IN THE SUPREME COURT

OF THE STATE OF ARIZONA

JACQUELIN JAMILEX LOPEZ SANCHEZ, an individual; MARLIN LOPEZ SANCHEZ, an individual; ROSARIO LOPEZ SANCHEZ, an individual; ILIANA OFELIA SANCHEZ, individually and as parent/next of kin to minor ORLANDO LOPEZ, Plaintiffs/Appellants, v. MARICOPA COUNTY, Defendant/Appellee.	No. CV-24-0013-PR Court of Appeals, Div. One No. 1 CA-CV 22-0572 Maricopa County Superior Court No. CV 2022-092441

AMICUS CURIAE BRIEF OF THE ARIZONA ASSOCIATION FOR JUSTICE

ZWILLINGER WULKAN PLC
Larry J. Wulkan (021404)
Peter A. Silverman (020679)
2020 North Central Avenue, Suite 675
Phoenix, Arizona 85004
Tel: (602) 609-3800
Fax: (602) 962-0089
larry.wulkan@zwfirm.com
peter.silverman@zwfirm.com

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

INTRODUCTION 1

LEGAL ANALYSIS 1

I. The Arizona Legislature established the parameters of governmental tort liability and explicitly recognized a county's liability for the acts of its employees, including sheriffs and deputy sheriffs. 1

II. *Fridena* is distinguishable because it involved the limited circumstances where a sheriff acts as a judicial officer. 4

III. The Act is consistent with common-sense liability for parallel county actors. 10

IV. Maricopa County controls all litigation, and pays any judgment involving its employees, including the sheriff and his deputies. It makes no sense, and is against public policy, that the county is not the proper party in a case alleging vicarious liabilit where any of its employees, especially a deputy sheriff, is sued. 12

V. The Court of Appeals' conclusion that the sheriff, sued in his official capacity, is the proper defendant when a plaintiff seeks to impose vicarious liability following the tort of a sheriff's deputy, leads to absurd results. 14

CONCLUSION 15

TABLE OF AUTHORITIES

Page(s)

Cases

Arpaio v. Baca,
217 Ariz. 570 (App. 2008)..8, 9

Clark v. Campbell,
219 Ariz. 66 (App. 2008)..6, 7

Collins v. Corbin,
160 Ariz. 165 (1989)..9

Doe ex rel. Doe v. State,
200 Ariz. 174 (2001)..3, 14

Dowling v. Stapley,
179 P.3d 960 (App. 2008)..3

Falcon ex rel. Sandoval v. Maricopa County,
213 Ariz. 525 (Ariz. 2006)..9

Flanders v. Maricopa County,
203 Ariz. 368 (App. 2002)..11

Fridena v. Maricopa County,
18 Ariz. App. 527 (1972)..*passim*

Hayes v. Continental Ins. Co.,
178 Ariz. 264 (1994)..4

Hernandez v. Maricopa County,
138 Ariz. 143 (App. 1983)..8, 9

Johnson v. Superior Court In & For County of Pima,
158 Ariz. 507 (App. 1988)..2

Kentucky v. Graham,
473 U.S. 159 (1985)..14, 15

Loredo v. Maricopa County,
1 CA-CV 22-0259, 2023 WL 2181126 (App. 2023)..10

Mann v. Maricopa County,
104 Ariz. 561 (Ariz. 1969)..6

Merrill v. Phelps,
52 Ariz. 526 (Ariz. 1938)..6

Monell v. New York City Dep't of Social Servs.,
436 U.S. 658 n.55 (1978)..14, 15

Nicaise v. Sundaram,
245 Ariz. 566 (2019)...2

Patton v. Mohave County,
154 Ariz. 168(App. 1987)..3, 13, 15

Phoenix Newspapers, Inc. v. Superior Court In & For County of Maricopa,
180 Ariz. 159 (App. 1993)..9

Prudential v. Estate of Rojo-Pacheco,
192 Ariz. 139 (App. 1997)..3

Ryan v. State,
134 Ariz. 308 (1982)..1, 2

Ryman v. Sears, Roebuck & Co.,
505 F.3d 993 (9th Cir. 2007) 12

State ex rel. Andrews v. Superior Court of Maricopa County,
39 Ariz. 242 (Ariz. 1931), *overruled on other grounds by Genda v. Superior Court*, 103 Ariz. 240 (1968) 6

Transamerica Title Ins. Co. v. Cochise County,
26 Ariz. App. 323 (1976)..6

Warrington v. Tempe Elementary School Dist. No. 3,
187 Ariz. 249 (App. 1996)..4

Yamamoto v. Santa Cruz County Bd. of Sup'rs,
124 Ariz. 538 (App. 1979)..8

Statutes

A.R.S. § 11-251 11

A.R.S. § 11-401 3

A.R.S. § 11-401(A)(1) 15

A.R.S. § 11-441(A) 9

A.R.S. § 11-441(A)(1) 3

A.R.S. § 11-441(A)(4) 9

A.R.S. § 11-441(A)(7) 9

A.R.S. § 11-444 12

A.R.S. § 11-981(A)(2) 12

A.R.S. § 11-981(B) 12

A.R.S. § 12-820 3

A.R.S. § 12-820(1) 2

A.R.S. § 12-820(6) 2

A.R.S. § 12-820(7) 3

A.R.S. § 12-820.01 4

A.R.S. § 12-820.02 4

A.R.S. § 12-821.01(A) 3

A.R.S. § 12-1181 6

A.R.S. § 38-462 3

A.R.S. § 38-462(A) 15

1984 Ariz. Sess. Laws, Ch. 285 2

1984 Ariz. Sess. Laws ch. 285, § 1 14

Rules

Ariz. R. Civ. P. 17(d) 14

Ariz. R. Civ. P. 25(d) 14

Other Authorities

Ariz. Const. art. 3 7

Ariz. Const. art. 6 § 3 7

Ariz. Const. art. 12 § 3 3

INTRODUCTION

Arizona's Legislature established a statutory system for claims against public entities and officials that makes clear that a county is vicariously liable for the acts of all its employees. Under our statutory scheme, Maricopa County is vicariously liable for the acts of its deputy sheriffs. By statute, deputy sheriffs are county "employees," and a county is thus the public entity responsible for their actions. The Court of Appeals departed from the statutory scheme and imposed its own rule that a county cannot be held liable for the actions of deputy sheriffs unless the county Board of Supervisors exercises direct control over those deputy sheriffs. The Court of Appeals' ruling departs from the clear statutory language to impose an unclear and unworkable standard. As our legislature has made clear, the right of control is not relevant; the official relationship between the employee and a county is the dispositive factor.

LEGAL ANALYSIS

I. The Arizona Legislature established the parameters of governmental tort liability and explicitly recognized a county's liability for the acts of its employees, including sheriffs and deputy sheriffs.

In *Ryan v. State*, this Court held that "the state and its agents will be subject to the same tort law as private citizens." 134 Ariz. 308, 311 (1982). This Court also stated that governmental immunity should be "a defense only when its application is necessary to avoid a severe hampering of a governmental function or thwarting of

established public policy." *Id.* Two years later, the Arizona Legislature passed the Actions Against Public Entities or Public Employees Act (the "Act"). 1984 Ariz. Sess. Laws, Ch. 285. The "comprehensive act" governs "the immunity and liability of public entities and employees." *Johnson v. Superior Court In & For County of Pima*, 158 Ariz. 507, 508 (App. 1988). Sheriffs and their deputies are "employees" of "public entities."

First, the Act broadly defines "employee" to include "an officer, director, employee or servant … who is authorized to perform any act or service." A.R.S. § 12-820(1). Because the Arizona Legislature chose to define an "employee" as including not only common-law employees but also officers, directors and servants, it clearly intended its definition of "employee" to include officers, like sheriffs, *who were otherwise not employees*. If this were not so, then the references to "officer" and "director" would be superfluous, but courts presume the legislature intended every word in a statute to have meaning. *See Nicaise v. Sundaram*, 245 Ariz. 566, 568 (2019) ("A cardinal principle of statutory interpretation is to give meaning, if possible, to every word and provision so that no word or provision is rendered superfluous.").

Second, the Act ties its definition of "employee" to public entities like a county. "'Public employee' means an employee of a public entity." A.R.S. § 12-820(6). A county is a "public entity," which "includes this state and any political

subdivision of this state." § 12-820(7). Counties are political subdivisions of the state. *Dowling v. Stapley*, 179 P.3d 960, 965 (App. 2008). Thus, the Act defines employees as including *officers* of a public entity—e.g., a county.

A sheriff is a county officer. *See* Ariz. Const. art. 12 § 3; A.R.S. § 11-401. So are a sheriffs' deputies, because they have all the powers and duties as appointed by a sheriff, including a sheriff's authority to perform law enforcement functions within the county. *See* A.R.S. § 38-462, § 11-441(A)(1); *Patton v. Mohave County*, 154 Ariz. 168, 171(App. 1987). The legislature is presumed to have known that A.R.S. § 12-820 would include a sheriff, its deputies, and other county officers as "employees." *See Prudential v. Estate of Rojo-Pacheco*, 192 Ariz. 139, 149 (App. 1997) ("We presume that when the legislature enacts a statute, it is aware of existing statutes."). Against this backdrop, the Arizona Legislature stated that "public entities are liable for acts and omissions of employees in accordance with the statutes and common law of this state" and that the Act should "be construed with a view to carry out the above legislative purpose." *Doe ex rel. Doe v. State*, 200 Ariz. 174, 176 (2001).

Incorporating the foregoing definitions, the Act codifies broad liability for governmental entities to anyone having "claims against a public entity, public school or a public employee," subject to compliance with the procedural notice of claim requirement. A.R.S. § 12-821.01(A). Thus, where there is no specific grant of

immunity within the Act, a county (a public entity) is liable for the acts of its statutorily-defined "employees," including the deputy sheriffs in this case. *See Warrington v. Tempe Elementary School Dist. No. 3*, 187 Ariz. 249, 251 (App. 1996) (concluding public entity was liable under the general rule of "governmental liability" because none of the immunity provisions within the Act applied).

Nothing in the Act grants immunity to a county under the circumstances here, where it is undisputed that the deputy who caused Sanchez's injuries was acting in the course and scope of his employment. None of the limited circumstances enumerated in A.R.S. § 12-820.01 (absolute immunity) and § 12-820.02 (qualified immunity) apply here. Therefore, under the clear legislative intent of the Act, Maricopa County is liable for the acts of its deputy, as the deputy—a county officer—falls within the Act's definition of "employees." *Cf. Hayes v. Continental Ins. Co.*, 178 Ariz. 264, 268 (1994) (in construing a statute, courts consider its context, language, subject matter, historical background, effects and consequences, and its spirit and purpose).

II. ***Fridena*** is distinguishable because it involved the limited circumstances where a sheriff acts as a judicial officer.

The Court of Appeals cited an almost fifty-year-old case, *Fridena v. Maricopa County*, for the proposition that a county cannot be vicariously liable for the acts of its sheriff or deputies. The Court of Appeals' reliance on *Fridena* is misplaced for two reasons: first, *Fridena* was decided before the legislature adopted the Act which

set forth county liability for the actions of deputies; and second, in *Fridena* the deputy was acting as a judicial officer rather than a county officer.

Fridena was decided more than a decade before our legislature adopted the Act. Thus, at the time of its decision, our legislature had not established the scope of county liability for county officers and employees. The legislature's adoption of the Act rendered the control and function analysis in *Fridena* unnecessary. But even if *Fridena's* analysis remains good law, *Fridena's* own language makes clear its holding does not apply in this case.

In *Fridena*, the plaintiff sued the county for "tortious conduct … in the issuance and service of a writ of restitution." 18 Ariz. App. 527, 528 (1972). In the course of executing the writ, deputies physically removed the plaintiff from the premises and arrested her for obstructing justice. *Id.* at 529. The *Fridena* court recognized that normally "the County exercises supervision of the official conduct of the Sheriff," but noted that "*in the instant case*, the County, having no right of control over the Sheriff or his deputies in service of the writ of restitution, is not liable under the doctrine of Respondeat superior for the Sheriff's torts." *Id*. at 530. (Emphasis supplied.) The *Fridena* court's use of the phrase "in the instant case" shows why context matters.

For starters, executing a writ of restitution is a judicial—not an executive (i.e. county)—function. Arizona law on forcible detainer clearly demarcates that the

sheriff executes writs of execution under direct orders from the Superior Court: "The writ of restitution or execution shall be issued by the clerk of the superior court and shall be executed by the sheriff or constable as in other actions." A.R.S. § 12-1181. In so doing, a sheriff is a court officer because the writ is issued *by the court* and the court orders a sheriff to execute it.[1] Thus, although a sheriff is typically a county officer, while executing a writ of restitution he acts under the order of the Superior Court, not the county. In doing so, he is a judicial officer under the control of the judicial branch. "Both the Arizona Supreme Court and this court have recognized that a sheriff, when carrying out certain of the statutory duties of the office, is acting as an officer of the court." *Clark v. Campbell*, 219 Ariz. 66, 72 ¶ 21 (App. 2008). "The court 'has jurisdiction either to exercise control over the act or to discipline the officer for doing or not doing it.'" *Id.* (citation omitted).

Arizona cases reinforce that a sheriff executing a writ of restitution is acting as a judicial officer because it has been long held the Superior Court has the ***exclusive*** right to control the sheriff's deputies in the performance of court functions such as executing writs. *See Merrill v. Phelps*, 52 Ariz. 526, 530 (Ariz. 1938); *Mann v. Maricopa County*, 104 Ariz. 561, 566 (Ariz. 1969) ("[T]he Judiciary has the power of control over the personnel directly connected with the Courts"); *State ex rel.*

[1] Correspondingly, there is no statute imposing upon a county the duty to execute writs of restitution. A county's power is entirely derivative and must be conferred by the State, either through the Arizona Constitution or a statute. *Transamerica Title Ins. Co. v. Cochise County*, 26 Ariz. App. 323, 326 (1976).

Andrews v. Superior Court of Maricopa County, 39 Ariz. 242, 248-49 (Ariz. 1931), *overruled on other grounds by Genda v. Superior Court*, 103 Ariz. 240 (1968) (court had authority to control sheriffs' conduct when performing duties as a court officer).

The judicial branch's exclusive control over a sheriff who is executing writs derives from the Arizona Constitution. Ariz. Const. art. 6 § 3. In turn, the Arizona Supreme Court delegates this power to the Superior Court, which commands the sheriff. This power is held entirely within the judicial branch and counties are not involved in any way. Similarly, in *Clark*, the Arizona Court of Appeals held that although a constable, like a sheriff, is an elected position, the Superior Court had the right "to exercise supervisory authority" over the constable and to "take appropriate and reasonable disciplinary action" over the constable for failure to "properly perform[] the statutory duties required of her in her capacity as an officer of the court." 219 Ariz. at 73 ¶ 26. Thus, two points explain why *Fridena* does not apply to the law enforcement operations here.

First, in *Fridena*, the deputies were performing an exclusively judicial function that rendered them judicial—rather than executive—officers. Consequently, only the judicial branch of government could possibly control them, and it would violate the separation of powers to hold one branch of government responsible for another's torts. *See* Ariz. Const. art. 3 (none of the three separate "departments shall exercise the powers properly belonging to either of the others").

Second, *Fridena*'s remark that the county had no vicarious liability because it lacked the right of control was *dicta*. The actual guiding principle was that the deputy sheriffs were acting as judicial officers. *Fridena* was unartfully written because after correctly recognizing that "[i]nasmuch as the Sheriff is a county officer" (implying that there, the Sheriff was not a county officer engaged in an executive function), the Court of Appeals continued to confusingly recite two consequences of the sheriff being a judicial officer (the County did not have the right to control and no vicarious liability) in such a way as to inadvertently imply that the lack of vicarious liability was the consequence of the lack of the right to control.

For the same reasons, *Hernandez v. Maricopa County* is also inapplicable. *Hernandez* involved a justice of the peace. The Court of Appeals held: "Justice of the peace courts, like the superior court, are part of the judicial department and thus they are not under the control of the executive branch of government." 138 Ariz. 143, 146 (App. 1983). For that reason, the county obviously had no right to control an officer under a different branch of government. *Id.*; *see also Yamamoto v. Santa Cruz County Bd. of Sup'rs*, 124 Ariz. 538, 540 (App. 1979) (reaching same conclusion on justice of peace and other court personnel).

Arpaio v. Baca confirms the distinction between a sheriff (or his deputies) acting as executive versus judicial officers. There, the Arizona Court of Appeals noted that in carrying out some of the sheriff's statutorily-enumerated duties, he acts

as an "officer of the court." 217 Ariz. 570, 579 ¶ 27 (App. 2008) (citing § 11–441(A)(4), (7)). However, "the sheriff does not act as an arm of the court in performing most of the other functions for which the sheriff is assigned responsibility under A.R.S. § 11-441(A)." *Id.* Thus, the Superior Court had no right to control the sheriff in his management of jail visitation. *Id.*

Thus, *Fridena*, read carefully, stands for the unremarkable proposition that when a sheriff is performing a judicial duty, the county cannot be liable. Furthermore, a sheriff's status as a county officer has no bearing on whether the officer is performing a judicial or executive function; it is the nature of the function being performed that drives the liability. *Cf. Collins v. Corbin*, 160 Ariz. 165, 166 (1989) (justices of the peace are county officers but are part of the judicial branch, so the counties have no right to control them).

The Maricopa County Board of Supervisors is part of the executive branch. *Falcon ex rel. Sandoval v. Maricopa County*, 213 Ariz. 525, 527 (Ariz. 2006). The deputy sheriff who collided with the plaintiffs' vehicle was charged with preserving the peace and enforcing laws—executive branch functions. *See Phoenix Newspapers, Inc. v. Superior Court In & For County of Maricopa*, 180 Ariz. 159, 163-64 (App. 1993). The separation of powers doctrine, which prevented liability in *Fridena* and *Hernandez*, is not implicated here.

The Court of Appeals cited to an unpublished decision titled *Loredo v. Maricopa County*, 1 CA-CV 22-0259, 2023 WL 2181126 (App. 2023), in which the court also applied *Fridena* to thwart vicarious liability on the part of the county. After reading the *Loredo* decision, it is clear the Court of Appeals borrowed extensively from that ruling for its decision in the present case. Not surprisingly, *Loredo* also failed to correctly analyze the holding in *Fridena* as an application of separation of powers and whether an officer is acting under the judicial or the executive branch. Instead, the court got hung up on the right to control and failed to account for the tapestry of Arizona law that confirms *Fridena* was simply a poorly-explained application of the separation of powers without fully explaining that county officers sometimes serve different branches of government.

III. The Act is consistent with common-sense liability for parallel county actors.

The fact the sheriff is elected to office does not somehow preclude the county's liability for his deputies' actions. The bulk of county functions are performed by a number of elected *parallel* policymakers, each of whom is the final authority within his or her sphere of statutorily-prescribed duties and ultimately accountable only to the voters. A county is liable for each of its final policymakers, and to allow a county to duck liability because of this parallel power structure would revive sovereign immunity.

For example, a county's board of supervisors consists of elected members and its duties are statutorily prescribed, just like a sheriff's. *See* A.R.S. § 11-251. Yet no one seriously suggests that a county is not vicariously liable for the actions of its board of supervisors. Similarly, a county's attorney, treasurer, recorder, and assessor, among others, are also elected and discharge statutory duties. If the county can avoid liability for the acts of its sheriff, there is nothing to stop it from avoiding liability for the acts of those other officers. This absurd result is precisely what our legislature hoped to avoid when it enacted the Act. As the Act makes clear, the legislature intended to impose liability on the county for the acts of all of its officials. Each is a final policymaker within his or her own realm. *See Flanders v. Maricopa County*, 203 Ariz. 368, 378 (App. 2002) (Sheriff was final policymaker such that the County was liable as a matter of law for § 1983 claim).

U.S. District Judge Wake recognized the error of interpreting *Fridena* in the context of the final parallel policymaker structure of Arizona counties:

> Ability to control really has nothing to do with liability. The Sheriff is the County. He is the final actor. It is simply not logical, doesn't serve any logical purpose, to say that the County escapes its liability because any one of its final actors cannot be controlled by any of its other final actors. So I'm satisfied that [the county's argument] is clearly contrary to Arizona law.

Donahoe v. Arpaio, CV10-2756 PHX-NVW, Motion Hearing Transcript at 56:16-58:22 (October 30, 2013). In that case, *Donahoe v. Arpaio*, Judge Wake intended to

issue a ruling that declined to follow *Fridena* as a poorly-reasoned intermediate state appellate court decision, which he was not bound to follow if he was convinced that the Arizona Supreme Court would rule differently. *See Ryman v. Sears, Roebuck & Co.*, 505 F.3d 993, 995 (9th Cir. 2007). However, *Donahoe* settled before any written opinion issued.

IV. Maricopa County controls all litigation, and pays any judgment involving its employees, including the sheriff and his deputies. It makes no sense, and is against public policy, that the county is not the proper party in a case alleging vicarious liability where any of its employees, especially a deputy sheriff, is sued.

Arizona law expressly recognizes that the county is liable for the torts of all of its elected officials, employees or officers, because it allows a county to purchase liability insurance to cover torts committed by "its elected or appointed officials, employees or officers if such elected or appointed officials, employees or officers are acting within the scope of employment or authority." A.R.S. § 11-981(A)(2). And Arizona law specifically imposes upon the county an obligation to reimburse the sheriff for all necessary expenses, including litigation. *See* A.R.S. § 11-444. Arizona law also allows a county to elect to self-insure against this same tort liability, and Maricopa County has done so. Pursuant to § 11-981(B), the county created the Maricopa County Self-Insured Risk Trust Fund. The Trust agreement, executed by the Board of Supervisors, provides that the Trustees of the fund shall pay "lawful

claims of liability that are the obligation of the County."[2]

Like the Act, the Trust agreement explicitly includes the sheriff and his deputies in its definition of "Employees." "'Employees' means all persons who are paid a wage, or salary from public monies in accordance with official entries on the County payroll, officers, board members of the County." *Id.* § 1.7.7. The sheriff and his deputies are public officers of the county whose wages are paid from the county's monies. *See Patton*, 154 Ariz. at 172.

Thus, not only does the county have the statutory obligation to pay all necessary expenses of the sheriff, including liabilities, but the county has assented in the Trust agreement to pay these liabilities. And consistent with this obligation, the county's self-insurance Trust recognizes that the county has the right to control litigation against the sheriff and to settle any claims. *Supra* note 3 §§ 2.2.3.1 (County Attorney may appoint counsel), 2.2.3.4 (settlement authority). It is thus absurd for the county to claim that it is not a proper party, contrary to its own Trust agreement.

Finally, Maricopa County's claim that it is not a proper party is contrary to public policy. "The legislative statement of purpose and intent in the act declares that it is 'the public policy of this state that public entities are liable for acts and omissions of employees in accordance with the statutes and common law of this

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[2] https://www.maricopa.gov/DocumentCenter/View/19902/Declaration-of-Trust-for-Self-Insured-Risk-Trust-Fund-PDF § 2.2.2.3.

state.'" *Doe*, 200 Ariz. at 175-76 (quoting 1984 Ariz. Sess. Laws ch. 285, § 1). This makes sense. If Maricopa County's argument is accepted, a plaintiff's only recourse against a sheriff's deputy who causes an injury is against the deputy himself. In such a situation, the public employee will rarely have sufficient means to compensate a victim, especially one who has suffered a catastrophic injury. The is contrary to the very reason the Arizona Legislature passed the Act.

V. The Court of Appeals' conclusion that the sheriff, sued in his official capacity, is the proper defendant when a plaintiff seeks to impose vicarious liability following the tort of a sheriff's deputy, leads to absurd results.

Arizona law mirrors federal law in recognizing "official capacity" suits for state law claims. *See* Ariz. R. Civ. P. 17(d) ("A public officer who sues or is sued in an official capacity may be identified as a party by the officer's official title rather than by name … ."); Ariz. R. Civ. P. 25(d) (when a public officer "who is a party in an official capacity" ceases to hold office, the officer's successor is automatically substituted as a party). The United States Supreme Court has explained that official capacity suits are a legal fiction that "generally represent only another way of pleading an action against an entity of which an officer is an agent." *Kentucky v. Graham*, 473 U.S. 159, 165–66 (1985) (quoting *Monell v. New York City Dep't of Social Servs.*, 436 U.S. 658, 690, n.55 (1978)). "[A]n official-capacity suit is, in all respects other than name, to be treated as a suit against the entity. It is not a suit against the official personally, for the real party in interest is the entity. … [A]

plaintiff seeking to recover on a damages judgment in an official-capacity suit must look to the government entity itself." *Id.* (Citations omitted). Here, the sheriff's deputy was acting in his official capacity as law enforcement officer when he collided with the plaintiffs because he was within the course and scope of his employment. He was a county officer because the sheriff is a county officer and his deputies have the same powers. *See* A.R.S. § 11-401(A)(1); A.R.S. § 38-462(A); *Patton*, 741 P.2d at 304. Any claim against the sheriff, in his official capacity, for the acts of his deputies is—by operation of law—a claim against the entity of which the sheriff is an agent. *See Kentucky*, 473 U.S. at 166.

CONCLUSION

When the Arizona Legislature waived sovereign immunity, it determined that counties would be responsible for the acts of their officials, including the torts of sheriffs and their deputies. Any other result ignores Arizona's statutes and creates the absurd situation in which the entity in charge of defending, managing and settling claims against the deputy has no responsibility for the deputy's acts leaving a plaintiff with no recourse against the employer who the tortfeasor served when injuring someone else.

The Arizona Supreme Court should find under the Arizona Claims Act, a county is the "public entity" that employs a "public employee" deputy county sheriff who has negligently caused a motor vehicle collision. Similarly, the injured

motorists in this case properly filed a notice of claim with the county as the "public entity" that employs the deputy county sheriff as a "public employee" in one of its departments, namely in the office of the county sheriff.

RESPECTFULLY SUBMITTED this 14th day of October, 2024.

ZWILLINGER WULKAN PLC

By: */s/ Larry J. Wulkan*

Larry J. Wulkan
Peter A. Silverman
2020 North Central Avenue, Ste. 675
Phoenix, Arizona 85004-4584