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Casenote

Finding Immunity: *Manders v. Lee* and the Erosion of § 1983 Liability

In *Manders v. Lee*,¹ the United States Court of Appeals for the Eleventh Circuit held that a Georgia county sheriff is an arm of the state when acting in his official capacity in implementing and enforcing use-of-force guidelines and, thus, is immune from suit in federal court under the Eleventh Amendment.² This decision creates considerable uncertainty in the area of government-entity liability under 42 U.S.C. § 1983³ because of the potentially broad impact of this newly established analytical approach.

I. FACTUAL BACKGROUND

In May of 1997, Willie Santonio Manders was arrested by the City of Homerville Police for punching a police officer. While Sheriff Deputy Brown and a city police officer were leading Manders into his cell, a different police officer stated that Manders hit him earlier. Sheriff Deputy Brown and the city police officer assisting him then began hitting Manders, repeatedly striking him across the face, neck, and head,

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1. 338 F.3d 1304 (11th Cir. 2003).
 2. *Id.* at 1328; U.S. CONST. amend. XI.
 3. 42 U.S.C. § 1983 (2003).

and ramming his head into the wall. Manders sustained physical injuries to his face and suffered emotional injuries that eventually resulted in a mental hospital stay.⁴

Manders filed his amended complaint in the United States District Court for the Middle District of Georgia on April 20, 1999, alleging numerous claims against several defendants.⁵ The majority of the claims against the numerous defendants were eventually dismissed; however, the district court denied Sheriff Peterson's⁶ motion for summary judgment with respect to Manders's "use-of-force policy claims"⁷ under § 1983 against . . . Sheriff Peterson in his official capacity.⁸ Sheriff Peterson then filed a motion for reconsideration, asserting that he was entitled to Eleventh Amendment immunity. After the district court denied his motion for reconsideration, Sheriff Peterson filed an interlocutory appeal with the Eleventh Circuit Court of Appeals.⁹

Following circuit precedent that treated suits against Georgia sheriffs acting in their official capacity as suits against a county, instead of as suits against the state, the court of appeals reluctantly affirmed the district court's denial of summary judgment.¹⁰ However, because the precedent decisions did not analyze whether a sheriff actually represents either the state or the county under Georgia law, the court questioned the correctness of those decisions.¹¹ Subsequently, the court of appeals voted to vacate the panel opinion affirming the denial of summary judgment and ordered the case reheard en banc.¹² On July 28, 2003, the Eleventh Circuit issued its decision in the case of *Manders v. Lee*,¹³ determining that Georgia sheriffs act as an arm of the state when

4. 338 F.3d at 1306.

5. *Id.*

6. "As elected sheriff for Clinch County, Georgia, Sheriff Peterson is responsible for operating the jail in Clinch County, for establishing policy and procedures at the jail, and for hiring, training, and supervising his deputies who work in the jail." *Id.*

7. "According to Manders, deputy Brown beat him, and Clinch County and Sheriff Peterson permitted deputy Brown's use of excessive force. Manders also asserts that Clinch County and Sheriff Peterson failed to provide deputies proper training and oversight regarding use of force at the jail and failed to promulgate rules and regulations adequate to regulate deputies conduct, and that this failure caused the beating suffered by Manders." *Manders v. Lee*, 285 F.3d 983, 988 (11th Cir.), *vacated by*, 300 F.3d 1298 (11th Cir. 2002).

8. *Id.* at 989.

9. *Id.*

10. *Id.* at 1009.

11. *Id.*

12. *Manders v. Lee*, 300 F.3d 1298 (11th Cir. 2002).

13. 338 F.3d 1304 (11th Cir. 2003).

establishing or implementing use-of-force policies generally, and, in particular, at a county-funded and county-managed jail.¹⁴

II. LEGAL BACKGROUND

The central question addressed in *Manders*—when does a sub-state entity act on the state's behalf—occurs at the intersection of two legal doctrines: Eleventh Amendment immunity¹⁵ and claims based on 42 U.S.C. § 1983.¹⁶ The Eleventh Amendment, in recognition that the states retain certain attributes of sovereignty, largely shields states from suits in federal court.¹⁷ It was passed after the Revolutionary War primarily out of concern that the heavily indebted states would be forced to answer for their debts in federal court, thus leading to their financial destruction.¹⁸

The Civil Rights Act of 1871 was introduced as a bill to “enforce the provisions of the Fourteenth Amendment to the Constitution of the United States,”¹⁹ and to suppress “Ku Klux Klan violence in the Southern States.”²⁰ The bill's first section, later codified as 42 U.S.C. § 1983, secured federal rights by giving a broad remedy to any citizen subjected to violations of federally protected civil rights at the hands of officers of the state.²¹ Legislative history indicates that the Civil Rights Act of 1871 was aimed at sheriffs whose active participation, tacit approval, or neglect of duty caused the violation of federally protected civil rights.²²

14. *Id.* at 1305-06.

15. Amendment XI of the U.S. Constitution provides: “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.”

16. Section 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . 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

42 U.S.C. § 1983 (2003).

17. *Hess v. Port Auth. Trans-Hudson Corp.*, 513 U.S. 30, 39 (1994).

18. *Id.*

19. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 665 (1977).

20. *Id.*

21. *Id.* at 665-86. The bill was divided into four parts. Part 1, later codified as 42 U.S.C. § 1983, and parts 2-4, which dealt mostly with Ku Klux Klan violence. *Id.*

22. *See id.*

Although § 1983 liability extends only to “persons,”²³ the Supreme Court in *Monell v. Department of Social Services of New York*²⁴ held that “persons” includes local governments and municipalities.²⁵ While expanding the definition of “persons” falling under the ambit of § 1983, *Monell* also significantly narrowed the reach of § 1983 liability against local governments and municipalities by holding that the constitutionally violative conduct must be carried out “pursuant to official municipal policy of some nature”²⁶ instead of by mere tortious activity of an employee acting contrary to official sanction.²⁷ The requisite policy can be made by its lawmakers or by one whose “edicts or acts may fairly be said to represent official policy.”²⁸ The Supreme Court, however, expressly chose to save for another day development of the full contours of municipal liability under § 1983.²⁹

Ten years later, in *City of St. Louis v. Propotnick*,³⁰ the Supreme Court seized the opportunity to further clarify § 1983 municipal, county, or other local-entity liability by elaborating on the method courts should follow in determining where policymaking authority lies. Recognizing that state law, including “custom or usage” having the force of law, governs this determination, the Court stated in *Jett v. Dallas Independent School District*³¹ that in deciding § 1983 municipal liability claims, the trial court must first identify the official or government body that acts with final policymaking authority regarding the action alleged to have caused the constitutional violation. Once the final policymaking officials have been identified, the court must then determine whether the constitutional violation was caused directly by their decisions or by their acquiescence in a long standing practice or custom constituting “standard operating procedure.”³²

23. 42 U.S.C. § 1983 (2003).

24. 436 U.S. 658 (1977).

25. *Id.* at 694 (overruling Part III of *Monroe v. Pape*, 365 U.S. 167 (1961)). Although when *Monroe* was decided it appeared that its extension of § 1983 liability to local government subentities also applied to states themselves—all of which might be considered to be acting “under color of state law,” the operative phrase in § 1983—the Supreme Court held otherwise in 1989. In *Will v. Michigan Department of State Police*, 491 U.S. 58 (1989), the Court held that a state was not a § 1983 “person” and therefore could not be sued under that statute in any court, state or federal.

26. *Id.* at 691.

27. *Id.* “We conclude, therefore, that a local government may not be sued under § 1983 for an injury inflicted solely by its employees or agents.” *Id.* at 694.

28. *Id.* at 694.

29. *Id.* at 694-95.

30. 485 U.S. 112 (1988).

31. 491 U.S. 701, 737 (1989).

32. *Id.*

In the foregoing cases, it was uncontroverted that a city's or county's final policymaker was acting for the city or county who employed him. But in *McMillian v. Monroe County*,³³ the Supreme Court addressed which entity an Alabama sheriff (whom both parties agreed was the official policymaker for § 1983 purposes) represented when inflicting the unconstitutional injury at issue.³⁴ The Court announced two principles that governed the decision of the preliminary question whether an injury inflictor was a "final policymaking official" at all.³⁵ The first principle is whether the government official has final policymaking authority for the local government in that "particular area of the government's business, or on that particular issue,"³⁶ as opposed to having final policymaking authority in an all-or-nothing categorical sense.³⁷ Second, the analysis of the official's function in a local government is dependent on how relevant state law defines the official's functions.³⁸

In *McMillian* the sheriff allegedly suppressed exculpatory evidence and testimony and coerced a codefendant to give inculpatory evidence resulting in an alleged unconstitutional capital conviction against the defendant.³⁹ Accordingly, the Supreme Court identified the local-government function at issue in this case as law enforcement.⁴⁰ The Court then grappled with whether the sheriff exercised this law-enforcement function on behalf of the county or the State of Alabama.⁴¹ If the county sheriff was exercising law-enforcement authority on behalf of the county as the county's final policymaker, the county could be liable for its actions under § 1983.⁴² If, on the other hand, the sheriff was acting on behalf of the state, the functional defendant would be the state itself; and because states sued in their own name are not "persons" capable of being sued under § 1983, in state or federal court, no government would be liable for the sheriff's allegedly unconstitutional conduct.⁴³

33. 520 U.S. 781 (1997).

34. *Id.* at 783.

35. *Id.* at 785.

36. *Id.* "[The] question is whether school district superintendent 'possessed final policymaking authority in the area of employee transfers.'" *Id.* (quoting *Jett v. Dallas Indep. Sch. Dist.*, 491 U.S. 701, 738 (1989)).

37. *Id.* at 785.

38. *Id.* at 786.

39. *Id.* at 783.

40. *Id.* at 785-86.

41. *Id.*

42. See *Will v. Mich. Dep't of Police*, 491 U.S. 58, 58 (1988).

43. *Id.*

To answer the question whether the sheriff in Alabama possessed final policymaking authority for the county or the state when acting in a law enforcement capacity, the Court first turned to the supreme law of the state, the Alabama Constitution.⁴⁴ Framed in its current form in 1901, the Alabama Constitution states that each county sheriff is an executive official who is impeachable by the Alabama Supreme Court for neglect of duty.⁴⁵ This fact weighed heavily in favor of classifying the sheriff as a state officer.⁴⁶ Turning to the Alabama Code, the Court found supportive, but less compelling, evidence tending toward classifying sheriffs as state officers.⁴⁷ First, the sheriff is charged with attending to the state courts in his county and must obey orders given by the judge, who is a state official.⁴⁸ Second, the sheriff must give to the county treasurer a written statement detailing the funds received for the county and must pay these to the treasurer, but the treasurer cannot direct the sheriff to take specific actions, thus showing a lack of control.⁴⁹ Third and most important, the sheriff is given complete authority to enforce Alabama state criminal law.⁵⁰ A county has no such power and may not instruct the sheriff in his duties.⁵¹ Whereas the county does not exercise control over the sheriff, the governor and attorney general can exercise control by directing the sheriff to investigate violations of state law in the sheriff's counties and report those findings to the charging officer.⁵²

Juxtaposed against the state constitutional findings and the three statutory provisions supporting the conclusion that sheriffs are state officials, the Court held four other provisions collectively insufficient to tip the balance in favor of the conclusion that Alabama sheriffs exercised law-enforcement functions on behalf of Alabama counties: (1) the sheriff's salary is paid out of the county treasury, (2) the county provides equipment and other necessities reasonably needed for the sheriff to

44. *McMillian*, 520 U.S. at 787.

45. The 1901 revision of the Alabama Constitution sought to remedy reports of sheriffs who either allowed or sanctioned lynching of prisoners by centralizing control over the sheriff by making the sheriff an executive officer, making such neglect of duty an impeachable offense, and by removing impeachment authority from the county to the Alabama Supreme Court. Thus, sheriffs share the same impeachment procedures as state legal officers, instead of those of county and municipal officers. *Id.* at 788.

46. *Id.*

47. *Id.* at 789.

48. *Id.*

49. *Id.* at 790.

50. *Id.*

51. *Id.*

52. *Id.* at 791.

execute his duties, (3) the sheriff's jurisdiction is limited to his county's borders, and (4) the local county voters elect the county sheriff.⁵³ The Court discounted these factors by emphasizing that they afforded the county scant control over the sheriff with respect to law-enforcement functions.⁵⁴ Although the Court in *McMillian* did not explicitly rely on Eleventh Amendment jurisprudence and analysis in reaching its conclusion, the Court's reasoning on these factors mirrors the approach the Supreme Court used in determining, for Eleventh Amendment purposes, when a sub-state entity acts on behalf of a state.⁵⁵

Before conclusively settling the issue, the Court dispelled two other concerns potentially weighing against the sheriff's status as a state officer.⁵⁶ First, the Court examined the history of the sheriff's office in Alabama to demonstrate how the sheriff can be a state policymaker only in his elected county, even though normally a state policymaker is elected by all state voters to implement policy for the entire state.⁵⁷ Second, the Court cautioned other states that they could not effectively shield their local governments from liability by manipulating the titles of their state officers. This is because plaintiffs could still prove a widespread practice of constitutional violations under county auspices by showing custom or usage having the force of law, instead of showing constitutional injury inflicted by a county policymaker.⁵⁸

In two Eleventh Circuit decisions before *Manders*, the court followed *McMillian* by cloaking Alabama sheriffs with that state's Eleventh Amendment immunity from liability for damages in federal court actions under § 1983. In *Turquitt v. Jefferson County*,⁵⁹ the Eleventh Circuit held the county not liable for the sheriff's negligent supervision of the county jail because the Alabama county lacked control over the sheriff's performance of such duties.⁶⁰ The court noted that even though the Alabama Constitution clearly labeled the sheriff as a state officer, *McMillian* required a state-law analysis of which government body actually exercised control over the sheriff's duty at issue.⁶¹

53. *Id.*

54. *Id.* at 791-93.

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

56. *McMillian*, 520 U.S. at 793.

57. *Id.* at 793-95.

58. *Id.* at 796.

59. 137 F.3d 1285 (1998).

60. *Id.* at 1286.

61. *Id.* at 1288.

The court in *Grech v. Clayton County*⁶² relied on *McMillian* and *Turquitt* for the proposition that a “sheriff’s policy or act cannot be said to speak for the county if the county has no say in what policy or action the sheriff takes.”⁶³ This is because a contrary holding would impose on the government entity formally employing the actual constitutional injury inflictor a form of respondeat superior liability rejected by the Supreme Court in *Monell*.⁶⁴ Under Georgia law, the Eleventh Circuit held that Clayton County was not liable for a sheriff’s improper maintenance of the Criminal Justice Information System⁶⁵ network because the county had no control over the sheriff’s performance of this function.⁶⁶

In the Eleventh Amendment context, the Supreme Court has provided additional guidance on the question of when a sub-state entity may be deemed to be acting on behalf of the state itself. In *Hess v. Port Authority Trans-Hudson Corp.*,⁶⁷ the Supreme Court examined whether a bi-state entity, created under the Compact Clause and run by the federal government and two states, was entitled to Eleventh Amendment immunity. Because the indicators of immunity pointed in different directions, the Court held that the twin justifications for Eleventh Amendment immunity—protection of state treasuries against judgments and the integrity of the states within the federal system—should guide the analysis.⁶⁸ Thus, the merits of each competing factor were evaluated against the twin reasons for immunity in order to measure their comparative weight.⁶⁹ The Court rejected assigning decisive weight to the state’s control over the bi-state entity, saying that states always exercise ultimate control over every state entity.⁷⁰ Instead, the implication of the state’s purse is the salient factor that will be given decisive weight when it points toward immunity.⁷¹

In *Regents of the University of California v. Doe*,⁷² the Supreme Court clarified the “money-judgments factor,” holding that a state university’s

62. 335 F.3d 1326 (2003). *Grech* was issued three weeks prior to *Manders*. However, it did not command a majority opinion.

63. *Id.* at 1331.

64. *Id.* at 1341.

65. CJIS is a statewide database accessible to law enforcement agencies throughout Georgia. *Id.* at 1327.

66. *Id.* at 1348.

67. 513 U.S. 30 (1994).

68. *Id.* at 47.

69. *Id.* at 49-53.

70. *Id.* at 47-48.

71. *Id.* at 48-49.

72. 519 U.S. 425 (1997).

Eleventh Amendment immunity was not undermined by its potential indemnification by the federal government.⁷³ The Court reasoned that the state's integrity is implicated by the mere risk of adverse judgment, even if the state does not actually pay the judgment, and held that it is the state's "potential legal liability" that is relevant.⁷⁴

III. COURT'S RATIONALE

The Eleventh Circuit in *Manders v. Lee*,⁷⁵ confronting the same question the Supreme Court addressed in *McMillian* (although under Georgia rather than Alabama law), departed from the *McMillian* analogue by relying on a blend of Supreme Court § 1983 municipal liability doctrine and Eleventh Amendment doctrine as previously elaborated by the Eleventh Circuit itself. The court applied its own four-factor Eleventh Amendment test for determining if a Georgia county sheriff is an arm of the state when carrying out the particular functions at issue.⁷⁶ Formally, the opinion was obedient to *McMillian*, first by setting out the function at issue and then observing that state law is determinative of this federal question.⁷⁷

While being placed in his jail cell, Manders was subjected to constitutionally violative conduct at the hands of the sheriff's deputy; accordingly, the majority defined the sheriff's function in this context as establishing a use-of-force policy at the jail and training and disciplining his deputies in that regard,⁷⁸ as opposed to the dissent's characterization of "operating a county jail."⁷⁹ The majority regarded the dissent's view of the sheriff's function as being imprecise and abstract,⁸⁰ and emphasized that the proper assessment is not whether Sheriff Peterson acts on behalf of the state in an all-or-nothing categorical approach, but rather

73. *Id.* at 431.

74. *Id.*

75. 338 F.3d 1304 (11th Cir. 2003).

76. *Id.* at 1308-09.

77. *Id.*

78. *Id.*

79. *Id.* at 1333.

80. At the heart of the debate between the majority and dissent over the proper definition of the function at issue is the implication of the majority's definition. The dissent contends that "use of force" is a general attribute of the sheriff's office that is implicated to a greater or lesser degree by every action of the sheriff. Because "use of force" is a pervasive attribute of the sheriff's office, the majority's definition of function is applicable not just in jails but on highways and virtually anywhere the sheriff executes his duties. Even though the majority characterizes the dissenting formulation as being an abstract "all-or-nothing" definition, the dissent points out that not only is their formulation established by precedent, but it focuses the analysis on determinative, positive state law. *Id.* at 1309 n.9.

"in light of the particular function in which the defendant was engaged when taking the actions out of which liability is asserted to arise."⁸¹

The majority turned to the sheriff's constitutional definition and statutory relationship to the county and the state.⁸² In Georgia, the sheriff is elected by the people of the county but holds a constitutional office that exists separate from the county.⁸³ In some respects the state legislature has control over the sheriff because it controls the qualifications for election of sheriffs and their minimum salary.⁸⁴ Moreover, Georgia law expressly forbids the county from exercising control over a sheriff's force policy.⁸⁵ The sheriff exercises sole discretion in the hiring of deputies, who are considered employees not of the county but of the sheriff.⁸⁶ For these reasons, the sheriff is an officer of the state, and thus the state's constitutional designation of sheriffs as "county officers" is merely a label describing where the sheriff operates and is elected instead of defining his office.⁸⁷

The majority then proceeded to outline the sheriff's functions and duties, which they characterized as (1) law enforcement; (2) state courts; and (3) corrections.⁸⁸ The majority also noted the state's singular role in granting these powers to the sheriff, and assigning and controlling the sheriff's exercise of these duties.⁸⁹ Law enforcement relates to a sheriff's duty "to enforce the laws and act on behalf of the sovereign State,"⁹⁰ an observation made by the Court in *McMillian* when the Justices noted that the Alabama sheriff was an officer of that state charged with keeping the peace in the county where he is elected.⁹¹ Further, Georgia law assigns sheriffs an integral role in operating the superior courts, which are the trial courts of general jurisdiction in Georgia.⁹² These duties, ranging from mandatory attendance at all sessions of court, enforcement of state court orders, authorization of

81. *Id.* at 1308.

82. *Id.* at 1310.

83. *Id.*

84. *Id.*

85. *Id.* at 1311.

86. *Id.*

87. *Id.* at 1312.

88. *Id.*

89. *Id.*

90. *Id.* (citing O.C.G.A. § 15-16-10(a)(1)-(8)). The court also notes the availability of other state actors, the Georgia State Patrol and the Georgia Bureau of Investigation, in law enforcement activity. *Id.* at 1313 n.16.

91. *Id.* at 1313 (citing *McMillian v. Monroe County*, 520 U.S. 781 (1997)).

92. *Id.* at 1314.

bonding companies, and others, are discrete state functions delegated specifically to Georgia sheriffs.⁹³

Regarding corrections, at issue in *Manders*, the majority examined the rules governing incarceration of Georgia state prisoners in county jails, and the role Georgia sheriffs play in managing those jails.⁹⁴ The court concluded that Georgia law addressing these points represents Georgia state management and control over the Georgia sheriff, whereas the county has no authority over the Georgia sheriff's corrections duties, including which offenders serve time in county jails and who is in charge of those jails.⁹⁵ The majority concluded that a sheriff in Georgia is an officer of the state even though he acts within an assigned county and is elected by county voters.⁹⁶

Having completed the examination of Georgia law, the majority applied the four Eleventh Amendment factors elaborated by the Eleventh Circuit to the sheriff's functions of establishing force policy and training and disciplining his deputies in that regard.⁹⁷ Beginning with how "state law defines the entity," the court stressed that the authority to use force is derived from the state and is a state function regardless of the context surrounding the employment of force.⁹⁸ This factor thus weighs heavily in favor of characterizing the Georgia sheriff as a state officer regarding this function.⁹⁹

The second factor, "where Georgia law vests control," points to identifying the Georgia sheriff as a state officer because only the state has control over the sheriff's force policy.¹⁰⁰ Under Georgia law the state requires county sheriffs to undergo annual training, funded by the state, which presumably includes instruction on force policy and deputy training.¹⁰¹ Further, the governor alone may investigate the sheriff and discipline the sheriff for the violation of his duties.¹⁰² Meanwhile, the county has no control over or involvement in the sheriff's force policy and only possesses control over separate matters.¹⁰³

For the court, the third factor, "where the entity derives its funds," showed sufficient state involvement to tip the balance in favor of

93. *Id.* at 1314-15.

94. *Id.* at 1315-19.

95. *Id.* at 1317.

96. *Id.* at 1318.

97. *Id.* at 1318-19.

98. *Id.*

99. *Id.*

100. *Id.* at 1320.

101. *Id.* at 1321.

102. *Id.*

103. *Id.* at 1322.

Eleventh Amendment immunity.¹⁰⁴ Even though the county supplies the majority of the sheriff's budget, the majority found persuasive the state's involvement with funding particular aspects of the function at issue, such as "the annual training of sheriffs, [and] the [g]overnor's disciplinary procedure over sheriffs for use of excessive force."¹⁰⁵ Furthermore, the majority reasoned that county funding grants the county attenuated control, at best, over the sheriff because the state mandates that the county pay the sheriff a minimum salary and official bond amounts, and the county cannot dictate how the sheriff must spend the funds allocated by the county.¹⁰⁶

The majority denied that the fourth factor, "liability for and payment of adverse judgments," defeated Eleventh Amendment immunity.¹⁰⁷ After pointing out that the sheriff's office alone is liable for adverse judgments, the majority said that to the extent adverse judgments create deficiencies in the sheriff's budget, both county and state funds are implicated when recouping the losses because both the county and state ultimately fund the sheriff.¹⁰⁸ However, as the Supreme Court wrote in *Regents of the University of California v. Doe*,¹⁰⁹ an actual drain on the state treasury is not required because the Eleventh Amendment's main focus is on respecting the dignity and integrity of each state in the federal system.¹¹⁰ The majority found this factor insufficient to defeat Eleventh Amendment immunity because these concerns are not limited to who pays for adverse judgments.¹¹¹

Having concluded that the first two factors weigh heavily in favor of immunity, the third factor tilts in favor of immunity, and the fourth, at a minimum, does not defeat immunity, the court held that the sheriff acts as an arm of the state when enacting force policy.¹¹² The court was quick to point out that the decision was limited to the narrow issue decided that day, but authored a footnote suggesting that Georgia sheriffs act on behalf of the county in providing, or failing to provide, medical care at the jails they run.¹¹³

104. *Id.* at 1323.

105. *Id.*

106. *Id.* at 1324.

107. *Id.*

108. *Id.* at 1327.

109. 519 U.S. 425 (1997).

110. 338 F.3d at 1327.

111. *Id.* at 1328.

112. *Id.* at 1328-29.

113. *Id.* at 1328-29, 1323 n.43.

A. *Anderson Dissent*

Judge Anderson, dissenting, wrote that the majority misapplied the Eleventh Amendment analysis because the twin reasons for Eleventh Amendment immunity, as laid out in *Hess*, should be the guide when immunity indicators do not point in the same direction.¹¹⁴ Here, Judge Anderson did not see any greater threat to the dignity of the state by this suit than would occur by an identical suit brought against a city or county.¹¹⁵ Second, he read the Supreme Court's opinion in *Hess* to hold that the liability-for-judgment factor is the paramount inquiry in Eleventh Amendment jurisprudence, displacing the significance afforded to the control factor.¹¹⁶ While ultimate control over every sub-state entity lies with the state, focusing on the control factor fails to address the central, overriding reason behind the Eleventh Amendment—protecting the state purse from adverse judgments.¹¹⁷ Using these two reasons as a guide, Judge Anderson would hold that the sheriff is not an arm of the state and thus is liable under § 1983.¹¹⁸

B. *Barkett Dissent*

Judge Barkett, also dissenting, accused the majority of subverting the law of local government liability.¹¹⁹ In her view, the pivotal error in the majority's analysis was the misidentification of the function at issue.¹²⁰ This error allowed the majority to loosen the Eleventh Amendment immunity analysis from its moorings.¹²¹ In the past, the Eleventh Circuit has treated the function in § 1983 claims dealing with the mistreatment of inmates as "operating a county jail."¹²² By defining the function in this case as "use of force," the majority elevated a general attribute of the sheriff's office to the level of a function.¹²³ In the process, the majority departed from the reason the Supreme Court gave in *McMillian* for identifying the function¹²⁴ in the first place, to

114. *Id.* at 1329-30 (Anderson, J., dissenting).

115. *Id.* at 1330 (Anderson, J., dissenting).

116. *Id.* at 1330 (Anderson, J., dissenting).

117. *Id.* at 1330-31 (Anderson, J., dissenting).

118. *Id.* at 1331 (Anderson, J., dissenting).

119. *Id.* at 1332 (Barkett, J., dissenting).

120. *Id.* (Barkett, J., dissenting).

121. *Id.* (Barkett, J., dissenting).

122. *Id.* (Barkett, J., dissenting).

123. *Id.* at 1333 (Barkett, J., dissenting).

124. The majority's definition of function is even more puzzling when one considers that later in the opinion it only identifies three functions of the sheriff under Georgia law: corrections, law enforcement, and state courts. *Id.* at 1312-18.

focus the analysis on the positive state law that defines the area of official responsibility at issue.¹²⁵ The lack of direct state law authority on the use-of-force function forced the majority to draw inferences from virtually the entire code and constitution, resulting in two misstatements of law having tremendous importance and implication.¹²⁶

First, the majority suggested that sheriffs are state agents merely because the state confers on sheriffs the authority to use force; by implication then, all law enforcement officers, from city police to department store security guards, would be state officers because their authority to use force is also granted by the state.¹²⁷ Second, the majority suggested that the sheriff is immune from suit because the legislature outlines the powers and duties of the sheriff's office.¹²⁸ The full application of this argument would obliterate the distinction between local and state government because all local government is created by the legislature's outlining of the powers and duties of government offices.¹²⁹

Judge Barkett identified the function at issue as "operating a county jail,"¹³⁰ and applying the same four-factor Eleventh Amendment test used by the majority, concluded that a Georgia sheriff acts on the county's behalf when operating the county jail.¹³¹ With regard to the first factor, the definition of a sheriff's office and jails under state law,¹³² Judge Barkett rested her analysis on her previous discussion of the topic in *Grech v. Clayton County*¹³³ wherein she elaborated on the Georgia Constitution's designation of sheriffs as county officers.¹³⁴ An examination of the statutory law governing the function at issue further "complements the constitution's definition of the sheriff's office,"¹³⁵ and the majority was able to set aside this clear constitutional and statutory authority and reach a contrary conclusion only by defining function in a "novel" manner.¹³⁶

125. *Id.* at 1333 (Barkett, J., dissenting).

126. *Id.* (Barkett, J., dissenting).

127. *Id.* at 1334 (Barkett, J., dissenting).

128. *Id.* (Barkett, J., dissenting).

129. *Id.* at 1335 (Barkett, J., dissenting).

130. *Id.* at 1333 (Barkett, J., dissenting).

131. *Id.* at 1335 (Barkett, J., dissenting).

132. *Id.* (Barkett, J., dissenting).

133. 335 F.3d 1326 (11th Cir. 2003).

134. *Id.* at 1326 n.8 (Barkett, J., concurring).

135. 338 F.3d at 1335 (Barkett, J., dissenting).

136. *Id.* at 1336 (Barkett, J., dissenting).

The second factor, "degree of control maintained by the state" likewise pointed in favor of labeling the sheriff as a county officer.¹³⁷ Counties in Georgia fund and build jails that are run by their sheriffs and overseen by the county commissioner, whereas the state maintains its own distinct network of correctional facilities run by wardens and overseen by the Department of Corrections.¹³⁸ Thus, Sheriff Peterson's administration of the Clinch County Jail is independent and free from oversight by state corrections officials.¹³⁹ Further, the majority's misidentification of the relevant function allowed it to rely on the yearly training requirement and governor oversight of the sheriff as support for the conclusion that the sheriff is a state officer.¹⁴⁰ But the majority overreaches by relying on the mere existence of a state-mandated training requirement for establishing state control because such requirements are just part of the sovereign state's regulatory control; the state-mandated training requirement for the county commissioner or a lawyer does not likewise subject them to state control for purposes of Eleventh Amendment immunity.¹⁴¹

For Judge Barkett, the third factor, "the source of funds," strongly points to labeling the sheriff as county officer because the county not only funds the sheriff's entire operating budget, it appropriates funds for the function at issue.¹⁴² As is the case with the other factors, the majority's error begins with the misidentification of the relevant function at issue. The majority relied primarily on the state's funding of the state-mandated training and governor oversight of sheriffs to label sheriffs as state actors. The majority failed, however, to explain how several days of training and the possible cost of investigation for misconduct outweighs the county's daily cost of operating and maintaining the jail.¹⁴³ Further, by discounting the county's complete funding of the sheriff's budget, the majority downplays the degree of control actually exercised by the county. More important, even if county funding of the sheriff grants the county only attenuated control over the sheriff, the state clearly exercises no control over the sheriff's expenditures.¹⁴⁴

137. *Id.* at 1339 (Barkett, J., dissenting).

138. *Id.* at 1342 (Barkett, J., dissenting).

139. *Id.* at 1344 (Barkett, J., dissenting).

140. *Id.* at 1345 (Barkett, J., dissenting).

141. *Id.* at 1343-44 (Barkett, J., dissenting).

142. *Id.* at 1344-45 (Barkett, J., dissenting).

143. *Id.* at 1345 (Barkett, J., dissenting).

144. *Id.* at 1346 (Barkett, J., dissenting).

Judge Barkett emphasized that the fourth factor, "liability for and payment of adverse judgments," being the most important factor in the Eleventh Amendment analysis, cuts strongly against the sheriff being cloaked with Eleventh Amendment immunity.¹⁴⁵ For the foregoing reasons, Judge Barkett concluded that sheriffs in Georgia operate county jails for the counties in which they serve.¹⁴⁶

IV. IMPLICATIONS

The aftermath of *Manders* means that a citizen will not be able to bring a § 1983 claim against a sheriff in his official capacity in federal court if the sheriff's action at issue was done while executing an application of force. In federal court then, the citizen seeking redress for a Georgia county sheriff's use of force can no longer state a claim against the county because *Manders* deems the sheriff to be acting on behalf of the state; in effect, that claim founders on the element of causation. Nor would that claim lie against the state, which would be granted Eleventh Amendment immunity for the same reason. The citizen would be left with the option of bringing a § 1983 action for injunctive relief, with the possible eligibility for attorney fees. The citizen might also bring a suit against a Georgia county sheriff in his personal capacity, subject to qualified immunity. Even if the suit overcomes the qualified-immunity hurdle, the possibility still exists that the sheriff will not be indemnified or solvent to pay the judgment.

Not only is the citizen effectively barred from bringing a § 1983 claim in federal court against a sheriff, but it is ultimately unlikely that the same claim can be brought in state court because of state law sovereign immunity rules. Even if the § 1983 claim in state court proceeded past the immunity hurdle, the citizen would face the prospect of litigating a claim against a sheriff with the county citizens who elected the sheriff serving as jurors in the suit. The overall effect of *Manders* then is to eradicate any remedy that was available under § 1983 when the constitutionally violative conduct was a sheriff's use of force.

Aside from the implication for § 1983 claims against a sheriff for use of force, *Manders* creates considerable uncertainty in the area of § 1983 liability and Eleventh Amendment immunity for Georgia sheriffs in particular, and sheriffs generally. Will Georgia sheriffs become state actors for all law enforcement functions, or will a case-by-case analysis be required, leaving prospective plaintiffs to engage in a guessing game as to whether a sheriff will be a county or state actor with respect to

145. *Id.* at 1347 (Barkett, J., dissenting).

146. *Id.* at 1347-48 (Barkett, J., dissenting).

particular functions? The majority did seem to indicate that the Georgia sheriff is acting on behalf of the county when providing medical aid to inmates at the county jail,¹⁴⁷ but beyond this function *Manders* seems to point toward finding the sheriff as acting on behalf of the state absent clear statutory authority to the contrary because use of force is implicated by virtually every act of the sheriff.

If the sheriff is held to be acting as state policymaker for Georgia, then the sheriff could fall under the scope of the Georgia Tort Claims Act¹⁴⁸ ("GCTA") if Georgia courts follow the analysis of *Manders*. Because the GCTA provides "the exclusive remedy for any tort committed by a state officer or employee acting within the scope of his or her official employment duties,"¹⁴⁹ the sheriff could then avail himself of the protections and immunities provided by the GCTA.

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147. *Id.* at 1323 n.43; see also O.C.G.A. § 42-5-2 (2003).

148. O.C.G.A. § 50-21-20 (2003).

149. O.C.G.A. § 50-21-25(a) (2003).

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