

# COMMENTS

## County Liability for Poor Living Conditions and Inadequate Medical Care in California's County Jails

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### INTRODUCTION

Not every county in America resembles Mayberry, and not every county sheriff in America resembles Andy Griffith.<sup>1</sup> Many county jails in America are dangerous places, where inmates may suffer physical assault, same-sex rape, AIDS, tuberculosis, racial violence,

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<sup>1</sup> See Ken Sanes, *Transparency* (visited Jan. 7, 1999) <<http://www.transparencynow.com/andy.htm>> (on file with author) (describing Mayberry as idealized depiction of small town, and Andy Griffith as fictional peacemaker, who does good deeds and holds society together).

mental debility, hypertension, suicidal behavior, or death.<sup>2</sup> Although such dangerous living conditions have increased the need for adequate medical care in county jails, medical service providers in jails are often underfunded, understaffed, or underqualified.<sup>3</sup>

When inmates receive inadequate medical care in jail, they can sue those that are responsible for the poor care under 42 U.S.C. § 1983.<sup>4</sup> In California, county sheriffs supervise the quality of medical care in county jails, which makes them the frequent target of civil rights lawsuits brought by inmates that suffer injuries due to substandard jail conditions.<sup>5</sup> But county sheriffs are not ideal defendants for the inmates because they do not possess sufficient wealth to pay large judgments.<sup>6</sup> Consequently, inmates often seek damages from the employers of sheriffs: county governments.<sup>7</sup>

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<sup>2</sup> See generally Jeff Potts, *American Penal Institutions and Two Alternative Proposals for Punishment*, 34 S. TEX. L. REV. 443, 460-74 (1993) (stating that empirical studies show connection between jail overcrowding and assaultive behavior, communicable illness, hypertension, suicide, psychiatric commitments, death, and spread of AIDS); Laura Beil, *Mentally Ill Filling County Jails*, ORANGE COUNTY REG., Jan. 6, 1998, at A6 (stating that county jails are becoming "depots" for mentally ill people and explaining that conditions at many jails can worsen mental illnesses); Josh Meyer, *Peace Plan Elusive as County Jails Race War Continues*, L.A. TIMES, Jan. 17, 1994, at A1 (describing racial violence in county jails).

<sup>3</sup> See Potts, *supra* note 2, at 469-70 (noting that inadequate jail medical care often results from lack of funds, lack of medical staff, and lack of qualified practitioners).

<sup>4</sup> See 42 U.S.C. § 1983 (1994). Section 1983 provides in relevant part:

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, suit in equity, or other proper proceeding for redress . . . .

*Id.*

<sup>5</sup> See CAL. GOV'T CODE § 26605 (West Supp. 2000) (requiring sheriffs to "take charge of and be the sole and exclusive authority to keep the county jail and the prisoners in it"); see also CAL. PENAL CODE § 4000 (West 1982) (stating that sheriffs are keepers of county jails); *id.* § 4011 (West 1982) (stating that sheriffs are responsible for safekeeping of jail inmates that require medical care beyond care available in jail itself); *id.* § 4011.5 (West 1982) (stating that sheriffs may remove inmates to medical facilities without prior court order if inmates require immediate medical attention); 27 Op. Cal. Att'y Gen. 379, 382 (1956) (stating that sheriffs are responsible for safekeeping of persons confined in county jails).

<sup>6</sup> See Erwin Chemerinsky, *Supreme Court Review: Making It Harder to Sue Cities*, TRIAL, Nov. 1997, at 18 (stating that plaintiffs in civil rights suits often seek remedy from local governments because government officers usually are without assets to pay large judgments).

<sup>7</sup> See *id.* (arguing that recovering from local government often represents civil rights plaintiffs' only available remedy); see also CAL. CONST. art. XI, § 4 (stating that counties must provide for compensation and terms of sheriffs); CAL. GOV'T CODE § 24000 (West Supp. 2000) (listing sheriffs as "county officers"); *id.* § 28003 (West Supp. 2000) (providing that counties may fix pay schedules of all county employees and officers).

Suits against county governments, however, are not always tenable. In *Monell v. Department of Social Services*,<sup>8</sup> the U.S. Supreme Court held that plaintiffs may not recover damages from county governments for civil rights violations that lower level county employees commit.<sup>9</sup> Instead, a plaintiff may hold a county liable only if a county policy or policymaker caused the civil rights violation that the plaintiff suffered.<sup>10</sup> As a result of *Monell*'s rule, courts must decide whether a defendant county official violated section 1983 as a county policymaker, a state policymaker, or as a mere employee.<sup>11</sup> Under current California law, sheriffs are county policymakers while supervising jail medical care and jail conditions.<sup>12</sup> Consequently, California inmates that suffer injuries from sheriffs' poor supervision of jail conditions or medical care may recover damages from the counties that employ the sheriffs.<sup>13</sup>

Recently, however, the Supreme Court's *McMillian v. Monroe County* decision provided a new analytical framework for determining whether county officials are county policymakers.<sup>14</sup> *McMillian*'s analytical framework may cause California courts to break from precedent and deem sheriffs policymakers of the state, not the county.<sup>15</sup> If California courts hold that sheriffs are state policymakers, then *Monell* will prevent inmates from holding counties liable

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<sup>8</sup> 436 U.S. 658 (1978).

<sup>9</sup> See *id.* at 694 (stating that tortious act that employee or agent commits must have been committed while employee or agent acted pursuant to municipal custom or policy).

<sup>10</sup> See *id.* (stating that municipality is liable for plaintiff's injury only when edicts or acts that represent official policy caused plaintiff's injury).

<sup>11</sup> See, e.g., *McMillian v. Monroe County*, 520 U.S. 781, 785 (1997) (noting that central dispute is whether sheriff acted as state or county policymaker); *Jett v. Dallas Indep. Sch. Dist.*, 491 U.S. 701, 736 (1989) (stating that municipalities are liable for acts of policymakers, but not for acts of employees); *Turquitt v. Jefferson County*, 137 F.3d 1285, 1287 (11th Cir. 1998) (explaining that analysis must address which government entity policymaker represented, state or county).

<sup>12</sup> See, e.g., *Granville v. Plummer*, No. 97-3513MHP, 1999 WL 66513, at \*5-6 (N.D. Cal. Feb. 8, 1999) (ruling that sheriff's department represents county while supervising medical care in county jail).

<sup>13</sup> See *Monell*, 436 U.S. at 694-95 (stating that plaintiffs may hold local government liable if local government policymaker inflicted plaintiff's injury); *Granville*, 1999 WL 66513, at \*6 (stating that sheriffs are county, not state, officials and thus defendants, including county government, are susceptible to § 1983 liability).

<sup>14</sup> See *McMillian*, 520 U.S. at 784-87 (stating that dispute focuses on whether sheriffs are policymakers for state or policymakers for county); *Pitts v. County of Kern*, 17 Cal. 4th 340, 353, 949 P.2d 920, 928-29 (1998) (stating that *McMillian* decision is "analytical framework" that U.S. Supreme Court provided for resolution of whether particular official represents state or county).

<sup>15</sup> See Chemerinsky, *supra* note 6, at 18-19 (stating that *McMillian* will likely lead state courts outside Alabama to deem sheriffs state policymakers).

for sheriffs' failure to provide adequate jail medical care and living conditions, and inmates may be denied monetary damages.<sup>16</sup>

This Comment discusses *McMillian's* potential effect on California counties' liability for sheriffs' failure to provide adequate jail living conditions and medical care. Part I provides an overview of section 1983, the *Monell* decision, and the *McMillian* decision. Part II examines laws that pertain to the powers and duties of sheriffs in Alabama and Illinois, two states in which courts have applied the *McMillian* analytical framework to sheriffs.<sup>17</sup> Finally, Part III compares California's sheriff-related laws to those of Alabama and Illinois, proposing that California courts retain the status quo and deem sheriffs county policymakers.

## I. BACKGROUND

### A. 42 U.S.C. § 1983 in County Jails

The Eighth Amendment of the U.S. Constitution states that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."<sup>18</sup> When a governmental entity violates an inmate's Eighth Amendment rights, the inmate can sue under 42 U.S.C. § 1983.<sup>19</sup> Courts have held that

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<sup>16</sup> See *Monell*, 436 U.S. at 694 (stating that local governments are not liable for act of employee or agent unless act represented local government policy). The Eleventh Amendment bars suits for damages against states and state officials. See *Ford Motor Co. v. Department of Treasury*, 323 U.S. 459, 464 (1945). However, Eleventh Amendment immunity generally does not extend to counties and similar municipal entities. See *Mount Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 280 (1977). But to the extent that county officials perform duties on behalf of the state, the Eleventh Amendment affords immunity from suit. See *Scott v. O'Grady*, 975 F.2d 366, 371 (7th Cir. 1992).

<sup>17</sup> See, e.g., *McMillian*, 520 U.S. at 781 (applying analytical framework to Alabama law); *Franklin v. Zaruba*, 150 F.3d 682, 685 (7th Cir. 1998) (applying analytical framework to Illinois law); *Turquitt v. Jefferson County*, 137 F.3d 1285, 1287 (11th Cir. 1998) (applying analytical framework to Alabama law); *DeGenova v. Sheriff of DuPage County*, 18 F. Supp. 2d 848, 849 (N.D. Ill. 1998) (applying analytical framework to Illinois law).

<sup>18</sup> See U.S. CONST. amend. VIII (prohibiting cruel and unusual punishments); *Gregg v. Georgia*, 428 U.S. 153, 169-73 (1976) (reviewing origins and history of Eighth Amendment); *McCord v. Maggio*, 927 F.2d 844, 846-47 (5th Cir. 1991) (interpreting Eighth Amendment as prohibiting filthy, appalling jail conditions); *Howell v. Cataldi*, 464 F.2d 272, 280 (3d Cir. 1972) (explaining that Eighth Amendment prohibits barbarous treatment of criminals); *Vasquez v. Carver*, 729 F. Supp. 1063, 1069 (E.D. Pa. 1989) (stating that Eighth Amendment prohibits intolerable jail overcrowding), *aff'd without opinion*, 181 F.3d 85 (3d Cir. 1999); see also Anthony F. Granucci, *Nor Cruel and Unusual Punishments Inflicted: The Original Meaning*, 57 CAL. L. REV. 839, 839-65 (1969) (providing extensive description of Eighth Amendment's origins and development).

<sup>19</sup> See 42 U.S.C. § 1983 (1994) (stating that government is liable if unconstitutional statute, ordinance, custom, or usage causes injury to citizen).

section 1983 requires the government to provide medical care to inmates<sup>20</sup> and to remedy unconstitutional conditions that arise in jails.<sup>21</sup>

Unconstitutional conditions include living conditions that subject inmates to physical abuse by guards,<sup>22</sup> physical or sexual abuse by other prisoners,<sup>23</sup> or mental distress.<sup>24</sup> The Eighth Amendment also prohibits inadequate nutrition,<sup>25</sup> racial segregation or violence,<sup>26</sup> and filthiness<sup>27</sup> in jails. Finally, jails must not expose inmates to infestations of vermin,<sup>28</sup> dangerous overcrowding,<sup>29</sup> or any

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<sup>20</sup> See, e.g., *Estelle v. Gamble*, 429 U.S. 97, 103-05 (1976) (holding that deliberate indifference to medical needs of inmates and detainees violates Eighth Amendment and § 1983); *Allen v. Sakai*, 48 F.3d 1082, 1087 (9th Cir. 1995) (stating that Eighth Amendment requires protection of inmates' physical well being); *Wishon v. Gammon*, 978 F.2d 446, 449 (8th Cir. 1992) (stating that Eighth Amendment requires jail supervisors to protect inmates' health).

<sup>21</sup> See *Bienvenu v. Beauregard Parish Police Jury*, 705 F.2d 1457, 1460 (5th Cir. 1983) (stating that inmate's allegations of filthy conditions stated valid cause of action for protection of Eighth Amendment rights); *Parnell v. Waldrep*, 538 F. Supp. 1203, 1205-06 (W.D.N.C. 1982) (holding that jails must provide adequate living conditions to inmates).

<sup>22</sup> See *King v. Blankenship*, 636 F.2d 70, 72-73 (4th Cir. 1980) (stating that unjustified striking or beating of inmates violates § 1983); *Johnson v. Glick*, 481 F.2d 1028, 1032 (2d Cir. 1973) (stating that unprovoked attacks on inmates violate § 1983); *Allison v. Wilson*, 434 F.2d 646, 647 (9th Cir. 1970) (stating that nondisciplinary physical abuse of inmate creates cause of action under § 1983).

<sup>23</sup> See *Johnston v. Lucas*, 786 F.2d 1254, 1259 (5th Cir. 1986) (stating that failure to protect inmates from attack by other inmates violates § 1983); *Porm v. White*, 762 F.2d 635, 638 (8th Cir. 1985) (stating that failure to protect inmates from sexual or physical assaults by other inmates violates § 1983); *Martin v. White*, 742 F.2d 469, 474 (8th Cir. 1984) (stating that sexual assault of inmates by other inmates is not legitimate form of punishment); *Little v. Walker*, 552 F.2d 193, 197-98 (7th Cir. 1977) (stating that inmates are entitled to reasonable protection against sexual assaults).

<sup>24</sup> See *Riley v. Jeffes*, 777 F.2d 143, 147 (3d Cir. 1985) (stating that inmate that alleged that officials caused him to live in persistent fear of violent or sexual assault states valid cause of action under § 1983).

<sup>25</sup> See *Dearman v. Woodson*, 429 F.2d 1288, 1289 (10th Cir. 1970) (stating that inmate that alleged that he went unfed for over 50 hours states valid cause of action under § 1983); *Landman v. Royster*, 333 F. Supp. 621, 647 (E.D. Va. 1971) (stating that jail administrators violate Eighth Amendment by providing inmates with bread and water diet that provides only 700 calories per day).

<sup>26</sup> See *Mickens v. Winston*, 462 F. Supp. 910, 911-13 (E.D. Va. 1978) (stating that officials may not segregate inmates by race and must provide adequate supervision to prevent racial violence), *aff'd without opinion*, 609 F.2d 508 (4th Cir. 1979).

<sup>27</sup> See *Padgett v. Stein*, 406 F. Supp. 287, 293 (M.D. Pa. 1975) (ruling that jail was not filthy, did not possess other objectionable conditions, and, thus, did not violate Eighth Amendment).

<sup>28</sup> See *McCord v. Maggio*, 927 F.2d 844, 846-47 (5th Cir. 1991) (stating that jail violated § 1983 by forcing inmate to live in harsh, appalling, cockroach-infested cell); *Bienvenu v. Beauregard Parish Police Jury*, 705 F.2d 1457, 1460 (5th Cir. 1983) (stating that inmate's allegation of filthy, cockroach-infested jail conditions was valid cause of action under § 1983); *Padgett*, 406 F. Supp. at 293 (noting that infestation of rats or other vermin may violate Eighth Amendment).

other conditions that would shock the conscience of contemporary society.<sup>30</sup> Section 1983 incorporates these court-defined entitlements and provides inmates with a cause of action against those that violate their Eighth Amendment rights.<sup>31</sup> In *Monell*, the Supreme Court held that county governments are proper defendants in section 1983 suits.<sup>32</sup>

### B. *The Monell Decision*

In *Monell*, the U.S. Supreme Court confirmed that counties are proper defendants under section 1983.<sup>33</sup> The Court held, however, that counties cannot incur section 1983 liability if the person that violated section 1983 was a county employee without policymaking power.<sup>34</sup> Thus, under *Monell*, inmates in county jails may not recover damages from counties for civil rights violations committed by mere county employees without policymaking power.<sup>35</sup>

*Monell* involved New York City municipal officials who illegally compelled pregnant city employees to take medically unnecessary leaves of absence.<sup>36</sup> The city employees brought suit under section 1983 against the city officials and the city.<sup>37</sup> The district court concluded that the city officials' acts violated the Constitution.<sup>38</sup> Despite this conclusion, however, the district court denied the employees' prayer for damages.<sup>39</sup> The court ruled that the employees

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<sup>30</sup> See *Marsh v. Barry*, 824 F.2d 1139, 1145 (D.C. Cir. 1987) (holding that jail officials may violate § 1983 by allowing overcrowding to develop and degrade into riots and fire); *Vazquez v. Carver*, 729 F. Supp. 1063, 1068-70 (E.D. Pa. 1989) (stating that jail overcrowding violates Eighth Amendment if it causes intolerable conditions for inmates).

<sup>31</sup> See *Howell v. Cataldi*, 464 F.2d 272, 280-81 (3d Cir. 1972) (stating that Eighth Amendment's "cruel and unusual punishment" standard is evolving concept that prohibits acts which contemporary people perceive as outrageous and barbarous).

<sup>32</sup> See *Parnell v. Waldrep*, 538 F. Supp. 1203, 1205-06 (W.D.N.C. 1982) (stating that county jail inmate may recover damages from county board of commissioners that knew of unconstitutional conditions in county jail).

<sup>33</sup> See *Monell v. Department of Soc. Servs.*, 436 U.S. 658, 700-01 (1978) (holding that local governments are clearly proper defendants in § 1983 suits).

<sup>34</sup> See *id.*

<sup>35</sup> See *id.* at 691 (holding that plaintiffs cannot hold municipalities liable by respondeat superior).

<sup>36</sup> See *id.* (stating that plaintiffs cannot hold local governments liable simply for employing constitutional tortfeasor).

<sup>37</sup> See *id.* at 661.

<sup>38</sup> See *id.* at 660.

<sup>39</sup> See *Monell v. Department of Soc. Servs.*, 394 F. Supp. 853, 855 (S.D.N.Y. 1975) (stating that current case law would hold practices complained of by plaintiffs to be unconstitutional), *aff'd*, 532 F.2d 259 (2d Cir. 1976), *rev'd*, 436 U.S. 658 (1978).

<sup>40</sup> See *id.*

were not entitled to damages because municipalities enjoyed immunity from section 1983 suits for damages.<sup>40</sup> Because a ruling for the employees would have caused New York City to pay damages, the district court held that New York's municipal immunity barred the employees' section 1983 claims.<sup>41</sup> The Court of Appeals for the Second Circuit affirmed.<sup>42</sup>

On appeal, the Supreme Court overruled.<sup>43</sup> Engaging in a lengthy analysis of legislative intent, the Court determined that Congress did not intend municipalities to be immune from section 1983 suits.<sup>44</sup> Based on this finding, the Court stripped municipalities of much of their immunity from section 1983 suits.<sup>45</sup>

However, *Monell* preserved municipalities' immunity from section 1983 suits that plaintiffs bring under respondeat superior,<sup>46</sup> a theory that allows plaintiffs to hold employers liable for wrongful acts that employees commit.<sup>47</sup> The Court stated that Congress only intended section 1983 to remedy violations that result from unconstitutional municipal policies or from the acts of municipal policymakers.<sup>48</sup> A policymaker, the Court explained, is any official whose acts represent official policy.<sup>49</sup> The Court determined that Congress did not intend municipalities to incur section 1983 liability as mere employers of non-policymaking employees that violate the Constitution.<sup>50</sup>

In the context of jails, *Monell* dictates that when sheriffs' section 1983 violations injure inmates, the inmates cannot reach counties'

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<sup>40</sup> *See id.*

<sup>41</sup> *See id.* (explaining that plaintiff cannot circumvent immunity by suing mayor, commissioner, or administrator, because city would still pay).

<sup>42</sup> *See Monell*, 532 F.2d at 268.

<sup>43</sup> *See Monell*, 436 U.S. at 702.

<sup>44</sup> *See id.* at 665-69 (stating that rule of municipal immunity in § 1983 suits arose from incorrect legislative intent analysis that Court performed in prior decision).

<sup>45</sup> *See id.* at 701 (holding that municipal bodies are not absolutely immune from § 1983 suits).

<sup>46</sup> *See id.* at 663-64 & n.7 (upholding municipalities' immunity from § 1983 liability insofar as municipalities incur liability under respondeat superior doctrine).

<sup>47</sup> *See BLACK'S LAW DICTIONARY* 1311-12 (6th ed. 1990) (defining "respondeat superior" as doctrine under which employer may be liable for wrongful act of employee).

<sup>48</sup> *See Monell*, 436 U.S. at 690 (stating that legislative history analysis compels conclusion that Congress intended local governments to incur liability when policy or policymaker caused constitutional injury).

<sup>49</sup> *See id.* at 694 (stating that government's "policy" includes enactments of lawmakers or officials "whose edicts or acts may fairly be said to represent official policy").

<sup>50</sup> *See id.* at 691 (stating that Congress did not intend respondeat superior liability to apply in § 1983 suits).

deep pockets solely because they employ sheriffs.<sup>51</sup> Instead, *Monell* permits inmates to hold county governments liable for sheriffs' civil rights violations only if the sheriffs are county policymakers.<sup>52</sup> An inmate cannot hold a county liable under section 1983 if the sheriff is a mere employee or is a policymaker of the state.<sup>53</sup>

Sheriffs are policymakers, either of a county or a state, whenever a state government mandates that sheriffs' acts and edicts represent official policy.<sup>54</sup> Under this standard, sheriffs are clearly policymakers in many states.<sup>55</sup> In many states, however, it is less apparent which government entity, county or state, that sheriffs are policymakers for.<sup>56</sup>

In a recent case, *McMillian v. Monroe County*,<sup>57</sup> the Supreme Court examined Alabama law to determine which government entity had final authority over Alabama sheriffs.<sup>58</sup> *McMillian* provides an analytical framework for determining whether a municipal policymaker represents the state or the county.<sup>59</sup> This framework

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<sup>51</sup> See *id.* at 694 (concluding that plaintiffs cannot sue local government solely because local government employee committed constitutional violation).

<sup>52</sup> See *id.* (stating that local government is responsible under § 1983 only when either lawmaker or person whose acts and edicts represent official policy commits violation); see also *Pembaur v. Cincinnati*, 475 U.S. 469, 481 (1986) (stating that municipalities are liable under § 1983 only for acts that represent official policy).

<sup>53</sup> See, e.g., *McMillian v. Monroe County*, 520 U.S. 781, 785 (1997) (implying that county is not liable under § 1983 for unconstitutional act of sheriff that is state policymaker); *Strickler v. Waters*, 989 F.2d 1375, 1390 (4th Cir. 1993) (stating that local government is not liable under § 1983 for unconstitutional act of sheriff that is independent of local government).

<sup>54</sup> See *Monell*, 436 U.S. at 694 (stating that policymakers include officials whose acts and edicts represent official policy).

<sup>55</sup> See, e.g., *McMillian*, 520 U.S. at 785 (noting that there is no dispute amongst parties that Alabama sheriffs are law enforcement policymakers); *Hawkins v. Comparet-Cassani*, 33 F. Supp. 2d 1244, 1253 (C.D. Cal. 1999) (stating that California law makes sheriffs policymakers of either state or county); *Hernandez v. County of DuPage*, No. 96-C8030, 1997 U.S. Dist. LEXIS 14526, at \*6 (N.D. Ill. Sept. 19, 1997) (stating that Illinois law clearly grants policymaking authority to sheriffs).

<sup>56</sup> See, e.g., *McMillian*, 520 U.S. at 785 (noting sharp disagreement as to whether sheriffs are state or county policymakers); *Granville v. Plummer*, No. C97-3513MHP, 1999 WL 66513, at \*4 (N.D. Cal. Feb. 8, 1999) (noting disagreement regarding whether sheriffs are state or county policymakers); *DeGenova v. Sheriff of DuPage County*, 18 F. Supp. 2d 848, 850 (N.D. Ill. 1998) (noting general agreement regarding sheriffs' policymaking authority and disagreement regarding whether sheriff represents state or county).

<sup>57</sup> 520 U.S. 781 (1997).

<sup>58</sup> See *id.* at 785 (stating that dispute for Court to decide is whether Alabama sheriffs are state policymakers or county policymakers).

<sup>59</sup> See *id.* (stating that goal of Court's inquiry is to determine whether sheriffs act for state or county); *Pitts v. County of Kern*, 17 Cal. 4th 340, 353, 949 P.2d 920, 928-29 (1998) (describing *McMillian* decision as "analytical framework" that U.S. Supreme Court provided to resolve whether official represents state or county).

should cause many states to reexamine whether their sheriffs act as state or as county policymakers.<sup>60</sup>

### C. *The McMillian Decision*

The *McMillian* Court examined the laws of Alabama that pertain to sheriffs' law enforcement functions.<sup>61</sup> The Court held that sheriffs in Alabama are policymakers for the state, not the county, when they enforce the law.<sup>62</sup> The Court thus held that plaintiffs cannot recover damages from Alabama counties when sheriffs violate section 1983 while enforcing the law.<sup>63</sup> *McMillian's* holding, however, is less significant than the analytical framework that the Court created in reaching its holding.<sup>64</sup> While the *McMillian* Court based its holding solely on Alabama law, the *McMillian* analytical framework is applicable in all states.<sup>65</sup>

The *McMillian* case arose out of the criminal investigation of Walter McMillian, a suspect in a 1986 murder of an Alabama woman.<sup>66</sup> During the investigation of McMillian, the Monroe

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<sup>60</sup> See Chemerinsky, *supra* note 6, at 18-19 (stating that although *McMillian* seems to be narrow decision, its policy implications will be broad as courts apply it nationwide); see also *Franklin v. Zaruba*, 150 F.3d 682, 685 (7th Cir. 1998) (applying *McMillian* framework to Illinois sheriffs); *Brady v. Fort Bend County*, 145 F.3d 691, 698 (5th Cir. 1998) (applying framework to Texas sheriffs); *Turquitt v. Jefferson County*, 137 F.3d 1285, 1287 (11th Cir. 1998) (applying *McMillian* framework to Alabama sheriffs); *Aleman v. Milwaukee County*, 35 F. Supp. 2d 710, 719-21 (E.D. Wis. 1999) (applying framework to Wisconsin sheriffs); *Granville*, 1999 WL 66513, at \*5-6 (applying framework to California sheriffs); *Knight v. Vernon*, 23 F. Supp. 2d 634, 640 (M.D.N.C. 1998) (applying framework to North Carolina sheriffs); *Pharris v. Looper*, 6 F. Supp. 2d 720, 730 (M.D. Tenn. 1998) (applying framework to Tennessee county property assessors); *Morgan v. Rossi*, No. CIV.A.96-1536, 1998 WL 175604, at \*9-12 (E.D. Pa. Apr. 15, 1998) (applying framework to Pennsylvania sheriffs); *Bibbs v. Newman*, 997 F. Supp. 1174, 1178 (S.D. Ind. 1998) (applying framework to Indiana county prosecutors); *Mace v. City of Akron*, 989 F. Supp. 949, 954-55 (N.D. Ohio 1998) (applying framework to Ohio municipal court employees); *Hamilton v. Stafford*, No. 1:96CV265-SD, 1997 WL 786768, at \*1 (N.D. Miss. Nov. 26, 1997) (applying framework to Mississippi sheriffs); *Kent County v. Shepherd*, 713 A.2d 290, 293-95 (Del. 1998) (applying framework to Delaware sheriffs), *aff'd sub nom. Knapp v. Shepherd*, 741 A.2d 1026 (Del. 1999).

<sup>61</sup> See *McMillian*, 520 U.S. at 785-86 (stating that issue is whether, based on Alabama law, sheriffs in Alabama act for county or state while performing law enforcement duties).

<sup>62</sup> See *id.* at 793 (stating that Alabama sheriffs act for state, not county, while performing law enforcement functions).

<sup>63</sup> See *id.* at 783 (implying that if sheriffs are policymakers of state, plaintiffs cannot recover from counties).

<sup>64</sup> See *id.* at 804-05 (Ginsburg, J., dissenting) (noting that Court's holding is limited and does little to change liability of local governments outside Alabama because courts outside Alabama will reach different holdings).

<sup>65</sup> See *id.* at 805 (Ginsburg, J., dissenting) (noting that, under Court's approach, states other than Alabama will probably reach opposite holdings regarding sheriffs).

<sup>66</sup> See *id.* at 783.

County Sheriff allegedly suppressed exculpatory evidence and coerced false statements from a co-suspect.<sup>67</sup> At trial, an Alabama jury sentenced McMillian to death.<sup>68</sup> However, after McMillian spent six years in prison, the Alabama Court of Criminal Appeals reversed McMillian's conviction, based on the sheriff's unconstitutional investigative tactics.<sup>69</sup>

After his release from prison, McMillian brought a section 1983 action against Monroe County and the Monroe County Sheriff.<sup>70</sup> The district court found that Alabama counties do not have the power to make law enforcement policy.<sup>71</sup> Based on this finding, the court ruled that the Monroe County sheriff was not a county policymaker.<sup>72</sup> Consequently, the district court dismissed Monroe County from the case because the sheriff's unconstitutional acts did not reflect Monroe County's policies.<sup>73</sup> Both the Eleventh Circuit and the Supreme Court affirmed.<sup>74</sup>

The Supreme Court ruled that Alabama sheriffs act for the state, not for the county, when they perform their law enforcement duties.<sup>75</sup> The Court thus held that Alabama counties are not liable for section 1983 violations that sheriffs commit while enforcing the law.<sup>76</sup> Two principles guided the *McMillian* Court's analysis.<sup>77</sup>

First, the Court focused on the specific official action that the Monroe County sheriff was engaged in when he committed the

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<sup>67</sup> See *id.*

<sup>68</sup> See *id.*

<sup>69</sup> See *id.*

<sup>70</sup> See *id.* McMillian sued the sheriff in his official capacity. See *id.* at 783-84. McMillian also sued two investigators: one a Monroe County employee, and one an employee of the State of Alabama. See *id.* Additionally, McMillian sued each of the defendants in their individual capacities. See *id.* at 784 n.1.

<sup>71</sup> See *McMillian v. Johnson*, No. CV-93-A-699-N, 1994 WL 904652, at \*13 (M.D. Ala. Feb. 18, 1994) (explaining that no statute or case indicates that Alabama counties have law enforcement authority), *aff'd*, 88 F.3d 1573 (11th Cir. 1996), *aff'd sub nom. McMillian v. Monroe County*, 520 U.S. 781 (1997).

<sup>72</sup> See *id.*

<sup>73</sup> See *id.* at \*21 (finding that Monroe County has no law enforcement authority).

<sup>74</sup> See *McMillian*, 520 U.S. at 784. Justices O'Connor, Scalia, Kennedy, and Thomas joined Chief Justice Rehnquist's 5-4 majority opinion. See *id.* at 782. Justice Ginsburg wrote a dissenting opinion, which Justices Stevens, Souter, and Breyer joined. See *id.* at 796.

<sup>75</sup> See *id.* at 793 (affirming court of appeals and stating that weight of evidence strongly supports conclusion that Alabama sheriffs represent State of Alabama while enforcing law).

<sup>76</sup> See *id.* at 784.

<sup>77</sup> See *id.* at 785 (indicating two criteria that Court uses to guide its inquiry).

constitutional violation.<sup>78</sup> In the *McMillian* case, the sheriff violated *McMillian's* civil rights while performing the criminal investigation of the murder that *McMillian* allegedly committed.<sup>79</sup> Therefore, the Court limited its analysis to whether the sheriff represented the state or the county when he acted in a law enforcement capacity.<sup>80</sup> The Court used this act-specific analysis to avoid an overly broad, sweeping characterization of sheriffs as county policymakers or state policymakers for all purposes.<sup>81</sup> The Court noted that sheriffs may be county policymakers while performing some official duties, yet state policymakers while performing others.<sup>82</sup> That is, the state may hold final policymaking authority over some of a sheriff's functions, yet the county may hold final policymaking authority over others.<sup>83</sup>

In addition to the need for an act-specific focus, a second principle guided the *McMillian* Court's analysis.<sup>84</sup> The Court emphasized that the analysis depended on state law<sup>85</sup> because state laws define sheriffs' functions.<sup>86</sup> Consequently, because state laws differ, courts in different states may reach opposite conclusions regarding which government entity a sheriff represents while performing a particular function.<sup>87</sup>

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<sup>78</sup> See *id.* at 785 (stating that cases on liability of municipalities under § 1983 instruct Court to examine whether official is local government policymaker in one particular area, or on one issue).

<sup>79</sup> See *id.* at 783-84.

<sup>80</sup> See *id.* at 785-86 (stating that goal is not to make broad characterization of sheriffs, but simply to discover whether sheriffs represent state or county while acting in law enforcement capacity).

<sup>81</sup> See *id.* at 785 (stating that question is not whether sheriffs act in categorical "all or nothing" manner); Matthew W. Bennett, *Recent Development/Constitutional Law: McMillian v. Monroe County, Alabama*, 27 STETSON L. REV. 947, 951 (1998) (stating that Court did not intend *McMillian* to be broad decision). Ginsburg's dissent emphasizes that courts may characterize an official's acts in different ways. See *McMillian*, 520 U.S. at 804-05 (Ginsburg, J., dissenting). For example, an official making employment decisions may be a policymaker for one governmental entity, yet may be a policymaker for another governmental entity while performing a different activity. See *id.* (Ginsburg, J., dissenting).

<sup>82</sup> See *id.* (Ginsburg, J., dissenting) (stating that, although Court held Alabama sheriffs to be state officials while performing some duties, Court did not appear to question that sheriffs may be county officials while performing other duties, such as hiring chief jailor).

<sup>83</sup> See *id.* (Ginsburg, J., dissenting).

<sup>84</sup> See *id.* at 785-86 (stating that two principles guide Court's analysis).

<sup>85</sup> See *id.* at 786 (stating that inquiry depends on state law).

<sup>86</sup> See *id.* (stating that courts' understanding of particular official's function depends on definition of official's functions under state law).

<sup>87</sup> See *id.* at 795 (explaining that no uniform, national characterization of sheriffs is possible, and that courts in different states will characterize sheriffs differently).

The *McMillian* Court explained that this variation among the states is the natural result of the American federalist system.<sup>88</sup> States empower local governments as they see fit.<sup>89</sup> As a consequence of this variation, counties in several states possess enough power over sheriffs to make sheriffs county policymakers for many purposes.<sup>90</sup> In other states, however, counties have relatively little power over sheriffs.<sup>91</sup> Thus, sheriffs in those states are state policymakers for many purposes.<sup>92</sup>

#### D. *The McMillian Analytical Framework*

Based on the principles of an act-specific and state law-based inquiry, the *McMillian* Court created a two-part analytical framework.<sup>93</sup> The Court provided the framework to determine which government entity, state or county, an official represents while performing a particular function.<sup>94</sup> The framework's purpose is to determine whether the state or the county has final control over an official's performance of a particular function.<sup>95</sup> If the state has final control, then the official is a state policymaker while perform-

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<sup>88</sup> See *id.* (explaining that federalism and regional differences have combined to produce local governments that enjoy various degrees of authority).

<sup>89</sup> See *id.* (noting that, as result of regional differences, states grant varying levels of power to counties).

<sup>90</sup> See *id.* at 795-96 n.10 (citing Maryland, Washington, Texas, and Arkansas as examples of states in which sheriffs are county policymakers for some purposes).

<sup>91</sup> See *id.* (citing Virginia and Illinois as examples of states in which sheriffs are state policymakers for at least some purposes).

<sup>92</sup> See *id.*

<sup>93</sup> See *id.* at 787-89 (beginning analysis by examining state constitution and then turning to state statutory provisions).

<sup>94</sup> See *Pitts v. County of Kern*, 17 Cal. 4th 340, 353, 949 P.2d 920, 928-29 (1998) (explaining that *McMillian* provides analytical framework for resolving question of which government entity official represents).

<sup>95</sup> See *McMillian*, 520 U.S. at 790-91 (noting that particular state statute is most important to analysis because it indicates lack of county control); *id.* at 791-92 (stating that certain state statutes do not grant counties control over sheriffs and, thus, do not suggest that sheriffs are county policymakers); *id.* at 799 (Ginsburg, J., dissenting) (stating that county residents are prime controllers of sheriffs' position, which suggests that sheriffs are county officers); *Turquitt v. Jefferson County*, 137 F.3d 1285, 1292 (11th Cir. 1998) (stating that *McMillian* analysis asks which government body has direct control over sheriff's duty); *Hernandez v. County of DuPage*, No. 96-C8030, 1997 WL 598132, at \*9 (N.D. Ill. Sept. 19, 1997) (applying *McMillian* framework and concluding that Illinois sheriffs are county policymakers because Illinois counties possess more control over sheriffs than Alabama counties).

ing the function.<sup>96</sup> If the county has final control, then the official is a county policymaker while performing the function.<sup>97</sup>

In the first part of its analytical framework, the *McMillian* Court analyzed the state's constitution.<sup>98</sup> This analysis included an examination of the state's constitutional history and state courts' interpretations of constitutional provisions that relate to sheriffs' powers and duties.<sup>99</sup> In particular, the Court found it important to determine whether any state officers have the constitutional right to impeach county sheriffs.<sup>100</sup> Additionally, the Court placed great weight on whether the state constitution explicitly places sheriffs within the state's executive branch.<sup>101</sup>

In the second part of its analytical framework, the *McMillian* Court examined the state's statutory provisions pertaining to sheriffs.<sup>102</sup> The Court explained that the most important statutes are those that suggest the extent of authority that counties possess over sheriffs.<sup>103</sup> For example, a state's statutes may indicate that counties lack power to instruct sheriffs how to perform a particular duty.<sup>104</sup> In such a state, a sheriff that violates section 1983 while performing that duty is not a county policymaker while committing the violation.<sup>105</sup>

The *McMillian* analytical framework is a template for courts to overlay onto state law to determine whether particular officials are

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<sup>96</sup> See, e.g., *McMillian*, 520 U.S. at 790-93 (arguing that lack of county control over sheriff's law enforcement duties makes sheriff state policymaker while performing those duties).

<sup>97</sup> See, e.g., *Hernandez*, 1997 WL 598132, at \*9 (stating that Illinois sheriffs are county policymakers on law enforcement issues because counties possess control over sheriffs' exercise of law enforcement duties).

<sup>98</sup> See *McMillian*, 520 U.S. at 787 (stating that analysis begins with examination of constitutional provisions).

<sup>99</sup> See *id.* (stating that constitutional analysis includes examination of historical development of constitutional provisions and interpretation of provisions by state supreme court).

<sup>100</sup> See *id.* at 788-89 (discussing importance of impeachment power as evidence of state government's control over sheriffs).

<sup>101</sup> See *id.* at 787 (deeming it "especially important" that state constitution explicitly designates sheriffs members of state government's executive branch).

<sup>102</sup> See *id.* at 789-91 (discussing statutory provisions after completing examination of constitutional sources).

<sup>103</sup> See *id.* at 790-91 (stating that statute granting state mandate to sheriffs is "most important[]" because it indicates that county government has no direct control over sheriffs' performance of duties, while state does have such control).

<sup>104</sup> See *id.* (finding that Alabama statutes grant no direct control to counties over sheriffs' performance of law enforcement duties).

<sup>105</sup> See *id.* at 791 (stating that if county lacks control over sheriff's function, statutes relating to procedure, such as sheriff jurisdiction, will not "tip the balance" in favor of conclusion that sheriff is county policymaker).

state or county policymakers.<sup>106</sup> The result of the analysis will differ from state to state.<sup>107</sup> The analytical framework, however, provides courts with a uniform approach to the question.<sup>108</sup>

## II. THE STATE OF THE LAW

An examination of Alabama and Illinois laws concerning sheriffs provides a foundation for a comparative discussion of California's relevant sheriff-related law.<sup>109</sup> Under the *McMillian* framework, sheriffs in Alabama are state policymakers while operating county jails.<sup>110</sup> In Illinois, on the other hand, sheriffs are county policymakers while managing detainees in county jails.<sup>111</sup>

### A. Alabama's Sheriff-Related Law

#### 1. Alabama's Constitutional Sources

In *McMillian*, the U.S. Supreme Court deemed it "especially important" that Alabama's 1901 Constitution explicitly places county sheriffs within the state's executive branch.<sup>112</sup> The framers of the Alabama Constitution placed sheriffs within Alabama's executive branch to curtail sheriff-abetted lynchings.<sup>113</sup> As members of the executive branch, sheriffs became impeachable officers.<sup>114</sup> Moreover, the 1901 Alabama Constitution stripped county courts of the

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<sup>106</sup> See *Pitts v. County of Kern*, 17 Cal. 4th 340, 353, 949 P.2d 920, 928-29 (1998) (stating that U.S. Supreme Court's *McMillian* decision provides analytical framework that California courts can use to resolve which government entity particular official represents while performing certain function).

<sup>107</sup> See *McMillian*, 520 U.S. at 795 (noting that it is "entirely natural" for courts in different states to reach different conclusions because counties possess varying levels of power from state to state).

<sup>108</sup> See *supra* note 60 (listing decisions in 12 states that have applied *McMillian* analytical framework to various government officials performing various government functions).

<sup>109</sup> See discussion *infra* Part III.

<sup>110</sup> See *Turquitt v. Jefferson County*, 137 F.3d 1285, 1288-89 (11th Cir. 1998) (applying *McMillian* framework to Alabama's sheriff-related law and holding that Alabama sheriffs are state policymakers while keeping jails).

<sup>111</sup> See *Franklin v. Zaruba*, 150 F.3d 682, 685 (7th Cir. 1998) (stating that Illinois sheriffs are not state officers, but are county officers or, possibly, independent constitutional officers at county level).

<sup>112</sup> See *McMillian*, 520 U.S. at 798 (explaining importance of ALA. CONST. art. V, § 112, which places sheriffs within executive branch of Alabama government).

<sup>113</sup> See ALA. CONST. art. V, § 112 (enumerating sheriff as executive officer); *McMillian*, 520 U.S. at 788 (explaining that framers of 1901 Alabama Constitution placed impeachment power under state control with intent to prevent sheriffs from allowing local mobs to abduct and lynch inmates).

<sup>114</sup> See ALA. CONST. art. VII, § 174 (making office of sheriff impeachable).

impeachment power, and granted it instead to the Alabama Supreme Court.<sup>115</sup> The Governor of Alabama proposed this change in 1901<sup>116</sup> to centralize state control over county sheriffs.<sup>117</sup> The Alabama governor intended to prevent sheriffs from finding political shelter behind local support in the aftermath of sheriff-abetted lynchings.<sup>118</sup>

The *McMillian* Court was also persuaded by an Alabama Supreme Court opinion stating that the state's executive branch includes sheriffs.<sup>119</sup> In *Parker v. Amerson*, the Alabama Supreme Court, ruling on a question that the Eleventh Circuit Court of Appeals certified to it, concluded that the framers of Alabama's 1901 Constitution intended sheriffs to be state executive officers.<sup>120</sup> The *Parker* case involved a county jailor who kidnapped and raped a female jail detainee.<sup>121</sup> The detainee subsequently brought a section 1983 civil rights suit in federal district court against the Macon County Sheriff.<sup>122</sup> The detainee alleged that the sheriff negligently hired the defendant jailor.<sup>123</sup> On the basis of this allegation, the detainee attempted to impose section 1983 liability on Macon County under a respondeat superior theory.<sup>124</sup>

The district court found Macon County liable for the actions of its sheriff, and the central issue on appeal was whether Alabama

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<sup>115</sup> See *McMillian*, 520 U.S. at 788 (describing shift in impeachment power in Alabama from county to state courts); *Parker v. Amerson*, 519 So. 2d 442, 443-44 (Ala. 1987) (explaining that framers granted state supreme court power to impeach sheriffs because county courts failed to punish sheriffs adequately), *modified*, 855 F.2d 763 (11th Cir. 1988), *overruled in part by* *Turquitt v. Jefferson County*, 137 F.3d 1285 (11th Cir. 1998).

<sup>116</sup> See Emmet O'Neal, Governor of Alabama, Strengthening the Power of the Executive 9-10 (Address of Sept. 12, 1911) (advocating grant of impeachment power to state supreme court).

<sup>117</sup> See *McMillian*, 520 U.S. at 788 (explaining that governor intended constitutional revision to augment his power to order state supreme court to begin impeachment proceedings).

<sup>118</sup> See *id.* (describing intent behind governor's proposal); *Parker*, 519 So. 2d at 444 (explaining that impeachment power gave governor centralized power over local sheriff's supporters).

<sup>119</sup> See *McMillian*, 520 U.S. at 789 (deeming it "critical[]" that Alabama Supreme Court has ruled that sheriffs are state executive officers); *Parker*, 519 So. 2d at 442 (stating that sheriffs are executive officers of State of Alabama).

<sup>120</sup> See *Parker*, 519 So. 2d at 443 (stating that debates of 1901 Alabama Constitution's drafters indicate drafters' intent to place sheriffs within state's executive branch).

<sup>121</sup> See *Parker v. Williams*, 862 F.2d 1471, 1473 (11th Cir. 1989), *overruled by* *Turquitt v. Jefferson County*, 137 F.3d 1285 (11th Cir. 1998).

<sup>122</sup> See *id.* at 1474.

<sup>123</sup> See *id.*

<sup>124</sup> See *id.*

sheriffs are state or county officers.<sup>125</sup> To determine Macon County's liability, the Court of Appeals for the Eleventh Circuit needed to determine whether the sheriff violated section 1983 as a county policymaker.<sup>126</sup> The court used Alabama's certification statute,<sup>127</sup> which allows a federal court to request guidance from the Alabama Supreme Court regarding an unclear issue of state law.<sup>128</sup> The federal court of appeal inquired of the Alabama Supreme Court whether Alabama sheriffs are county officers for purposes of imposing liability on counties.<sup>129</sup>

The Alabama Supreme Court in *Parker* held that Alabama sheriffs are state officers, not county employees, for purposes of respondeat superior liability.<sup>130</sup> The court relied heavily on the intent of the drafters of the Alabama Constitution.<sup>131</sup> The *Parker* court concluded that the sheriff acted for the state, not the county, when he negligently hired the rapist jailor.<sup>132</sup> Thus, the court held that the county was not liable for the detainee's injuries.<sup>133</sup>

In *McMillian*, the Supreme Court deemed *Parker*'s interpretation of Alabama's 1901 Constitution critical.<sup>134</sup> The *McMillian* Court stated that *Parker* offered compelling evidence that Alabama sheriffs are state policymakers while enforcing the law.<sup>135</sup> The *McMil-*

<sup>125</sup> See *Parker*, 519 So. 2d at 442 (stating that relevant question is whether sheriff represented county while violating plaintiff's civil rights).

<sup>126</sup> See *Parker*, 862 F.2d at 1477 (explaining that counties are liable under § 1983 when officials executing government policy inflict injury).

<sup>127</sup> ALA. R. APP. P. 18 (authorizing federal courts to ask Alabama Supreme Court questions of state law in absence of controlling precedent).

<sup>128</sup> See *id.* (stating that federal court may certify to state supreme court any questions involving unclear questions of state law).

<sup>129</sup> See *Parker*, 862 F.2d at 1474 (explaining that panel heard oral argument in December 1986 but withheld judgment pending certification); see also *Parker*, 519 So. 2d at 442 (stating that certified question is whether county sheriffs represent county for purpose of imposing liability on counties for sheriffs' acts).

<sup>130</sup> See *Parker*, 519 So. 2d at 442-43 (stating that plain reading of relevant constitutional provisions makes clear that sheriffs are not county employees, but executive officers of state).

<sup>131</sup> See *id.* at 443-44 (stating that sheriffs are state executive officers because state constitution lists them with executive officers and framers intended sheriffs to be under control of governor and supreme court).

<sup>132</sup> See *id.* at 443 (stating that sheriff acted as state official while hiring jailor, and is not county employee for purposes of respondeat superior liability).

<sup>133</sup> See *id.* at 445-46 (explaining that suit against sheriff is suit against state and not maintainable).

<sup>134</sup> See *McMillian v. Monroe County*, 520 U.S. 781, 789 (1997) (stating that *Parker* court's decision is "critical[] for our case").

<sup>135</sup> See *id.* (stating that *Parker* decision strongly favors conclusion that Alabama sheriffs act for state, not county, while enforcing law).

lian Court also noted that it found Alabama's relevant constitutional sources more compelling than the relevant portions of the Alabama Code.<sup>136</sup> Nevertheless, the *McMillian* Court closely examined Alabama's statutes conferring authority on sheriffs.<sup>137</sup>

## 2. Alabama's Statutory Sources

Like the Alabama Constitution, statutes governing the authority of sheriffs also indicate that Alabama sheriffs are state policymakers while supervising jail living conditions and medical care.<sup>138</sup> The Alabama Code requires sheriffs to keep jail inmates from harm and to take "legal custody and charge" of the jail, jail inmates, and jail employees.<sup>139</sup> The Alabama Supreme Court has construed this provision to mean that sheriffs in Alabama do not share their authority over county jails with county governments.<sup>140</sup> Significantly, counties in Alabama possess no powers aside from those explicitly granted to them by the state legislature.<sup>141</sup> Thus, county governments in Alabama do not have power over jail operations aside from those powers that the Alabama Code explicitly enumerates.<sup>142</sup>

Because the Alabama Code does not grant supervisory power over jail inmates to counties, only sheriffs and state agencies have control over jail operations.<sup>143</sup> For example, counties in Alabama do not have management power over the county sheriff's employees.<sup>144</sup> Moreover, counties do not possess duties that relate to the

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<sup>136</sup> See *id.* (stating that relevant provisions of state code are less compelling than relevant provisions of state constitution). The language of the *McMillian* opinion does not make clear whether constitutional sources are more compelling in all cases. See *id.* The opinion's language could also mean that constitutional sources are more compelling only with regard to this particular issue in this particular state. See *id.*

<sup>137</sup> See *id.* at 789-93 (citing and discussing over ten Alabama Code sections relating to sheriffs).

<sup>138</sup> See discussion *infra* Part II.A.2.

<sup>139</sup> See ALA. CODE §§ 14-6-1, 14-6-105 (1995).

<sup>140</sup> See *King v. Colbert County*, 620 So. 2d 623, 625 (Ala. 1993) (stating that sheriffs hold authority over jail independently of county governments).

<sup>141</sup> See *Tuscaloosa County v. Alabama Great S. R.R. Co.*, 150 So. 328, 331 (Ala. 1933) (explaining that counties in Alabama have no power to create jail operation policies absent express delegation by state), *aff'd*, 162 So. 681 (Ala. 1935).

<sup>142</sup> See *Turquitt v. Jefferson County*, 137 F.3d 1285, 1289 (11th Cir. 1998) (noting absence of Alabama statute authorizing county supervision of county jail inmates).

<sup>143</sup> See *id.* (stating that thorough analysis of Alabama Code indicates that only sheriffs and state executive agencies hold power over jail operations).

<sup>144</sup> See ALA. CODE § 14-6-1 (1995) (granting legal custody over jail and jail inmates to sheriff); *Terry v. Cook*, 866 F.2d 373, 379 (11th Cir. 1989) (construing § 14-6-1 to mean that county governments have no power to hire and fire jailers or deputy sheriffs); *Lockridge v.*

day-to-day operation of county jails or to the supervision of jail inmates.<sup>145</sup>

The Alabama Code does charge counties with some duties pertaining to jail maintenance.<sup>146</sup> However, these duties do not give counties control over sheriffs' supervision of jail conditions and medical care.<sup>147</sup> For example, counties must build a physical plant sufficient to serve as a jail, and must keep the physical plant in good repair.<sup>148</sup> Counties also must fund jail necessities like sanitation and electrical services, bedding, and clothing.<sup>149</sup> Further, counties must stay informed<sup>150</sup> of jail conditions that may bear on future appropriations increases or decreases.<sup>151</sup>

Finally, counties in Alabama must pay the salary of sheriffs and jail personnel.<sup>152</sup> This salary provision appears to give counties some control over sheriffs.<sup>153</sup> The appearance of control is illusory, however, because counties may not increase, decrease, or stop payment of a sheriff's salary.<sup>154</sup>

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Etowah County Comm'n, 460 So. 2d 1361, 1363 (Ala. Civ. App. 1984) (assuming, as matter of statutory construction, that county possesses no authority in area of jail work rules).

<sup>145</sup> See *Stark v. Madison County*, 678 So. 2d 787, 787 (Ala. Civ. App. 1996) (stating that Alabama Code limits counties' duties as relating to county jails to funding of jail operations and providing facilities).

<sup>146</sup> See *Turquitt*, 137 F.3d at 1289-90 (recognizing that Alabama counties do possess some statutory duties relating to county jails).

<sup>147</sup> See *id.* at 1290 (stating that counties' duties do not relate to daily operations of jails).

<sup>148</sup> See ALA. CODE §§ 11-14-10, 11-14-13 (1989) (charging county governments with duty to build and maintain jails of sufficient size and security); *Keeton v. Fayette County*, 558 So. 2d 884, 886 (Ala. 1989) (construing narrowly §§ 11-14-10 to limit counties' power merely to duty to keep jail in good repair).

<sup>149</sup> See ALA. CODE §§ 11-12-15(a)(1), 11-14-20 (1989) (mandating that counties appropriate funds for various jail expenses).

<sup>150</sup> See *id.* § 14-6-81 (1995) (providing that each county government must receive Alabama Department of Corrections' report regarding conditions at county jail).

<sup>151</sup> See *Turquitt*, 137 F.3d at 1290 (stating that provision mandating county to learn of jail conditions is reasonable method for county to learn whether to increase or redirect funding). The *Turquitt* court noted that courts could interpret this statutory mandate as granting some control over jail operations to counties. See *id.* Such an interpretation, however, would be inaccurate because the Alabama Code does not expressly delegate any such control to county governments. See ALA. CODE § 14-6-81.

<sup>152</sup> See ALA. CODE § 11-12-15(a)(2) (charging county with duty to pay sheriffs and jail personnel); *id.* § 36-22-16 (1991) (stating that sheriff's salary paid out of county treasury).

<sup>153</sup> See *McMillian v. Monroe County*, 520 U.S. 781, 791 (1997) (stating that petitioner argues counties' payment of sheriffs' salaries "cut[s] in favor" of conclusion that sheriffs are county officials).

<sup>154</sup> See *id.* (stating that county payment of sheriffs' salaries does not give counties power over sheriffs because counties are unable to change or deny sheriffs' salaries).

Alabama's statutory and constitutional provisions do not grant power over sheriffs to counties.<sup>155</sup> As a result, Alabama sheriffs are state policymakers while supervising county jail operations.<sup>156</sup> Consequently, Alabama inmates that suffer injuries caused by sheriffs' failure to provide adequate jail living conditions or medical care cannot recover section 1983 damages from counties.<sup>157</sup>

### B. Illinois' Sheriff-Related Law

Unlike Alabama law, Illinois' sheriff-related statutes and constitutional sources suggest that Illinois sheriffs are county policymakers while supervising jail conditions and medical care.<sup>158</sup> Courts in Illinois have applied *McMillian's* analytical framework to Illinois' constitutional and statutory sources that concern sheriffs' powers and duties.<sup>159</sup> These courts have indicated that Illinois sheriffs are either county policymakers or independent policymakers at the county level.<sup>160</sup>

#### 1. Illinois' Constitutional Sources

Illinois' constitution, along with judicial interpretation of the constitution, indicates that Illinois sheriffs are county policymakers while supervising jail conditions and medical care.<sup>161</sup> Unlike the Alabama Constitution, the Illinois Constitution does not expressly include county sheriffs within the state's executive branch.<sup>162</sup> In

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<sup>155</sup> See *Turquitt*, 137 F.3d at 1288 (stating that "our review of Alabama law persuades us that an Alabama sheriff acts exclusively for the state rather than for the county in operating a county jail").

<sup>156</sup> See *id.* at 1292.

<sup>157</sup> See *Monell v. Department of Soc. Servs.*, 436 U.S. 658, 691 (1978) (stating that plaintiffs cannot hold municipalities liable under § 1983 by respondeat superior theory); *Turquitt*, 137 F.3d at 1288, 1291-92 (stating that Alabama counties cannot be liable for sheriffs' improper supervision of jails because counties have no authority to make policy in that area).

<sup>158</sup> See discussion *infra* Parts II.B.1, II.B.2.

<sup>159</sup> See *Franklin v. Zaruba*, 150 F.3d 682, 684-86 (7th Cir. 1998) (applying *McMillian* framework and stating in dicta that sheriffs in Illinois are independently elected county officials); *DeGenova v. Sheriff of DuPage County*, 18 F. Supp. 2d 848, 851 (N.D. Ill. 1998) (applying *McMillian* framework and concluding that Illinois law strongly suggests that Illinois sheriffs are county policymakers); *Hernandez v. County of DuPage*, No. 96-C8030, 1997 WL 598132, at \*7-9 (N.D. Ill. Sept. 19, 1997) (applying *McMillian* framework and concluding that Illinois sheriffs make policy for county).

<sup>160</sup> See cases cited *supra* note 159.

<sup>161</sup> See discussion *infra* Part II.B.1.

<sup>162</sup> See ILL. CONST. arts. II, IV, V, VI (lacking any reference to sheriffs as state executive officers); *DeGenova*, 18 F. Supp. 2d at 852 (noting that unlike Alabama, Illinois state constitution does not place sheriffs in any state branch).

fact, the Illinois Constitution explicitly deems sheriffs "county officers."<sup>163</sup> This "county officer" designation is not determinative because the mere label "county officer" does not automatically make an official a county policymaker.<sup>164</sup> The "county officer" designation, however, provides strong evidence that Illinois sheriffs are county policymakers.<sup>165</sup> The Illinois Supreme Court's decision in *Moy v. County of Cook*<sup>166</sup> bolsters this evidence.<sup>167</sup>

In *Moy*, an inmate in the Cook County Jail died of an abdominal illness after the jail's staff ignored the inmate's repeated requests for medical attention.<sup>168</sup> The inmate's estate sued the county, alleging that the sheriff's failure to provide adequate jail medical care caused the inmate's death.<sup>169</sup> The trial court dismissed the plaintiff's suit, ruling that Illinois counties do not have authority over sheriffs' supervision of county jails.<sup>170</sup>

On appeal, the Illinois Supreme Court found that sheriffs in Illinois are county officers that act as extensions of the counties themselves.<sup>171</sup> The supreme court ruled that Illinois sheriffs are not mere county employees, but are independent constitutional officers at the county level.<sup>172</sup> Thus, the court concluded that plaintiffs can hold Illinois sheriffs independently liable as officers of the county.<sup>173</sup>

<sup>163</sup> See ILL. CONST. art. VII, § 4(c) (deeming sheriffs elected county officers); *DeGenova*, 18 F. Supp. 2d at 852 (noting Illinois Constitution's designation of sheriffs as county officers); *Hernandez*, 1997 WL 598132, at \*8 (noting that Illinois Constitution clearly designates sheriffs county officers).

<sup>164</sup> See *McMillian v. Monroe County*, 520 U.S. 781, 786 (1997) (stating that mere label "county officer" is not determinative because analysis depends on definition of official's functions under state law).

<sup>165</sup> See *DeGenova*, 18 F. Supp. 2d at 853-54 (explaining that state constitution's classification is relevant and indicates strong link between sheriffs and counties).

<sup>166</sup> 640 N.E.2d 926 (Ill. 1994).

<sup>167</sup> See *id.* at 927 (affirming trial court's decision that Illinois sheriffs are independently elected county officers).

<sup>168</sup> See *id.*

<sup>169</sup> See *id.*

<sup>170</sup> See *id.* (granting county's motion to dismiss on argument that county had not breached any statutory duties regarding jail supervision).

<sup>171</sup> See *id.* at 931 (holding that sheriffs are county officers); *DeGenova v. Sheriff of DuPage County*, 18 F. Supp. 2d 848, 852-53 (N.D. Ill. 1998) (stating that *Moy* court found that sheriff acts as branch or part of county itself).

<sup>172</sup> See *Moy*, 640 N.E.2d at 927 (affirming trial court's ruling that sheriff is independently elected officer of county).

<sup>173</sup> See *id.* at 931 (noting that state statute may obligate county to indemnify sheriff if sheriff incurs expenses as result of lawsuit against him). The *Moy* court ruled that Illinois sheriffs are independent constitutional officers at the county level. See *id.* at 929. However, the *Moy* court ruled that a sheriff's independence precludes inmates from holding Illinois

A recent district court decision reexamined *Moy* in light of the *McMillian* analytical framework.<sup>174</sup> In *DeGenova v. Sheriff of Dupage County*, the District Court for the Northern District of Illinois examined *Moy* and ruled that Illinois sheriffs are county policymakers.<sup>175</sup> In *DeGenova*, an inmate with a heart condition sued the county sheriff under section 1983, alleging that the sheriff violated his constitutional rights by withholding medical care.<sup>176</sup> Ruling on a motion to dismiss,<sup>177</sup> the court applied the *McMillian* framework to Illinois' sheriff-related law.<sup>178</sup> The district court noted that the *Moy* decision strongly supports the conclusion that Illinois sheriffs are county policymakers under the *McMillian* framework.<sup>179</sup>

In addition to explicitly deeming sheriffs "county officers," the Illinois Constitution also grants counties the power to terminate a sheriff's position.<sup>180</sup> The constitution provides that counties may terminate any county office by referendum, including the sheriff's.<sup>181</sup> Significantly, the Illinois Constitution declares that the state

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counties liable for a sheriff's nonwillful tortious conduct, such as failure to provide adequate medical care. *See id.* at 931. The U.S. Court of Appeals for the Seventh Circuit has examined *Moy* and noted that "sheriffs occupy a somewhat unique position under Illinois law." *Franklin v. Zaruba*, 150 F.3d 682, 686 (7th Cir. 1998). The *Franklin* court explained that Illinois sheriffs are county officers, yet are distinct from county governments. *See id.* Consequently, inmates cannot hold counties liable for sheriffs' violations of section 1983. *See id.* (citing 42 U.S.C. § 1983). Therefore, an examination of Illinois' sheriff-related law is useful for comparative purposes because Illinois courts have applied the *McMillian* analytical framework. *See supra* note 159 and accompanying text. Under that framework, according to *Moy*, although Illinois sheriffs are county officers, Illinois counties are not liable for sheriffs' poor jail supervision because sheriffs are independent county officers, not regular county officers. *See Franklin*, 150 F.3d at 686. The *Franklin* court's language suggests that plaintiff inmates can circumvent *Moy* by suing the county sheriff's office instead of the county proper. *See id.* (stating that general county government cannot incur liability for sheriff's acts, yet emphasizing that county sheriff's office is distinct entity from general county government).

<sup>174</sup> *See DeGenova*, 18 F. Supp. 2d at 852 (stating that, in light of *McMillian*, *Moy* "intensifies" conclusion that Illinois sheriffs are county policymakers).

<sup>175</sup> *See id.* at 851-52 (stating that, in accord with *Moy*, Illinois sheriffs are county policymakers for counties in which they win election).

<sup>176</sup> *See id.* at 849.

<sup>177</sup> *See id.*

<sup>178</sup> *See id.* at 849-54.

<sup>179</sup> *See id.* at 852 (stating that *Moy* decision "intensifies" conclusion that Illinois sheriffs make policy for county, not state).

<sup>180</sup> *See ILL. CONST.* art. VII, § 4(c) (providing that counties may eliminate sheriffs' office by referendum).

<sup>181</sup> *See id.*

may not terminate a sheriff's position.<sup>182</sup> This declaration is significant because the constitution allows the state to terminate most other county offices besides the sheriff's.<sup>183</sup>

The power of Illinois counties to terminate a sheriff's position contrasts sharply with Alabama counties' lack of any comparable power.<sup>184</sup> Similarly, the State of Alabama's control over the impeachment of sheriffs differs greatly from the State of Illinois' lack of such control.<sup>185</sup> Under *McMillian's* framework, Illinois counties' power over sheriffs' termination suggests that Illinois sheriffs are county policymakers while supervising jail conditions and medical care.<sup>186</sup>

## 2. Illinois' Statutory Sources

Like its constitutional sources, Illinois' statutory sources also indicate that Illinois sheriffs are county policymakers while supervising jail conditions and medical care.<sup>187</sup> The Illinois Code allows county governments to impose additional duties, powers, or functions on sheriffs by passing county ordinances.<sup>188</sup> Furthermore, counties in Illinois have a statutory obligation to indemnify those

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<sup>182</sup> See *id.* (providing that county power to terminate sheriff's office is exclusive, and that state does not share power to terminate); *DeGenova*, 18 F. Supp. 2d at 852 (stating that power to eliminate sheriff's position is beyond purview of state control).

<sup>183</sup> See ILL. CONST. art. VII, § 4(c) (providing that state may not eliminate sheriff's position).

<sup>184</sup> Compare *id.* (granting Illinois counties' citizenry sole right to terminate sheriff's position), with *Turquitt v. Jefferson County*, 137 F.3d 1285, 1288-89 (11th Cir. 1998) (explaining that Alabama Constitution of 1901 shifted impeachment power from counties to state).

<sup>185</sup> Compare ALA. CONST. art. VII, § 174 (assigning impeachment power to state Supreme Court), with ILL. CONST. art. VII, § 4(c) (providing that state may eliminate most county offices other than sheriff).

<sup>186</sup> See *DeGenova*, 18 F. Supp. 2d at 852 (citing Illinois counties' power to terminate sheriffs as strong indication that sheriffs are county policymakers under *McMillian* framework); *Hernandez v. County of DuPage*, No. 96-C8030, 1997 WL 598132, at \*8-9 (N.D. Ill. Sept. 19, 1997) (noting that state's lack of impeachment power over sheriffs favors conclusion that Illinois sheriffs are county policymakers under *McMillian* analysis).

<sup>187</sup> See discussion *infra* Part II.B.2.

<sup>188</sup> See 55 ILL. COMP. STAT. 5/5-1087 (West 1993) (granting county boards power to impose additional powers, duties, and functions upon county officers, including sheriffs, that are not specifically imposed by law); *cf. Moy v. County of Cook*, 640 N.E.2d 926, 929 (Ill. 1994) (stating that county government cannot alter sheriffs' duties relating to jail management). A close reading of both these Illinois sources suggests that Illinois counties may not alter existing duties of sheriffs specifically imposed by law, but may impose additional duties upon them. See 55 ILL. COMP. STAT. 5/5-1087; *Moy*, 640 N.E.2d at 929.

that suffer injuries due to a sheriff's misconduct in jail management.<sup>189</sup>

Since the Supreme Court's decision in *McMillian*, federal district courts in Illinois have held that Illinois counties clearly possess greater power over sheriffs than Alabama counties do.<sup>190</sup> Not all post-*McMillian* Illinois decisions have determined that inmates may hold counties liable for sheriffs' poor supervision of jail conditions or medical care.<sup>191</sup> Nevertheless, district courts in Illinois, unlike Alabama courts, have stated that *McMillian's* framework most likely allows inmates to hold counties liable for sheriffs' constitutional violations.<sup>192</sup>

### III. PROPOSAL: *MCMILLIAN* IN CALIFORNIA

Compared to Alabama and Illinois law, California's sheriff-related law indicates that California sheriffs are county policymakers while supervising jail conditions and medical care.<sup>193</sup> California's constitutional and statutory law grants county governments

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<sup>189</sup> See 55 ILL. COMP. STAT. 5/5-1002 (West 1993) (requiring county to indemnify persons to whom sheriff causes physical harm).

<sup>190</sup> See *DeGenova*, 18 F. Supp. 2d at 853 (adopting rationale of *Hernandez* court that Illinois counties have little control over sheriffs, but more than Alabama counties); *Hernandez*, 1997 WL 598132, at \*9 (stating that Illinois counties have more control over sheriffs than Alabama counties).

<sup>191</sup> See *Hernandez*, 1997 WL 598132, at \*8 (applying *McMillian* framework and holding that Illinois sheriffs act for county and thus counties are liable for acts of sheriffs and sheriffs' departments). Despite the *Hernandez* court's holding, other post-*McMillian* courts have not explicitly stated that counties are liable for sheriffs' acts. For example, in *Franklin v. Zaruba*, 150 F.3d 682 (7th Cir. 1998), the court applied the *McMillian* analytical framework to Illinois' sheriff-related law and concluded that sheriffs are county officers. See *id.* at 684-86. However, the sole issue facing the *Franklin* court was whether Illinois sheriffs are state officials such that Eleventh Amendment immunity would apply. See *id.* at 684. Therefore, the *Franklin* court used the result of its *McMillian* analysis to hold that sheriffs do not enjoy Eleventh Amendment immunity. See *id.* at 684-86. The *Franklin* court, however, did not hold that counties are liable for sheriffs' acts. See *id.* at 686. The *DeGenova* court discussed the *Hernandez* court's analysis and similarly concluded that sheriffs are county officers and thus do not enjoy Eleventh Amendment immunity. See *DeGenova*, 18 F. Supp. 2d at 851-53. The *DeGenova* court stated that "[w]hile [the *Hernandez* court] reasoned that the county could be liable for the acts of its sheriff because the sheriff was a county, not a state, officer, a conclusion to which we do not necessarily subscribe, [the *Hernandez* court's] analysis of sheriff as county officer is persuasive." *Id.* at 851.

<sup>192</sup> See *Hernandez*, 1997 WL 598132, at \*8 (applying *McMillian* to Illinois law and stating that plaintiffs may hold counties liable for sheriffs' acts); see also *DeGenova*, 18 F. Supp. 2d at 851 (noting that *McMillian* created distinctions that at least one pre-*McMillian* decision in Illinois may have ignored); *Hernandez*, 1997 WL 598132, at \*6 (stating that post-*McMillian* courts must subject question of whether Illinois sheriffs are county policymakers to more searching analysis than courts performed pre-*McMillian*).

<sup>193</sup> See discussion *infra* Parts III.A, III.B.

substantial power to affect sheriffs' supervision of county jails.<sup>194</sup> Therefore, California inmates should be able to hold counties liable under *Monell* for sheriffs' failure to provide adequate jail living conditions and medical care.<sup>195</sup>

### A. California's Constitutional Sources

The California Constitution does not grant any control over sheriffs to the state,<sup>196</sup> and allows only counties, not the state, to impeach sheriffs.<sup>197</sup> Furthermore, the historical context of California's constitution indicates that the framers did not have a compelling reason to place sheriffs under state control.<sup>198</sup> Thus, California's constitutional sources that pertain to sheriffs' powers and duties indicate that California sheriffs are county policymakers while supervising jail conditions and medical care.<sup>199</sup>

Unlike the Alabama Constitution, the California Constitution does not explicitly place sheriffs within the executive branch of California's state government.<sup>200</sup> Furthermore, unlike the constitution of Illinois, the California Constitution does not deem sheriffs "county officers."<sup>201</sup> Instead, the constitution of California states only that sheriffs must earn their office by election.<sup>202</sup> Beyond this

<sup>194</sup> See discussion *infra* Parts III.A, III.B.

<sup>195</sup> See *Monell v. Department of Soc. Servs.*, 436 U.S. 658, 694 (1978) (stating that plaintiff may hold county liable under § 1983 if county policymaker caused plaintiff's injury when executing government's policy or custom).

<sup>196</sup> See CAL. CONST. art. V, §§ 1-14 (omitting sheriffs from enumeration of state's executive officers); *Beck v. County of Santa Clara*, 204 Cal. App. 3d 789, 796, 251 Cal. Rptr. 444, 447 (Ct. App. 1989) (noting that California Constitution is relatively silent regarding sheriffs' duties); *Curphey v. Superior Court*, 169 Cal. App. 2d 261, 265-66, 337 P.2d 169, 171-72 (Ct. App. 1959) (explaining that county's power to remove sheriffs supersedes state's power to remove sheriffs).

<sup>197</sup> See CAL. CONST. art. XI, § 4(c) (granting counties power to provide for terms of sheriff's removal).

<sup>198</sup> See *infra* notes 217-18.

<sup>199</sup> See discussion *infra* Part III.A.

<sup>200</sup> See CAL. CONST. art. V, §§ 1-14 (omitting any mention of sheriffs' inclusion in executive branch).

<sup>201</sup> Compare *id.* (including no express designation of sheriffs as "county officers"), with ILL. CONST. art. VII, § 4(c) (enumerating list of "county officers" including "sheriff"). But see CAL. GOV'T CODE § 24000 (West Supp. 2000) (stating that category of county officers includes sheriffs). The *McMillian* Court gave little weight to a state legislature's mere labeling of a sheriff as a "county officer." See *McMillian v. Monroe County*, 520 U.S. 781, 786 (1997) (stating that simple label does not answer question whether official has final policymaking authority).

<sup>202</sup> See CAL. CONST. art. XI, § 4(c) (stating that county charter must provide for sheriff's election, compensation, terms, and removal).

provision, California's constitution does not specify any powers or duties that sheriffs possess.<sup>203</sup> This relative silence regarding sheriffs' powers and position in government could cause courts to conclude that California's constitutional sources are unimportant to the *McMillian* framework.<sup>204</sup> For example, the Illinois Constitution expressly designates sheriffs "county officers."<sup>205</sup> This designation provides strong evidence that Illinois sheriffs are county policy-makers.<sup>206</sup> In contrast, the California Constitution contains no such express designation.<sup>207</sup> Moreover, the California Constitution does not state that sheriffs are officials of the state's executive branch.<sup>208</sup>

Yet, although the California Constitution does not explicitly deem sheriffs "county officers," it does grant counties the exclusive power to impeach sheriffs.<sup>209</sup> Even the Illinois Constitution, which expressly designates sheriffs "county officers," does not grant counties comparable impeachment power over sheriffs.<sup>210</sup> In California, county governments' appointment or removal of county officers is a matter of local concern.<sup>211</sup> Counties alone hold power over sheriffs' appointment or removal, without interference from the state.<sup>212</sup>

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<sup>203</sup> See *Beck v. County of Santa Clara*, 204 Cal. App. 3d 789, 795-96, 251 Cal. Rptr. 444, 447-48 (Ct. App. 1988) (stating that California Constitution makes office of sheriff elective, but does not specify its duties).

<sup>204</sup> See *McMillian*, 520 U.S. at 787 (deeming "especially important" fact that state constitution designates sheriffs part of state's executive branch); *DeGenova v. Sheriff of DuPage County*, 18 F. Supp. 2d 848, 851-52 (N.D. Ill. 1998) (explaining that state constitution's classification of sheriff as "county officer" is strong evidence to add to *McMillian* analysis). The California Constitution does not expressly deem sheriffs either county officers or state executive officers. See CAL. CONST. art. V, §§ 1-14 (including no mention of sheriffs as state or county officers). Thus, courts might assume that the California Constitution has nothing "especially important" to add to the *McMillian* analysis.

<sup>205</sup> See ILL. CONST. art. VII, § 4(c) (deeming sheriffs "county officers").

<sup>206</sup> See *DeGenova*, 18 F. Supp. 2d at 852 (explaining that state constitution's classification of sheriffs as "county officers" supports conclusion that sheriffs make policy for county).

<sup>207</sup> See CAL. CONST. art. V, §§ 1-14 (including no express designation of sheriffs as county officers).

<sup>208</sup> See *id.* (including no mention of sheriffs' inclusion in executive branch).

<sup>209</sup> See *id.* art. XI, § 4(c) (stating that county charters must provide for sheriffs' removal from office).

<sup>210</sup> See *DeGenova*, 18 F. Supp. 2d at 852 (explaining that Illinois Constitution includes no section regarding impeachment of sheriffs); *cf.* ILL. CONST. art. VII, § 4(d) (providing that counties may terminate sheriffs' office by referendum). The Illinois Constitution allows counties to terminate the office of sheriff, but does not allow counties to impeach sheriffs individually. See *id.*

<sup>211</sup> See *Curphey v. Superior Court*, 169 Cal. App. 2d 261, 265, 337 P.2d 169, 171 (Ct. App. 1959) (stating that manner of appointment or removal of county officers is matter of local concern under county charter provision of state constitution).

<sup>212</sup> See *id.* (stating that appointment or removal of county sheriffs is not matter of "state-wide concern").

The power that California counties hold over sheriffs' impeachment or removal contrasts sharply with the lack of such power held by Alabama's counties.<sup>215</sup>

Furthermore, California history relating to the state constitution is not comparable to the legislative history of the Alabama Constitution.<sup>214</sup> The legislative history of the Alabama Constitution reflects state officials' intent to prevent lynchings by bringing county sheriffs under state control.<sup>215</sup> Alabama's constitution clearly signals that sheriffs are state officers, and that state officials are the best supervisors of jail inmates' health and safety.<sup>216</sup> In California, on the other hand, mass lynchings never occurred in county jails as they did in Alabama.<sup>217</sup> Thus, California's legislature did not have a compelling, lynching-related reason to place sheriffs under the centralized control of the governor.<sup>218</sup>

California's constitution, and the historical context of the constitution, contrast sharply with the Alabama Constitution.<sup>219</sup> The California Constitution does not explicitly place sheriffs within the state's executive branch<sup>220</sup> and does not allow state officials to im-

<sup>215</sup> Compare *McMillian v. Monroe County*, 520 U.S. 781, 788 (1997) (explaining that framers of 1901 Alabama Constitution stripped impeachment power over sheriffs away from counties and vested power in state officials), with CAL. CONST. art. XI, § 4(c) (stating that counties must provide for sheriffs' terms of removal).

<sup>214</sup> Compare FRANK SHAY, JUDGE LYNCH 256 (Patterson Smith Publ'g Corp. 1969) (1938) (surveying state lynching laws and noting that California has no statewide anti-lynching provisions and California counties have historically had responsibility for addressing mob violence), with *id.* at 255-56 (noting extensive Alabama statewide anti-lynching provisions and lack of county-level provisions).

<sup>215</sup> See *supra* notes 113-18 and accompanying text.

<sup>216</sup> See *supra* notes 113-18 and accompanying text; see also *Turquitt v. Jefferson County*, 137 F.3d 1285, 1289 (11th Cir. 1998) (stating that Alabama Constitution sends "clear message" that state is most appropriate controller of sheriffs' supervision of inmates' well-being).

<sup>217</sup> See SHAY, *supra* note 214, at 151-52 (tabulating lynchings from state to state and showing total of two lynchings of African Americans in California versus 320 in Alabama); see also Valesta Jenkins, *White Racism and Black Response in California History*, in *ETHNIC CONFLICT IN CALIFORNIA HISTORY* 123, 127-28 (Charles Wollenberg ed., 1970) (explaining that southern blacks came to California in larger numbers after 1910 to escape lynchings, among other race-related burdens); Eleanor M. Ramsey & Janice S. Lewis, *A History of Black Americans in California*, in *FIVE VIEWS: AN ETHNIC SITES SURVEY FOR CALIFORNIA* 59, 59 (California Office of Historic Preservation, 1988) (noting that African American population in California was only 7858 by 1900, and never exceeded one percent of population until late 1940s).

<sup>218</sup> Compare *McMillian*, 520 U.S. at 788 (explaining that Alabama Governor received increased control over sheriffs' impeachment to prevent lynching of jail inmates), with SHAY, *supra* note 214, at 151-52 (tabulating lynchings of African Americans by state and finding that California has experienced less than one percent of amount of lynchings that Alabama has experienced).

<sup>219</sup> See *supra* notes 200-18 and accompanying text.

<sup>220</sup> See CAL. CONST. art. V, §§ 1-14 (omitting sheriffs from list of state executive officers).

peach sheriffs.<sup>221</sup> The State of California's lack of constitutional power over sheriffs suggests that California sheriffs are county policymakers while supervising jail conditions and medical care.<sup>222</sup>

After examining relevant constitutional sources, the *McMillian* Court devoted the second half of its analytical framework to an examination of relevant state statutes.<sup>223</sup>

The Court noted that Alabama's statutory sources are less compelling than the state's relevant constitutional sources.<sup>224</sup> In California, however, statutory sources define sheriffs' powers and duties to a greater extent than constitutional sources do.<sup>225</sup>

Thus, in California, statutory sources concerning sheriffs' powers and duties may be more important to the *McMillian* analysis than they are in Alabama.<sup>226</sup>

### B. California's Statutory Sources

The California Code contains a large body of statutory law relating to sheriffs' powers and duties.<sup>227</sup> Four provisions of the California Code grant county governments substantial power over sheriffs' supervision of jail conditions and medical care.<sup>228</sup> These four pro-

<sup>221</sup> See CAL. CONST. art. XI, § 4 (granting impeachment power over sheriffs to county governments); *Curphey v. Superior Court*, 169 Cal. App. 2d 261, 265, 337 P.2d 169, 173-74 (Ct. App. 1959) (stating that removal of county sheriffs is county, not state, concern).

<sup>222</sup> Cf. *McMillian*, 520 U.S. at 788-89 (indicating that state's possession of direct power over sheriffs is key to finding that sheriffs are state officials).

<sup>223</sup> See *id.* at 789-91 (discussing statutory provisions after completing examination of constitutional sources).

<sup>224</sup> See *id.* at 789 (stating that relevant portions of Alabama Code are not as compelling as constitutional provisions).

<sup>225</sup> See *Beck v. County of Santa Clara*, 204 Cal. App. 3d 789, 796, 251 Cal. Rptr. 444, 447 (Ct. App. 1988) (stating that California Constitution "begins and ends with making the office of sheriff elective. It does not specify any of his duties; instead, they are specified in great detail in a large body of statutory law.").

<sup>226</sup> The *McMillian* Court did not clarify whether statutory sources are always less compelling, or if they are only less compelling in some states. See *McMillian*, 520 U.S. at 789 (stating, without further elaboration, that relevant Alabama statutes are less compelling than relevant state constitutional sources). Therefore, California's relevant statutory sources are possibly as compelling as its relevant constitutional sources because of the greater quantity, reach, and detail of statutory sources. See *Beck*, 204 Cal. App. 3d at 796, 251 Cal. Rptr. at 448 (noting large quantity of sheriff-related statutes in California Code compared with relatively small number of constitutional sources). But see *McMillian*, 520 U.S. at 792 n.7 (stating that statutory implications should have less weight than State Constitution as interpreted by state supreme court); *id.* at 804 (Ginsburg, J., dissenting) (arguing that presence or absence of limited state constitutional provisions shall not override weight of state law).

<sup>227</sup> See *Beck*, 204 Cal. App. 3d at 796, 251 Cal. Rptr. at 447.

<sup>228</sup> See CAL. GOV'T CODE §§ 24000, 25303 (West 1988) (granting counties power to supervise sheriffs); CAL. PENAL CODE §§ 4300-4305 (West 1982 & Supp. 2000) (granting coun-

visions suggest that California sheriffs are county policymakers while supervising jail living conditions and medical care.<sup>229</sup>

First, the California Code mandates that county governments must supervise the conduct of every "county officer."<sup>230</sup> The California Code explicitly deems sheriffs "county officers."<sup>231</sup> Thus, under the California Code, county boards of supervisors must supervise the conduct of every county sheriff.<sup>232</sup> This duty to supervise sheriffs empowers county boards to require sheriffs to make reports concerning jails.<sup>233</sup> Furthermore, it allows county authorities to inspect jail-related documents in the sheriff's possession.<sup>234</sup>

California counties' duty to supervise sheriffs is subject to one express limitation: counties must never interfere with the "investigative function" of sheriffs.<sup>235</sup> In California, many of a sheriff's duties pertain to the sheriff's investigative function.<sup>236</sup> Consequently, courts might conclude that counties' power to supervise sheriffs does not extend to sheriffs' oversight of jail conditions and medical

ties power to create advisory committees to inspect jail conditions and inmate care); CAL. GOV'T CODE § 23013 (West 1988) (granting counties power to shift control over jails from sheriffs to county-created departments of corrections); *see also* Pipoly v. Benson, 20 Cal. 2d 366, 371, 125 P.2d 482, 485 (1942) (stating general rule in California allowing counties to supplement state statutes with local ordinances).

<sup>229</sup> See discussion *infra* Part III.B.

<sup>230</sup> See CAL. GOV'T CODE § 25303 (stating that county boards of supervisors must supervise official conduct of county officers).

<sup>231</sup> See *id.* § 24000 (deeming sheriffs county officers). The California Code's characterization of sheriffs as county officers seems to be strong evidence that sheriffs are county policymakers under the *McMillian* framework. See *McMillian*, 520 U.S. at 800-01 (Ginsburg, J., dissenting) (noting that several provisions of Alabama Code that refer to sheriffs as county officers suggest that sheriffs are county policymakers). However, the *McMillian* Court did not give great weight to a state legislature's use of the phrase "county officer." See *id.* at 786 (noting that state law's mere labeling of official is not necessarily dispositive because analysis depends on official's functions under state law); *id.* at 796 (explaining that state government may not manipulate titles of local officials). *But see id.* at 799-801 (Ginsburg, J., dissenting) (noting several state statutes that Court majority disregarded that suggest sheriffs are "county officials").

<sup>232</sup> See CAL. GOV'T CODE §§ 24000, 25303 (stating that county boards must supervise official conduct of county officers, including sheriffs).

<sup>233</sup> See *id.* § 25303 (stating that, among other supervisory duties, counties must, when necessary, require county officers to make reports and to present certain documents for inspection).

<sup>234</sup> See *id.*

<sup>235</sup> See *id.* (stating that counties' supervisory power over county officers must never obstruct sheriffs' investigatory function).

<sup>236</sup> See, e.g., *id.* § 26600 (West 1998) (stating that sheriff must preserve peace and may participate in rehabilitation of convicted persons); *id.* § 26601 (West 1988) (stating that sheriff must arrest those that have committed public offenses); *id.* § 26602 (West 1988) (stating that sheriff must suppress affrays and breaches of peace, and must investigate public offenses).

care.<sup>237</sup> However, although county governments may not obstruct sheriffs' "investigative function,"<sup>238</sup> maintaining and caring for inmates is not an "investigative function."<sup>239</sup> Thus, county governments in California may exercise full supervisory power over sheriffs' oversight of jail conditions and medical care.<sup>240</sup>

California counties' supervisory power over sheriffs' oversight of jails contrasts sharply with Alabama counties' lack of any comparable power.<sup>241</sup> The Alabama Code does not grant counties control over sheriffs' official conduct.<sup>242</sup> Moreover, counties in Alabama possess no right to receive information from sheriffs.<sup>243</sup> In Alabama, only state officials can direct county sheriffs to investigate crimes or to submit reports.<sup>244</sup>

In addition to granting counties supervisory power over sheriffs, the California Code grants counties a second significant power over sheriffs.<sup>245</sup> Penal Code sections 4300 through 4305 allow counties to establish advisory committees to inspect the quality of care that sheriffs provide to inmates.<sup>246</sup> Significantly, section 4305 states that these committees should not limit their inspections to

<sup>237</sup> See *id.* § 25303 (stating that "[t]he board of supervisors shall not obstruct the investigative function of the sheriff of the county"). Section 25303 does not clarify which of a sheriff's functions are "investigative" and which are not. See *id.*

<sup>238</sup> See *id.* (stating that county boards must not obstruct investigative function of sheriffs).

<sup>239</sup> See *Granville v. Plummer*, No. C97-3513MHP, 1999 WL 66513, at \*6 (N.D. Cal. Feb. 8, 1999) (explaining that sheriffs are not engaged in investigative or enforcement duties while supervising and overseeing jail operations). But see *People v. Garcia*, 178 Cal. App. 3d 887, 895, 223 Cal. Rptr. 884, 888 (Ct. App. 1986) (stating that officers that maintain custody of prisoners are involved in ferreting out and prosecuting crime within confines of jail).

<sup>240</sup> See CAL. GOV'T CODE § 25303 (granting counties power to supervise sheriffs' performance of non-investigatory duties); *Granville*, 1999 WL 66513, at \*6 (explaining that sheriffs' duty to oversee jails is non-investigative).

<sup>241</sup> Compare CAL. GOV'T CODE § 25303 (granting counties power to supervise sheriffs' performance of jail-related duties), with *Turquitt v. Jefferson County*, 137 F.3d 1285, 1289 (11th Cir. 1998) (explaining that Alabama Code does not delegate any jail-related power to counties, and that state agencies, not counties, control sheriffs).

<sup>242</sup> See *Turquitt*, 137 F.3d at 1289 (stating that Alabama counties do not have supervisory power over sheriffs).

<sup>243</sup> See *id.* at 1289-90 (finding no direct transfers of information mandated from sheriffs to counties); see also *McMillian v. Monroe County*, 520 U.S. 781, 790-91 (1997) (stating that sheriffs must share investigative information with state, not county, officials).

<sup>244</sup> See ALA. CODE § 36-22-5 (1991) (granting state officials right to direct sheriffs to investigate any crime and to submit report of investigation to state); *Turquitt*, 137 F.3d at 1289 (indicating that, under Alabama law, "an express legislative delegation of authority to one [state] official . . . necessarily mean[s] that another entity, the county, possess[es] no authority in that area").

<sup>245</sup> See CAL. PENAL CODE §§ 4300-4305 (West 1982 & Supp. 2000) (allowing counties to create advisory committees to inspect county jail living conditions and care).

<sup>246</sup> See *id.* (mandating annual inspections of city and county adult detention facilities).

the “minimum standards” that state regulators establish.<sup>247</sup> This “minimum standards” wording may suggest that the legislature intended its regulations of jail conditions and medical care to be baseline standards only.<sup>248</sup> In other words, the language of Penal Code section 4305 suggests that counties should supplement the state’s “minimum standards” with heightened standards of their own.<sup>249</sup>

Like California counties, counties in Alabama also possess the power to inspect jails.<sup>250</sup> In Alabama, this inspection power merely allows county governments to learn whether they should increase, decrease, or redirect appropriations.<sup>251</sup> Thus, a California court might conclude that the power to inspect jails does not impart counties with meaningful control over sheriffs.<sup>252</sup>

However, the California Code grants a third significant power over sheriffs to county governments.<sup>253</sup> California Government Code section 23013 grants county governments the power to take complete control over jail living conditions and medical care.<sup>254</sup> Section 23013 empowers California county governments to create entirely separate county departments of corrections.<sup>255</sup> County gov-

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<sup>247</sup> See *id.* § 4305 (stating that county advisory committees shall inspect jails “on the basis of, but not limited to, the minimum standards established by the [State] Board of Corrections”).

<sup>248</sup> See *id.* Section 4305’s “but not limited to” language seems to authorize or encourage a county advisory committee to look beyond “minimum” state standards. See *id.* Section 4305’s language suggests that the state legislature recognized that certain jail conditions may meet the state’s minimum standards, yet still pose a danger to inmates. See *id.*

<sup>249</sup> See *id.* (stating that inspections are not restricted to state minimum standards).

<sup>250</sup> See ALA. CODE § 11-14-22 (1989) (granting Alabama county commissions power to inspect jails without notice to sheriff).

<sup>251</sup> See *Turquitt v. Jefferson County*, 137 F.3d 1285, 1290 (11th Cir. 1998) (concluding that counties’ power to inspect jails is funding-related only and imparts no control over sheriffs’ operation thereof).

<sup>252</sup> The jail-inspection power does not grant counties meaningful control over sheriffs if the goal of the inspections is merely to make more accurate appropriations. See *McMillian v. Monroe County*, 520 U.S. 781, 791-92 (1997) (stating that counties’ power over appropriations exerts only “attenuated and indirect” control over sheriff); *Turquitt*, 137 F.3d at 1290 (stating that jail-inspection power does not reach sheriffs’ operation of jails if exercise of power is funding-related).

<sup>253</sup> See CAL. GOV’T CODE § 23013 (West 1988) (providing that any county board may establish own department of corrections to take complete jurisdiction over punishment, treatment, care and rehabilitation of county inmates).

<sup>254</sup> See *id.*

<sup>255</sup> See *id.* (stating that boards may elect to establish new departments of corrections).

ernments that create such departments strip sheriffs of jurisdiction over inmates' care and treatment and shift it to the county level.<sup>256</sup>

California counties' power to take sole control over jails is important for two reasons.<sup>257</sup> First, it indicates that counties' power to inspect jails is more than merely a means towards more accurate appropriations.<sup>258</sup> If county advisory committees find jail conditions and medical care unsatisfactory, then county governments may divest sheriffs of control over jails.<sup>259</sup> Second, counties' power to take complete control over jails indicates that counties hold ultimate authority over sheriffs' oversight of jail conditions and medical care.<sup>260</sup> In California, sheriffs that allow jail conditions and medical care to deteriorate risk losing control over jails to county-created departments of corrections.<sup>261</sup>

In addition to counties' power to divest sheriffs of control over jails, counties possess a fourth significant statutory power over sheriffs' jail supervision.<sup>262</sup> County governments in California may pass ordinances to supplement sheriffs' state-imposed duties related to jail supervision.<sup>263</sup> In California, county ordinances may supple-

<sup>256</sup> See *id.* (stating that boards which establish departments of corrections gain jurisdiction over care and treatment of county inmates); 52 Op. Cal. Att'y Gen. 228, 230 (1969) (stating that boards which establish separate departments of corrections strip sheriffs of jail supervision responsibility).

<sup>257</sup> See *infra* notes 258-61 and accompanying text.

<sup>258</sup> See CAL. PENAL CODE §§ 4300-4305 (West 1982 & Supp. 2000) (granting counties power to form advisory committees to inspect jail conditions and inmate care); *Turquitt v. Jefferson County*, 137 F.3d 1285, 1290 (11th Cir. 1998) (stating that counties' power to inspect jails is insignificant if power is solely funding-related).

<sup>259</sup> See CAL. GOV'T CODE § 23013 (West 1988) (granting county board power to establish own department of corrections to take jurisdiction over all punishment, treatment, care and rehabilitation of county inmates).

<sup>260</sup> See *id.* (stating that county may take jurisdiction over all aspects relating to inmates' punishment, care, and treatment); 52 Op. Att'y Gen. 228, 230 (1969) (stating that chief officer of county department of corrections will have responsibility for administering county jail rather than sheriff).

<sup>261</sup> See CAL. GOV'T CODE § 23013 (allowing county to create its own department of corrections); CAL. PENAL CODE § 4305 (West 1982) (authorizing county department of corrections to inspect detention facilities regarding conditions of inmate detention, care, and treatment); *Beck v. County of Santa Clara*, 204 Cal. App. 3d 789, 802, 251 Cal. Rptr. 444, 451-52 (Cl. App. 1988) (finding county's transfer of management of county jail facilities from sheriff to newly-created county department of detention, as authorized by § 23013, not violation of separation of powers).

<sup>262</sup> See *infra* notes 263-70 and accompanying text.

<sup>263</sup> See *Pipoly v. Benson*, 20 Cal. 2d 366, 370, 125 P.2d 482, 486-87 (1942) (stating that general rule in California is that local government may pass ordinances to supplement state statutes).

ment state statutes if the state legislature has not expressed its intent to preempt the field of law at issue.<sup>264</sup>

California Code provisions suggest that the California legislature did not intend to preempt county ordinances regulating jail living conditions and medical care.<sup>265</sup> The state legislature has granted counties the power to supervise sheriffs' oversight of jails.<sup>266</sup> The legislature has also empowered counties to inspect jail conditions and medical care.<sup>267</sup> Furthermore, the state legislature has granted counties the power to take control over jails away from sheriffs.<sup>268</sup> In light of these powers, it seems unlikely that the state legislature intended to preempt county regulation of jail conditions and medical care.<sup>269</sup> Thus, although California's legislature has control over sheriffs' duties, counties may pass ordinances affecting sheriffs' supervision of jail living conditions and medical care.<sup>270</sup>

In summary, counties in California possess four significant statutory powers and one significant constitutional power over sheriffs. First, counties have the power to supervise the conduct of sheriffs

<sup>264</sup> See *id.* (stating that local government may supplement state statute only if state legislature did not intend state statute to preempt local ordinances in same field of law).

<sup>265</sup> See CAL. GOV'T CODE § 23013 (granting county governments power to take complete control over jail); CAL. GOV'T CODE § 25303 (West 1988) (granting county governments supervisory power over all county officers); CAL. PENAL CODE §§ 4300-4305 (West 1982 & Supp. 2000) (granting county governments power to form advisory committees to inspect jail living conditions and care); see also *Pipohy*, 20 Cal. 2d at 370, 125 P.2d at 486-87 (stating that rule permitting supplementary local regulation applies if state statutes contain no language indicating state legislature's intent to make regulation exclusive).

<sup>266</sup> See CAL. GOV'T CODE § 25303 (mandating that county must supervise all county officers).

<sup>267</sup> See CAL. PENAL CODE §§ 4300-4305 (granting county power to create advisory committee to investigate jail living conditions and care).

<sup>268</sup> See CAL. GOV'T CODE § 23013 (granting county power to take control over all functions relating to jails); 52 Op. Att'y Gen. 228, 230 (1969) (interpreting § 23013 as giving county department of corrections responsibility for administering jail rather than sheriff).

<sup>269</sup> See *supra* notes 263-68 and accompanying text. If the legislature had intended to preempt jail-related county ordinances, it seems unlikely that it would empower counties to create advisory committees on jail conditions. See CAL. PENAL CODE §§ 4300-4305 (granting power to counties to establish committee to inspect jails). Further, it seems unlikely that the legislature would instruct these committees to inspect jails without any limitations based on state standards. See *id.* § 4305 (stating that advisory committee should inspect jails "on the basis of, but not limited to, the minimum standards established by the Board of Corrections"). Additionally, if the state legislature intended to preempt jail-related county ordinances, it probably would not grant counties the power to take jurisdiction over all jail functions. See CAL. GOV'T CODE § 23013 (granting county power to take jurisdiction over all functions relating to jails).

<sup>270</sup> See *Beck v. County of Santa Clara*, 204 Cal. App. 3d 789, 796-97, 251 Cal. Rptr. 444, 448 (Ct. App. 1988) (explaining that state and county may share power over sheriff's office if evidence of preemption is absent).

related to sheriffs' oversight of jail conditions and inmate medical care.<sup>271</sup> As part of this power, counties can require sheriffs to submit reports and documents concerning jail inmates' care and medical treatment.<sup>272</sup> Second, counties possess the power to establish advisory committees to inspect inmates' living conditions and care.<sup>273</sup> Third, counties have the power to take away sheriffs' control over the care and treatment of county jail inmates.<sup>274</sup> In the sheriffs' place, counties may install county-controlled departments of corrections.<sup>275</sup> Fourth, counties have the power to pass ordinances affecting sheriffs' supervision of inmates' living conditions and medical care.<sup>276</sup> Finally, counties possess the power to impeach sheriffs.<sup>277</sup>

In light of these substantial powers, California courts should conclude that sheriffs are county policymakers when they supervise jail living conditions and medical care. California counties clearly possess more power over a sheriff's supervision of jail facilities than Alabama counties.<sup>278</sup> Likewise, California counties possess more control over sheriffs' jail-related duties than counties in Illinois,<sup>279</sup>

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<sup>271</sup> See *supra* notes 230-40 and accompanying text.

<sup>272</sup> See CAL. GOV'T CODE § 25303 (West 1988) (stating that counties, as part of supervisory duties, must require county officers to make reports and to present certain documents for inspection).

<sup>273</sup> See CAL. PENAL CODE §§ 4300-4305 (allowing counties to create advisory committees to inspect county jail living conditions and inmate's care).

<sup>274</sup> See CAL. GOV'T CODE § 23013 (granting counties power to establish departments of corrections to take jurisdiction over all functions relating to care and treatment of inmates).

<sup>275</sup> See *id.*

<sup>276</sup> See *supra* notes 262-70 and accompanying text.

<sup>277</sup> See CAL. CONST. art. XI, § 4(c) (stating that county charters must provide for sheriffs' removal from office); *Curphey v. Superior Court*, 169 Cal. App. 2d 261, 265, 337 P.2d 169, 171 (Cl. App. 1959) (stating that manner of county officers' removal is matter of local, not state, concern).

<sup>278</sup> See *supra* notes 200, 213-22, 241-44 and accompanying text.

<sup>279</sup> Compare 55 ILL. COMP. STAT. ANN. 5/5-1087 (West 1993) (forbidding county governments from altering duties that state law specifically imposes on county officers, including sheriffs), and *Moy v. County of Cook*, 640 N.E.2d 926, 929 (Ill. 1994) (noting that Illinois sheriffs must act as jail wardens and that county governments must not alter sheriffs' jail-related powers), with CAL. GOV'T CODE § 23013 (granting counties power to establish department of corrections that has jurisdiction over care and treatment of inmates). Compare also ILL. CONST. art. VII, § 4(c) (granting counties power to terminate sheriff's office by referendum), with CAL. CONST. art. XI, § 4(c) (granting counties power to remove sheriff in whatever manner counties find appropriate). The California Constitution's impeachment clause allows county governments to provide for their own methods of impeachment. See *id.*; *Curphey*, 169 Cal. App. 2d at 265, 337 P.2d at 171 (stating that sheriffs' removal is matter of county concern). This contrasts with the Illinois Constitution, which does not grant counties impeachment power over sheriffs, but instead allows counties to terminate a sheriff's office by referendum. See ILL. CONST. art. VII, § 4(c). California counties' impeachment

where courts have deemed sheriffs county policymakers.<sup>280</sup> Thus, California's sheriff-related law indicates that California sheriffs are county policymakers under the *McMillian* framework.<sup>281</sup> Consequently, California inmates that suffer injuries from a sheriff's poor supervision of jail conditions or medical care should be able to recover section 1983 damages from county governments.<sup>282</sup>

### CONCLUSION

Under *McMillian's* analytical framework, California's laws pertaining to sheriffs indicate that California sheriffs are county policymakers.<sup>283</sup> California's constitution grants counties the power to impeach sheriffs,<sup>284</sup> and does not place sheriffs within the state's executive branch.<sup>285</sup> Moreover, the California Code grants county governments four substantial powers over sheriffs' supervision of jail conditions and medical care.<sup>286</sup>

Courts in Alabama and Illinois have applied sheriff-related constitutional and statutory sources to the *McMillian* analytical framework.<sup>287</sup> Alabama counties have very little power over sheriffs' jail-related duties.<sup>288</sup> Consequently, Alabama sheriffs are state policymakers while overseeing jail conditions and medical care.<sup>289</sup> Illinois counties have greater power over sheriffs' jail-related duties than Alabama counties.<sup>290</sup> As a result, Illinois sheriffs are county policy-

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power seems to be broader than Illinois counties' termination power because California counties can provide for the manner of sheriffs' impeachment themselves. See CAL. CONST. art. XI, § 4(c) (stating that counties can provide for terms of sheriffs' removal). Also, California counties can impeach individual sheriffs, while Illinois counties can only terminate the office of sheriff. See CAL. CONST. art. XI, § 4; ILL. CONST. art. VII, § 4(c).

<sup>280</sup> See *supra* notes 159, 173.

<sup>281</sup> See discussion *supra* Parts III.A, III.B.

<sup>282</sup> See *Monell v. Department of Soc. Servs.*, 436 U.S. 658, 694 (1978) (stating that local government is responsible for local official's violation of § 1983 if official's act represents official policy).

<sup>283</sup> See discussion *supra* Parts III.A, III.B.

<sup>284</sup> See CAL. CONST. art. XI, § 4(c) (granting counties power to provide for terms of sheriffs' removal).

<sup>285</sup> See CAL. CONST. art. V, §§ 1-14 (omitting sheriffs from enumeration of state executive officers).

<sup>286</sup> See *supra* notes 228-70 and accompanying text.

<sup>287</sup> See discussion *supra* Part II.

<sup>288</sup> See discussion *supra* Part II.A.

<sup>289</sup> See discussion *supra* Part II.A; *Turquitt v. Jefferson County*, 137 F.3d 1285, 1288 (11th Cir. 1998) (finding that Alabama sheriffs act for state while operating county jails).

<sup>290</sup> See *DeGenova v. Sheriff of DuPage County*, 18 F. Supp. 2d 848, 853 (N.D. Ill. 1998) (recognizing that Illinois counties do not have great deal of control over sheriffs, yet clearly have more control over sheriffs than Alabama counties); *Hernandez v. County of DuPage*,

makers while supervising inmates' living conditions and medical care.<sup>291</sup>

California counties possess greater power over sheriffs' supervision of jail medical care and living conditions than do counties in Alabama and Illinois.<sup>292</sup> California law grants county governments substantial power over sheriffs' supervision of jails.<sup>293</sup> Under *McMillian*, therefore, California inmates should be able to hold counties liable for sheriffs' failure to provide adequate jail living conditions and medical care.

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No. 96-C8030, 1997 WL 598132, at \*9 (N.D. Ill. Sept. 19, 1997) (stating that Illinois counties have more control over sheriffs than Alabama counties).

<sup>291</sup> See *supra* notes 159, 173.

<sup>292</sup> See discussion *supra* Parts II, III.

<sup>293</sup> See discussion *supra* Part III.

