 90 F.4th at 640. English and Powell sued individual sheriffs in the Richland County Sheriff's Department as well as the Richland County Sheriff's Department itself under § 1983 for violation of their constitutional rights guaranteed by the First, Fourth, Fifth, Sixth, and Fourteenth Amendments. *Id.* At the outset, the district court granted summary judgment for a sheriff sued in his official capacity and for the Richland County's Sheriff's Department on all counts, "holding that they were arms of the state of South Carolina and thus immune from § 1983 damages suits." *Id.* at 644. *English* reached the Fourth Circuit on appeal from the district court's granting of summary judgment as to English's First, Fourth, and Fourteenth Amendment claims. *Id.* at 645. The Fourth Circuit affirmed the district court's grant of summary judgment and found that there was no

hearing, plaintiffs emphasized that Deputy Pelletier is facing parallel criminal proceedings such that discovery in this civil case will likely be stayed pending their resolution, which undermines CCSO and Deputy Sacks's arguments as to hardship. ECF No. 52. Considering the foregoing, the court finds that the fifth factor weighs in favor of the plaintiffs. Resolution of the Eleventh Amendment appeal will narrow the questions for trial and serve judicial economy, and the alleged hardship that may arise from delay of the case from the Rule 54(b) certification is accorded less weight because of the

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constitutional violation of English's rights under the First, Fourth, or Fourteenth Amendments. *Id.* at 645–49.

Relevant to Williams and Simmons's motion, the panel decision noted that since there was no underlying constitutional violation, "[it] need not reach the question of whether those defendants [Richland County Sheriff Lott and the Richland County Sheriff's Department] are entitled to Eleventh Amendment immunity. [It left] that question for another day." *Id.* at 649–50. Plaintiffs interpret this sentence to mean that the Fourth Circuit considers the question of whether South Carolina sheriffs are entitled to Eleventh Amendment immunity to be unsettled law. ECF No. 51 at 1. Such an interpretation is a stretch considering the explicit precedent from the Fourth Circuit holding otherwise. *See Cromer,* 88 F.3d 1315; *Gulledge,* 878 F.2d 379; *cf. Harter,* 101 F.3d at 340–41. However, plaintiffs' argument is well taken when that sentence is considered alongside the language in *Cromer,* in which the Fourth Circuit noted it was "unable to discern from the record in this case whether the state pays any premiums on behalf of Greenville County." 88 F.3d at 1332. In essence, plaintiffs claimed at the hearing that the record in this case would allow the Fourth Circuit to revisit its analysis in *Cromer,* 88 F.3d at 1332, with the information required to fully evaluate the *Ram Ditta* factors relevant to the Eleventh Amendment analysis. *See* ECF No. 52; *Ram Ditta,* 822 F.2d at 457–58. Whether that proves true remains to be seen.

likelihood of a stay pending the parallel criminal proceedings against Deputy Pelletier.

The court finds that the five factors weigh in favor finding no just reason for delay. Such a finding, taken together with the court's conclusion that its December Order constituted a final judgment, weighs in favor of granting plaintiffs' motion for partial final judgment under Rule 54(b) as to the question of CCSO's Eleventh Amendment immunity for § 1983 *Monell* claims that this court resolved in its December Order.

IV. CONCLUSION

For the reasons set forth above, the court **GRANTS** the motion for entry of judgment pursuant to Fed. R. Civ. P. 54(b) and **STAYS** further proceedings pending resolution of the appeal.

AND IT IS SO ORDERED.

/s/ David C. Norton
DAVID C. NORTON
UNITED STATES DISTRICT JUDGE

March 12, 2024
Charleston, South Carolina

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

No. 2:23-cv-02149-DCN

RANDALL WILLIAMS, Personal Representative of the Estates of Shanice R. Dantzler-Williams and Miranda R. Dantzler-Williams; and BETTY SIMMONS, Personal Representative of the Estate of Stephanie Dantzler;

Plaintiffs,

vs.

EMILY PELLETIER; CLINTON SACKS; CHARLESTON COUNTY SHERIFF'S OFFICE; and CHARLESTON COUNTY,

Defendants.

ORDER

The following matter is before the court on defendant Charleston County Sheriff's Office's ("CCSO") motion to dismiss. ECF No. 24. For the reasons set forth below, the court grants the motion.

I. BACKGROUND

This case arises from a car accident which resulted in the deaths of Shanice R. Dantzler-Williams ("Shanice"), Miranda R. Dantzler-Williams ("Miranda"), and Stephanie Dantzler ("Stephanie") (together, the "decedents"). ECF No. 129, Amend. Compl. ¶¶ 79–86. Deputy Emily Pelletier ("Deputy

Pelletier") and Deputy Clinton Sacks ("Deputy Sacks") were responding to a non-emergency stalled vehicle and, in so doing, greatly exceeded the speed limits, failed to abide by traffic laws, and failed to engage their respective emergency lights or audible sirens in violation of CCSO policy. *Id*. ¶¶ 38–86. Deputy Pelletier sped past a stop sign and crossed multiple lanes of traffic on Highway 17, ultimately striking, at a speed of seventy-three miles-per-hour, the vehicle Shanice drove southbound. *Id.* ¶ 79. Shanice and Miranda were celebrating Mother's Day with their mother Stephanie. *Id.* ¶ 80. All three of them sustained catastrophic injuries because of the crash and died shortly thereafter. *Id.* ¶¶ 80–86. This incident is purportedly not a one-off but is rather part of a history of dangerous driving and misuse of county vehicles by CCSO deputies, which neither CCSO nor Charleston County (the "County") have adequately addressed. *Id*. ¶¶ 93–98.

Plaintiffs Randall Williams ("Williams") and Betty Simmons ("Simmons") (together, "plaintiffs") filed this action in the Charleston County Court of Common Pleas on May 15, 2023. ECF No. 1-1, Compl. On May 19, 2023, defendant Deputy Pelletier removed the action to federal court pursuant to 28 U.S.C. §§ 1441 and 1446.[1] ECF No. 1. On October 4, 2023,

[1] It is unclear whether all the defendants consented to Deputy Pelletier's removal of the action from state court. ECF No. 1. Deputy Pelletier merely indicated that "[n]o other Defendants have appeared or answered," which is unsurprising because she removed the action only four days after it was initially filed. *Id.* at 2. "The Supreme Court has construed [§ 1446(b)] to include a 'unanimity requirement,' such that all defendants must consent to removal." *Mayo v. Bd. of Educ. of Prince George's Cnty.,* 713 F.3d 735, 741 (4th Cir. 2013) (citing *Lapides v. Bd. of Regents,* 535 U.S. 613, 620 (2002)). Under the requirement of unanimous

plaintiffs filed an amended complaint, now the operative complaint. ECF No. 29, Amend. Compl. Plaintiffs filed on behalf of the estates of the decedents with Williams representing his daughters Shanice and Miranda and with Simmons representing her daughter Stephanie. *Id.* They bring ten causes of action.[2] *Id.* ¶¶ 126–247. On September 15, 2023,

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consent for removal, if any defendant properly joined and served in a state-court action does not consent to removal, the action cannot be removed, and remand is required. *See* 28 U.S.C. § 1446(b). The Fourth Circuit has specified that in a multiple-defendant case, removal can "be accomplished by the filling of one paper signed by at least one attorney, representing that all defendants have consented to the removal." *Mayo,* 713 F.3d at 742. As such, removal was defective because the notice of removal did not indicate the unanimous consent of Deputy Sacks, CCSO, and the County, and because they did not later file consents to the docket. Noncompliance with the rule of unanimity is a waivable "error in the removal process," rather than a defect in subject matter jurisdiction. *Payne ex rel. Est. of Calzada v. Brake,* 439 F.3d 198, 203 (4th Cir. 2006). As a result, a plaintiff who fails to make a timely objection waives the objection. *See* 28 U.S.C. § 1447(c) (explaining that, after removal, any "motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days."). Plaintiffs did not move to remand and therefore waived their right to raise defective removal for failure to obtain unanimous consent as a basis for remand.

[2] Plaintiffs allege: (1) negligence / negligence per se by all defendants, Amend. Compl. ¶¶ 126–31; (2) negligent training by CCSO of Deputies Pelletier and Sacks, *id.* ¶¶ 132–35; (3) negligent supervision by CCSO and the County of Deputies Pelletier and Sacks, *id.* ¶¶ 136–44; (4) violation of the decedents' civil rights pursuant to 42 U.S.C. § 1983 by Deputies Pelletier and Sacks, *id.* ¶¶ 145–49; (5) municipal liability for an unconstitutional official policy pursuant to 42 U.S.C. § 1983 by CCSO and the County, *id.* ¶¶ 227–30; (6) municipal liability for an unconstitutional unofficial policy or custom pursuant to 42 U.S.C. § 1983 by CCSO and the County; *id.* ¶¶ 231–34; (7) municipal liability for inadequate training and supervision

CCSO filed a motion to dismiss plaintiffs' 42 U.S.C. § 1983 claims as asserted against CCSO for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6).[3] ECF No. 24. On October 20, 2023, plaintiffs responded in opposition to the motion, ECF No. 34, to which CCSO replied on November 10, 2023, ECF No. 43. As such, the motion has been fully briefed and is now ripe for review.

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pursuant to 42 U.S.C. § 1983 by CCSO and the County, *id.* ¶¶ 235–40; (8) survival action and damages pursuant to S.C. Code Ann. § 15-5-90, *id.* ¶¶ 241–42; (9) wrongful death action and damages pursuant to S.C. Code Ann. § 15-51-10, *id.* ¶¶ 243–45; and (10) entitlement to reasonable costs and attorney's fees pursuant to 42 U.S.C. § 1988, *id.* ¶¶ 246–47.

[3] The Fourth Circuit has been "unclear on whether a dismissal on Eleventh Amendment immunity grounds is a dismisssal for failure to state a claim under Rule 12(b)(6) or a dismissal for lack of subject matter jurisdiction under Rule 12(b)(1)." *Andrews v. Daw,* 201 F.3d 521, 524 n.2 (4th Cir. 2000) (comparing *Biggs v. Meadows,* 66 F.3d 56, 58–59 (4th Cir. 1995), with *Abril v. Virginia,* 145 F.3d 182, 184 (4th Cir. 1998), and *Republic of Paraguay v. Allen,* 134 F.3d 622, 626 (4th Cir. 1998)). The recent trend, however, appears to treat Eleventh Amendment Immunity motions under Rule 12(b)(1). *See, e.g., Beckham v. Nat'l R.R. Passenger Corp.,* 569 F. Supp. 2d 542, 547 (D. Md. 2008) ("[A]lthough the Eleventh Amendment immunity is not a 'true limit' on this Court's subject matter jurisdiction, the Court concludes that it is more appropriate to consider their argument under Fed. R. Civ. P. 12(b)(1) because it ultimately challenges this Court's ability to exercise its Article III power." (internal citations omitted)). This distinction, however, "makes little practical difference" as in either case the court must assume the truth of the facts alleged in the complaint and view them in the light most favorable to the plaintiff. *Zemedagegehu v. Arthur,* 2015 WL 1930539, at *3 (E.D. Va. Apr. 28, 2015); *accord Fleming v. Va. State Univ.,* 2016 WL 927186, at *1 n.4 (E.D. Va. Mar. 4, 2016), *aff'd as modified,* 671 F. App'x 117 (4th Cir 2016).

II. STANDARD

A. Motion to Dismiss

A Rule 12(b)(6) motion for failure to state a claim upon which relief can be granted "challenges the legal sufficiency of a complaint." *Francis v. Giacomelli,* 588 F.3d 186, 192 (4th Cir. 2009) (citations omitted); *see also Republican Party of N.C. v. Martin,* 980 F.2d 943, 952 (4th Cir. 1992) ("A motion to dismiss under Rule 12(b)(6) . . . does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses."). To be legally sufficient, a pleading must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). A Rule 12(b)(6) motion should not be granted unless it appears certain that the plaintiff can prove no set of facts that would support his claim and would entitle him to relief. *Mylan Lab'ys, Inc. v. Matkari,* 7 F.3d 1130, 1134 (4th Cir. 1993). When considering a Rule 12(b)(6) motion, the court should accept all well-pleaded allegations as true and should view the complaint in a light most favorable to the plaintiff. *Ostrzenski v. Seigel,* 177 F.3d 245, 251 (4th Cir. 1999); *Mylan Lab'ys,* 7 F.3d at 1134. "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.*

III. DISCUSSION

CCSO seeks to have the court dismiss plaintiffs' 42 U.S.C. § 1983 *Monell*[4] liability causes of action as asserted against CCSO for unconstitutional official policies, customs, and inadequate training and supervision for failure to state a claim. ECF No. 24 at 1 (referencing Compl. ¶¶ 155–64).[5] CCSO argues that "[i]t is well settled that the [CCSO] is immune from these claims as a § 1983 claim for municipal liability under the *Monell* Doctrine cannot be brought against a Sheriff's Office because it is a state agency and not a person as defined by § 1983." *Id.* at 2. In South Carolina, a Sheriff's office is an agency of the State. *Id.* at 4 (citing *Stewart v. Beaufort Cnty.,* 481 F. Supp. 2d 483, 492 (D.S.C. 2007)). Thus, CCSO, as a state agency, is entitled to immunity under the Eleventh Amendment. *Id.* (citations omitted). As such, CCSO argues that plaintiffs fail to state a claim upon which relief may be granted as to the municipal liability claims asserted against CCSO. *Id.* at 5.

In response, plaintiffs first contend that the court must decide whether CCSO is a policymaker for the County. ECF No. 34 at 2. Second, plaintiffs argue that the precedent establishing that a sheriff's office is an agent of the state does not govern the instant facts. *See id.* at 2–4 (first citing *Gulledge v. Smart,* 691 F. Supp. 947 (D.S.C. 1988), *aff'd,* 878 F.2d 379 (4th Cir. 1989); and then citing *Cromer v. Brown,* 88 F.3d 1315 (4th Cir. 1996)). Third, plaintiffs claim that

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[4] *Monell v. N.Y. Dep't of Soc. Servs.,* 436 U.S. 658, 701 (1978).

[5] The motion to dismiss, ECF No. 24, was filed prior to the amended complaint, ECF No. 29. As such, the motion's references to the three *Monell* liability causes of action in the complaint likely remain in force with regards to those same claims in the amended complaint. Amend. Compl. ¶¶ 227–40.

the critical question deciding whether CCSO is entitled to Eleventh Amendment immunity is whether the state of South Carolina is liable for any judgment on plaintiffs' *Monell* claims. *Id.* at 2 (citing *Ram Ditta ex rel. Ram Ditta v. Md. Nat'l Cap. Park & Planning Comm'n,* 822 F.2d 456, 457 (4th Cir. 1987)). Plaintiffs thereafter perform the analysis described in *Ram Ditta,* 822 F.2d at 457–58,[6] and conclude that the

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[6] The Fourth Circuit enumerated a four-factor test to determine whether an entity, other than the state itself, is eligible for Eleventh Amendment immunity:

> While many factors must be considered in determining whether an entity is the *alter ego* of the state, it is generally held that the most important consideration is [1] whether the state treasury will be responsible for paying any judgment that might be awarded. . . . Other important inquiries underlying our consideration of eleventh amendment immunity include, but are not necessarily limited to, [2] whether the entity exercises a significant degree of autonomy from the state, [3] whether it is involved with local versus statewide concerns, and [4] how it is treated as a matter of state law.

Ram Ditta, 822 F.2d at 457–58; *see also S.C. Dep't of Disabilities & Special Needs v. Hoover Universal, Inc.,* 535 F.3d 300, 303 (4th Cir. 2008). The original *Ram Ditta* analysis has been adapted consistent with the Supreme Court's decision in *Hess v. Port Auth. Trans-Hudson Corp.,* 513 U.S. 30 (1994). The Court considered how to resolve the primary question where the four factors do not lead to a single conclusion and declared that two considerations remain paramount: (1) to prevent federal court judgments from depleting a state's treasury and (2) to preserve the dignity of the states. *Id.* at 39, 47. "Under this sovereign dignity inquiry, a court must, in the end, determine whether the governmental entity is so connected to the State that the legal action against the entity would, despite the fact that the judgment will not be paid from the State treasury, amount to the indignity of subjecting a State to the coercive process of judicial tribunals at the instance of private parties." *Cash v.*

entity that would pay the judgment is Charleston County, not the state of South Carolina, and, thus, CCSO should be treated as a municipal entity rather than as a state agent.[7] *Id.* at 2–5, 10–33. Consequently, plaintiffs request that the court deny CCSO's claim of Eleventh Amendment immunity. *Id.* at 33–34.

In reply, CCSO contends that precedent from the federal appellate courts and the district courts in South Carolina have repeatedly answered this question and found that sheriffs' offices are state agents and thereby are entitled to Eleventh Amendment immunity. ECF No. 43 at 1. CCSO cites to ten cases in which courts have found that CCSO was entitled to Eleventh Amendment immunity, *id.* at 4–5, and attaches an appendix listing cases which concluded that sheriffs' offices across South Carolina were entitled to Eleventh Amendment immunity, *id.* at 4 n.2, 14–15. Moreover, CCSO cites to several Fourth Circuit opinions which have confirmed that under-

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Granville Cnty. Bd. of Educ., 242 F.3d 219, 224 (4th Cir. 2001) (quoting *Seminole Tribe of Fla. v. Florida,* 517 U.S. 44, 58 (1996)).

[7] Plaintiffs argue that three of the four *Ram Ditta* factors support finding CCSO to be a municipal agent, with the fourth factor unclear as to whether CCSO is an agent of the municipality or the state. ECF No. 34 at 7–11. Plaintiffs first contend that only the Charleston County Treasury is at risk for any *Monell* claim brought against CCSO, not the state treasury. *Id.* at 2, 7–8. Second, plaintiffs emphasize that the CCSO "operates with autonomy from the State of South Carolina as to virtually every aspect of its operations, funding, supervision, and employees." *Id.* at 8–9. Third, the CCSO and plaintiffs' claims are primarily involved in county, not state, concerns. *Id.* at 9–10. Fourth, plaintiffs emphasize that "[t]his Court is not bound by deficient State law determinations." *Id.* at 11.

standing and performed the *Ram Ditta* analysis—even finding the sheriff's office to be an arm of the state where it was unclear whether the state would pay out should the defendant be held liable. *Id.* at 5–7. Thus, CCSO emphasizes that Fourth Circuit precedent forecloses the court from adopting plaintiffs' interpretation and the plaintiffs' allegations and arguments cannot avoid the controlling precedent in the Fourth Circuit. *Id.* at 7–12. Furthermore, CCSO highlights that federal district courts have repeatedly ruled that a sheriff's office is a state office entitled to Eleventh Amendment immunity in South Carolina. *Id.* at 12. Those courts concluded as much separate and apart from whether any individual officer or sheriff when sued in his or her official capacity was entitled to immunity. *Id.* Consequently, CCSO requests the court grant its motion to dismiss. *Id.* at 13.

Initially, the court emphasizes the importance of precedent and further follows the Fourth Circuit's lead in noting that a court should not lightly presume that the law of the Fourth Circuit has been overturned, especially where the newly issued opinion can be read harmoniously with the existing precedent. *See Taylor v. Grubbs,* 930 F.3d 611, 619 (4th Cir. 2019). To be sure, the Fourth Circuit consistently reiterates that unpublished opinions are not binding precedent upon federal district courts. *See, e.g., Turner v. Kight,* 121 F. App'x 9 (4th Cir. 2005). However, federal district courts may not stray from binding precedent and this court will not do so in the instant case.[8] Consequently, the court first deter-

[8] As this court has noted before, "[w]hen presented with binding Fourth Circuit precedent, district courts, like obedient children, should be seen and not heard." *See Sadighi v. Daghighfekr,* 36 F. Supp. 2d 279, 288 n.9 (D.S.C. 1999).

mines whether binding precedent clearly establishes that CCSO is not a person nor a municipality, but an agent of South Carolina entitled to Eleventh Amendment immunity.

A cause of action under Section 1983 requires the deprivation of a civil right by a "person" acting under color of state law. 42 U.S.C. § 1983. "Section 1983 provides a federal forum to remedy many deprivations of civil liberties, but it does not provide a federal forum for litigants who seek a remedy against a State for alleged deprivations of civil liberties." *Will v. Mich. Dep't of State Police,* 491 U.S. 58, 66 (1989). "The Eleventh Amendment bars such suits unless the State has waived its immunity, . . . or unless Congress has exercised its undoubted power under § 5 of the Fourteenth Amendment to override that immunity." *Id.* In passing Section 1983, Congress clearly had no intention to disturb the States' Eleventh Amendment immunity or to so alter the federal-state balance. *Id.; see also Quern v. Jordan,* 440 U.S. 332 (1979). Entities which may benefit from Eleventh Amendment immunities are those states or government entities that are considered "arms of the State." *S.C. Troopers Fed'n Loc. 13 v. South Carolina,* 112 F. App'x 883, 885 (4th Cir. 2004) (citing *Will,* 491 U.S. at 70). In contrast, "municipal bodies sued under § 1983 cannot be entitled to absolute immunity," meaning municipalities are not entitled to Eleventh Amendment immunity. *Monell,* 436 U.S. at 701. Rather, municipalities may be held liable for constitutional violations committed by their employees or agents when an official custom, policy, or practice of the municipality, or the decision of a final policymaker for the municipality, is responsible for causing the deprivation. *Id.* at 694. Thus, the court is con-

fronted with the question of whether CCSO is an agent of the state or the municipality.

Courts in this district have consistently held that a county sheriff's office is considered a state agency, not a municipal department, which is an interpretation that the Fourth Circuit has affirmed and has independently determined.[9] *See, e.g., Cromer,* 88 F.3d at 1332; *Gulledge,* 691 F. Supp. at 954–55 (discussing sheriff as agent and alter ego of the state and that deputy sheriffs act as the sheriff's agent); *Patel v. McIntyre,* 667 F. Supp. 1131, 1145 n.26 (D.S.C. 1987) (concluding that the sheriff and county are distinct and separate entities in South Carolina and that the sheriff does not act as a "county" policymaker in law enforcement matters), *aff'd,* 848 F.2d 185 (4th Cir. 1988) (unpublished table decision). South Carolina courts, including the South Carolina Supreme Court, have also consistently held that the sheriff and the sheriff's deputies are state, not county, employees. *See, e.g., Edwards v. Lexington Cnty. Sheriff's Dep't,* 688 S.E.2d 125, 127 n.1 (S.C. 2010); *Lampley v. Hulon,* 854 S.E.2d 489, 491 (S.C. Ct. App. 2021), *reh'g denied* (Feb. 23, 2021), *cert. denied* (Apr. 6, 2022). In sum, "[i]t is well settled,

[9] In fact, this court has previously found as much on multiple occasions, explicitly stating "the Sheriff's Department, like the sheriff, is an arm of the state and entitled to Eleventh Amendment immunity." *McCall v. Williams,* 52 F. Supp. 2d 611, 623 (D.S.C. 1999); *see also Mozingo v. Strickland,* 2015 WL 5155259, at *2 (D.S.C. Sept. 1, 2015) ("Sheriffs' departments in South Carolina are considered state agencies."); *Magwood v. City of Charleston Police Dep't,* 2013 WL 5332640, at *3 (D.S.C. Sept. 23, 2013) (adopting report and recommendation) ("[A]s asserted against the Charleston County law enforcement division, this cause of action is a suit against the State of South Carolina itself.").

both in South Carolina law and federal law, that a Sheriff in South Carolina is an arm of the State and not a County employee and therefore is entitled to Eleventh Amendment Immunity in his or her official capacity from suit in Federal Court." *Cash v. Thomas,* 2013 WL 3804375, at *7 (D.S.C. July 19, 2013). These decisions have not been overturned or expressly abrogated, and therefore remain good law on the question of whether a South Carolina sheriff's office is an agent of the state versus a municipality.[10]

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[10] The decisions holding that a South Carolina sheriff's office is an arm of the state are unanimous and numerous. *See, e.g., Wall v. Sloan,* 135 F.3d 771 (4th Cir. 1998) (agreeing that a South Carolina county sheriff is a state official and thereby not subject to suit for monetary damages in his official capacity); *Brown v. Middleton,* 362 F. App'x 340, 346 n.8 (4th Cir. 2010) (noting that the district court correctly concluded that the Charleston County Sheriff could not be held liable under § 1983 in his official capacity since he is a state official); *Smith v. Cherokee Cnty. Sheriff's Off.,* 2023 WL 6466468, at *2 (D.S.C. Sept. 11, 2023) ("Cherokee County Sheriff's Office is considered a state agency under South Carolina law and is therefore entitled to sovereign immunity."), *report and recommendation adopted,* 2023 WL 6462871 (D.S.C. Oct. 4, 2023); *Brooks v. Berkeley Cnty. Sheriff's Off.,* 2022 WL 18635126, at *3 (D.S.C. Sept. 1, 2022) ("BCSO and OCSO are considered state agencies, and as such, they are entitled to sovereign immunity."), *report and recommendation adopted,* 2023 WL 142394 (D.S.C. Jan. 10, 2023); *Hoover v. Horry Cnty. Sheriff's Off.,* 2022 WL 17543063, at *2 (D.S.C. Nov. 3, 2022) ("Horry County Sheriff's Office is considered a state agency, as such it is entitled to sovereign immunity."), *report and recommendation adopted,* 2022 WL 17542997 (D.S.C. Dec. 8, 2022); *Murray v. Greenville Cnty. Sheriff's Off.,* 2018 WL 5624162, at *2 (D.S.C. Sept. 19, 2018) ("[County] sheriff's departments in South Carolina are considered alter egos or arms of the state."), *report and recommendation adopted sub nom.,* 2018 WL 5617931 (D.S.C. Oct. 29, 2018); *Wirtz v. Oconee Cnty. Sheriff's Dep't,* 2013 WL 5372795, at *1 (D.S.C. Sept. 24, 2013) ("Under South Carolina

Consequently, plaintiffs face a Sisyphean battle to demonstrate that the large body of cases that have found sheriffs and sheriff's offices to be arms of the state of South Carolina do not apply to the instant facts.[11]

Plaintiffs first argue that the CCSO is the sheriff's office, not an individual sheriff, and "no Court has . . . analyzed the South Carolina Sheriff's Office as an entity and has instead looked only at the Sheriff as an individual official." ECF No. 34 at 3. Consequently, plaintiffs conclude that precedent does not foreclose them from suing the sheriff's office as an entity. *Id.* at 11–33. This is a perplexing argument given the clear and ubiquitous precedent holding the

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law, a sheriff's department is a state agency, not a department under the control of the county."); *Watts v. Lexington Cnty. Police Dep't,* 2012 WL 6025771, at *4 (D.S.C. Nov. 15, 2012) ("[S]uing LCSD is the same as suing the State."), *report and recommendation adopted,* 2012 WL 6024672 (D.S.C. Dec. 4, 2012). Plaintiffs do not identify any court case that holds otherwise—instead choosing to critique the logic of all relevant cases for failing to adequately review the factors in *Ram Ditta,* 822 F.2d at 457–58. *See generally* ECF No. 34.

[11] Despite this precedent, plaintiffs believe they have met their burden to establish *stare decisis* does not apply by showing that:

> All prior court decisions cite to the deeply flawed analyses of *Gulledge* and *Cromer,* and no subsequent case (1) ever fully considered that the State is not liable for the judgment against a Sheriff's Office; (2) conducted a complete analysis of the three (3) *Ram Ditta[,* 822 F.2d at 457–58,] and *Harter[v. Vernon, 101 F.3d 334 (4th Cir. 1996)],* factors as to the Sheriff's Office as an entity; or (3) analyzed the Sheriff as policymaker as to the *Monell* claims alleged per *McMillian[v. Monroe Cnty.,* 520 U.S. 781, 785 (1997)].

ECF No. 34 at 11.

opposite. *See, e.g., Millmine v. Cnty. of Lexington,* 2011 WL 182875, at *5 (D.S.C. Jan. 20, 2011) ("In South Carolina, a sheriff's department is an agency of the state, not a department under the control of the county."), *aff'd,* 557 F. App'x 227 (4th Cir. 2014); *Carroll v. Greenville Cnty. Sheriff's Dep't,* 871 F. Supp. 844, 846 (D.S.C. 1994) ("It is well-established in this state that a sheriff's office is an agency of, and a sheriff 'dominated by' the state, such that a suit against the sheriff in his official capacity is a suit against the State."); *Abebe v. Moring,* 2013 WL 12098810, at *1 (D.S.C. Sept. 25, 2013) ("[I]n South Carolina, a sheriff's department is an agency of the state."), *aff'd,* 557 F. App'x 227 (4th Cir. 2014). The argument also falls apart because the rationale behind an individual state official's immunity is that it "is not a suit against the official but rather is a suit against the official's office," which here would be the sheriff's office. *Stewart,* 481 F. Supp. 2d at 489. Consequently, the suit against the sheriff's office "is no different from a suit against the State itself and is therefore barred under the Eleventh Amendment." *Id.*

Presumably considering the foregoing, plaintiffs contend that to the extent other courts have found the sheriff's office to be entitled to immunity, those courts have reached that conclusion by inappropriately extending the immunity established for the individual sheriff to the sheriff's office without engaging in a meaningful analysis of the relevant factors. ECF No. 34 at 11–33. Specifically, plaintiffs contend that none of those courts "had any proof that the State Treasury was at risk for any *Monell* claim brought against any Sheriff's Office" nor did they "conduct[] the complete analysis of the three remaining *Ram Ditta* factors." *Id.* at 4–5. Plaintiffs

also draw an analogy to a Fourth Circuit opinion considering whether North Carolina Sheriffs are county actors versus state actors where the court conducted a *Ram Ditta* analysis that emphasized the degree of autonomy of the sheriff and the sheriff's office from the state of North Carolina. ECF No. 34 at 17–18 (citing *Harter v. Vernon,* 101 F.3d 334, 340–41 (4th Cir. 1996)). Plaintiffs argue that the Fourth Circuit's holding in *Harter* should also apply to South Carolina—namely, the relevant South Carolina statutes are analogous to North Carolina statutes that the Fourth Circuit considered and found to establish that sheriffs were under the control of a mixture of both the state and the county. *Id.* at 17–24; *Harter,* 101 F.3d at 340–41.

Such an interpretation misses the mark because there are meaningful differences in the relevant North Carolina and South Carolina statutes, and the Fourth Circuit considered those differences to explain its conclusion in *Harter*. *See* 101 F.3d at 341 n.2 (identifying the meaningful differences in North Carolina and South Carolina to explain the different conclusions in *Harter* versus *Cromer).* Fortunately, this court need not speculate about how the Fourth Circuit would apply the *Ram Ditta* factors to a lawsuit against a South Carolina sheriff or sheriff's office because it considered the *Ram Ditta* factors in reaching its conclusions in factually analogous, if not identical, cases. For example, in *Gulledge,* the District Court determined that county sheriff's offices are "dominated" by the state for the following reasons:

> While the state constitution establishes the elective office of county sheriff and his term of office, it also provides that the General

Assembly is to prescribe his duties and compensation. S.C. Const. art. V § 24. Accordingly, the General Assembly through numerous statutes has set forth the sheriff's (and his deputies') duties and compensation. *See* South Carolina Code of Laws, 1976, §§ 23-11-10 et seq.; § 23-13-10; § 4-9-30(5) and (7). The sheriffs' arrest powers relate primarily to state offenses. *Id.* §§ 17-13-30, 23-15-50. Indeed, even the sheriff's territorial jurisdiction, namely, county-wide, is in effect prescribed by the legislature through the statutory designation of county boundary lines. *Id.* §§ 4-3-10 et seq. Although the sheriff as an elected official is not subject to hiring and firing by the state, the legislature has nevertheless prescribed that the Governor is the public official empowered to remove the sheriff from office for misconduct and to fill a vacancy in that office. *Id.* § 1-3-240; § 23-11–40.[12] As in *McConnell[v. Adams,* 829 F.2d

[12] Section 23-11-40 provides that a vacancy in the office of sheriff is filled by gubernatorial appointment until either the next general election for county sheriffs or a special election to elect someone to hold the office until the next general election for county sheriffs depending on when the vacancy occurs. Section 1-3-220(2) provides that the Governor appoints an officer to fill any vacancy in a "county office" until the next general election. The South Carolina Supreme Court has interpreted these two provisions *in pari materia* to mean that the Governor fills a vacancy in the sheriff's office until the next general election for county sheriffs. *Privette v. Grinnell,* 4 S.E.2d 305 (S.C. 1939). Although by this interpretation the State Supreme Court has concluded that the sheriff's office is a county office for the purpose of filling a vacancy, that conclusion d[id] not prevent [the court in *Gulledge,*

> 1319 (4th Cir. 1987)], "the inescapable conclusion is that [a county sheriff] [is] dominated by the state." 829 F.2d at 1328."

691 F. Supp. at 954–55 (footnote number altered). In *Cromer,* the Fourth Circuit stated that it "considered the remaining factors relevant to the immunity analysis and conclude[d] that, in his official capacity, Sheriff Brown [wa]s an arm of the state." *Cromer,* 88 F.3d at 1332. In so doing, the court cited to *Gulledge,* indicating its intention to incorporate *Gulledge's* analysis by reference. *See id.* Since the Fourth Circuit has fully considered the *Ram Ditta* factors in evaluating Section 1983 liability for South Carolina sheriffs, this court is foreclosed by controlling precedent from finding South Carolina county sheriffs or sheriff's offices to be municipal actors.

Plaintiffs have presented no reason that would convince the court to sidestep the controlling precedent establishing that South Carolina sheriff's offices are arms of the state. Plaintiffs' disagreement with the logic underlying those decisions and statutes does not fundamentally change that this court must follow binding precedent. *See* ECF No. 34 at 28–31. Thus, the court finds CCSO is entitled to Eleventh Amendment immunity and grants CCSO's motion to dismiss plaintiffs' 42 U.S.C. § 1983 claims as asserted against CCSO.

> 691 F. Supp. at 954 n.6,] from determining that the sheriff acts as an agent of the state, not the county, in light of the state's potential power of control over him. *See McConnell,* 829 F.2d at 1326 n.5; see also Patel v. McIntyre, 667 F. Supp. 1131, 1145 n.26 (D.S.C. 1987), aff'd, 848 F.2d 185 (4th Cir. 1988).

Gulledge, 691 F. Supp. at 954 n.6. This court similarly finds that the sheriff acts as an agent of the state, not the county.

IV. CONCLUSION

For the reasons set forth above, the court **GRANTS** the motion to dismiss.

AND IT IS SO ORDERED.

/s/ David C. Norton
DAVID C. NORTON
UNITED STATES DISTRICT JUDGE

December 13, 2023
Charleston, South Carolina

APPENDIX E

U.S. Const. Amend. XI

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

42 U.S.C. § 1983

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.

S.C. Const. Art. X - Finance, Taxation, And Bonded Debt

SECTION 7. Limitation on annual expenditures of state government and number of state employees; annual budgets and expenses of political subdivisions and school districts.

(a) The General Assembly shall provide by law for a budget process to insure that annual expenditures of state government may not exceed annual state revenue.

(b) Each political subdivision of the State as defined in Section 14 of this article and each school district of

this State shall prepare and maintain annual budgets which provide for sufficient income to meet its estimated expenses for each year. Whenever it shall happen that the ordinary expenses of a political subdivision for any year shall exceed the income of such political subdivision, the governing body of such political subdivision shall provide for levying a tax in the ensuing year sufficient, with other sources of income, to pay the deficiency of the preceding year together with the estimated expenses for such ensuing year. The General Assembly shall establish procedures to insure that the provisions of this section are enforced.

. . .

SECTION 8. Payments from treasuries.

Money shall be drawn from the treasury of the State or the treasury of any of its political subdivisions only in pursuance of appropriations made by law.

S.C. Code Ann. § 1-11-140. Authorization of Fiscal Accountability Authority, through the Office of Insurance Reserve Fund, to provide insurance.

(A) The State Fiscal Accountability Authority, through the Insurance Reserve Fund, is authorized to provide insurance for the State, its departments, agencies, institutions, commissions, boards, and the personnel employed by the State in its departments, agencies, institutions, commissions, and boards so as to protect the State against tort liability and to protect these personnel against tort liability arising in the course of their employment. The insurance also may be provided for physicians or dentists employed by the State, its departments, agencies, institutions, commissions, or boards against any tort liability arising out of the rendering of any professional services as a physician

or dentist for which no fee is charged or professional services rendered of any type whatsoever so long as any fees received are directly payable to the employer of a covered physician or dentist, or to any practice plan authorized by the employer whether or not the practice plan is incorporated and registered with the Secretary of State; provided, any insurance coverage provided by the authority may be on the basis of claims made or upon occurrences. The insurance also may be provided for students of high schools, South Carolina Technical Schools, or state-supported colleges and universities while these students are engaged in work study, distributive education, or apprentice programs on the premises of private companies. **Premiums for the insurance must be paid from appropriations to or funds collected by the various entities**, except that in the case of the above-referenced students in which case the premiums must be paid from fees paid by students participating in these training programs. The authority has the exclusive control over the investigation, settlement, and defense of claims against the various entities and personnel for whom it provided insurance coverage and may promulgate regulations in connection therewith. (emphasis added).

(B) Any political subdivision of the State including, without limitations, municipalities, counties, and school districts, may procure the insurance for itself and for its employees in the same manner provided for the procurement of this insurance for the State, its entities, and its employees, or in a manner provided by Section 15-78-140.

. . .

SECTION 1-11-445. Defense and indemnification of state agencies.

(A) The State of South Carolina, by and through its agencies, departments, and instrumentalities, must defend the state agency, department, or instrumentality, and the members of a governing board of the state agency, department, or instrumentality, as applicable, against an uninsured claim or suit that arises out of or by virtue of the performance of official duties on behalf of the state agency, department, or instrumentality, and must indemnify them for an uninsured loss or judgment incurred by them as a result of the claim or suit, without regard to whether the claim or suit is brought against them in their individual or official capacities, or both. The State also must defend directors, officers, and employees of the entity, and legislative employees performing duties for the entity, against an uninsured claim or suit that arises out of or by virtue of the performance of official duties unless the director, officer, employee, or legislative employee was acting in bad faith including, but not limited to, acting outside the scope of his official duties, or that the actions constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude. The State shall indemnify these directors, officers, employees, and legislative employees for a loss or judgment incurred by them as a result of such uninsured claim or suit, without regard to whether the claim or suit is brought against them in their individual or official capacities, or both. This commitment to defend and indemnify extends to members of the entity, the entity's officers, the entity's director, the entity's employees, and legislative employees after they have left their employment with the entity or the General Assembly, as applicable, if the uninsured claim or

suit arises out of or by virtue of their performance of official duties on behalf of their employer.

(B) The term "instrumentality" as used in this section includes an entity where a specific duty or function is imposed on the entity by law and includes any function where the entity must exercise a portion of the state's sovereignty. Entities to which this provision applies include, but are not limited to, the State Fiscal Accountability Authority, the Judicial Merit Selection Commission, the Public Utilities Review Committee, the Retirement Systems Investment Panel, and all joint special legislative committees.

. . .

SECTION 4-1-10. Division of State into counties; each county is a body politic and corporate.

The State of South Carolina is divided into forty-six counties. Each county is a body politic and corporate for the following purposes:

(1) To sue and be sued;

(2) To purchase and hold, for the use of the county, lands and personalty within the limits thereof;

(3) To make all contracts; and

(4) To do all acts in relation to the property and concerns of the county necessary thereto.

SECTION 4-1-80. County officers shall be furnished office space, furniture and equipment by county.

The governing body of each county shall furnish the probate judge, auditor, superintendent of education, clerk of court, sheriff, treasurer and master in equity of their respective counties office room, together with necessary furniture and stationery for the same, which shall be kept at the courthouse of their respective

counties, and it shall supply the offices of such officials with fuel, lights, postage and other incidentals necessary to the proper transaction of the legitimate business of such offices.

. . .

SECTION 4-9-25. Powers of counties.

All counties of the State, in addition to the powers conferred to their specific form of government, have authority to enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of these powers in relation to health and order in counties or respecting any subject as appears to them necessary and proper for the security, general welfare, and convenience of counties or for preserving health, peace, order, and good government in them. The powers of a county must be liberally construed in favor of the county and the specific mention of particular powers may not be construed as limiting in any manner the general powers of counties.

SECTION 4-9-30. Designation of powers under each alternative form of government except board of commissioners form.

. . .

(6) to establish such agencies, departments, boards, commissions and positions in the county as may be necessary and proper to provide services of local concern for public purposes, to prescribe the functions thereof and to regulate, modify, merge or abolish any such agencies, departments, boards, commissions and positions, except as otherwise provided for in this title. Any county governing body may by ordinance abolish a rural or other county police system established pursuant to Chapter 6 of Title 53 [of the Code of Laws,

1962] and devolve the powers and duties of the system upon the county sheriff; provided, however, that such an ordinance shall not become effective until the registered electors of the county shall first approve the ordinance by referendum called by the governing body;

. . .

SECTION 4-9-33. Referendum required to approve creation of county police department.

A referendum must be held to approve the creation of a county police department prior to the implementation of an ordinance adopted by a county council which would duplicate or replace the law enforcement functions of a sheriff. As used in this section, the term law enforcement means those activities and duties which require the exercise of custodial arrest authority by a sheriff or his duly appointed and sworn deputy or the performance of duties conferred by state law upon a sheriff and those activities incidental to the performance of law enforcement duties.

. . .

SECTION 15-78-30. Definitions. (South Carolina Tort Claims Act)

. . .

(e) "State" means the State of South Carolina and any of its offices, agencies, authorities, departments, commissions, boards, divisions, instrumentalities, including the South Carolina Protection and Advocacy System for the Handicapped, Inc., and institutions, including state-supported governmental health care facilities, schools, colleges, universities, and technical colleges.

. . .

(h) "Political subdivision" means the counties, municipalities, school districts…

. . .

SECTION 15-78-140. Procurement of insurance by political subdivisions; exclusivity of remedies provided in this chapter.

(A) The political subdivisions of this State, in regard to tort and automobile liability, property, and casualty insurance shall procure insurance to cover these risks for which immunity has been waived by: (1) the purchase of liability insurance pursuant to Section 1-11-140; or (2) the purchase of liability insurance from a private carrier; or (3) self-insurance; or (4) establishing pooled self-insurance liability funds, by intergovernmental agreement, which may not be construed as transacting the business of insurance or otherwise subject to state laws regulating insurance.

. . .

SECTION 17-13-40. Law enforcement officer jurisdiction when in pursuit of offender; authority, rights, privileges and immunities extended.

. . .

(B) When the police authorities of a county are in pursuit of an offender for a violation of a county ordinance or statute of this State committed within the county, the authorities may arrest the offender, with or without a warrant, at a place within the county, or at a place within an adjacent county.

SECTION 23-13-60. Power of arrest.

The deputy sheriffs may for any suspected freshly committed crime, whether upon view or upon prompt information or complaint, arrest without warrant and,

in pursuit of the criminal or suspected criminal, enter houses or break and enter them, whether in their own county or in an adjoining county.

SECTION 23-13-70. Duty to patrol county.

The deputy sheriffs shall patrol the entire county at least twice a week by sections assigned to each by the sheriff, remaining on duty at night when occasion or circumstances suggest the propriety thereof to prevent or detect crime or to make an arrest.