Rel: November 13, 2026

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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2026-2027

SC-2026-0115

Carol Brown Marsh, as the personal representative of the Estate of her deceased husband, Preston H. Marsh

v.

U.S.A. Healthcare Management, LLC

Appeal from Mobile Circuit Court
(CV-25-900452)

MENDHEIM, Justice.

Carol Brown Marsh, as the personal representative of the estate of her deceased husband, Preston H. Marsh, appeals from a summary judgment entered by the Mobile Circuit Court in favor of U.S.A. Healthcare Management, LLC ("HCM"), in Carol's action alleging medical negligence that resulted in Preston's death. We reverse and remand.

I. Facts

Carol alleges that Preston arrived at the emergency department of the University of South Alabama Hospital at 9:51 p.m. on March 17, 2023, complaining of dizziness and extreme shortness of breath. Preston was seen by hospital staff who learned that he had been experiencing shortness of breath throughout the day, had registered low blood pressure, and had suffered chest pains during the day. After Preston received preliminary care, Preston and Carol were told to return to the lobby. Carol asserts that Preston was a patient in the emergency department until approximately 4:00 a.m. on March 18, 2023, during which time several tests and scans were performed -- including multiple EKGs, X-rays, and "stat" tests -- all of which allegedly indicated that Preston was experiencing heart trauma. According to Carol, Preston

received care during those hours from Dr. Marco P. Teeter, Dr. Carmen J. Martinez, and Dr. Caroline Marie Molins, but, she said, on multiple occasions the doctors had Preston return to the emergency-department lobby after ordering him to take aspirin rather than admitting him to the hospital in order to receive acute care for his condition. At approximately 3:00 a.m., Drs. Teeter, Martinez, and Molins consulted two cardiologists, Dr. Mustafeez Ur Rahman and Dr. Ghulam M. Awan, about Preston's "stat" test results. The Marshes allegedly were told that no cardiologist was available at that time, and so Preston was admitted to the hospital with plans to be seen by a cardiologist later in the morning. According to Carol, after a third EKG at 4:09 a.m. indicated "abnormal R-wave progression," Preston was told to go to his hospital room, but, she said,

> "[a]s soon as [Preston] got to his room, ... he was dizzy. He then became limp and began to pass out. [Preston] then exhibited two episodes of generalized shaking occurring two to three minutes apart and urinated on himself .... Afterwards, he was not communicating the way he had before."

The neurology department was then consulted concerning what was presumed to be a seizure. At 4:37 a.m., Preston "was noted to be in pulseless electrical activity ... cardiac arrest and a Code was called. Thereafter, from 4:37 [a.m.] to 5:19 [a.m., Preston] received continuous

advanced cardiac life support under the care of numerous providers ...." At approximately 5:20 a.m., Preston died. He was 55 years old.

On February 21, 2025, Carol, in her capacity as the personal representative of Preston's estate, commenced an action against Drs. Teeter, Martinez, Molins, Rahman, and Awan, asserting claims of medical negligence in their care and treatment of Preston, and against HCM for vicarious liability for the torts allegedly committed by the doctors based on the doctrine of respondeat superior.

In response to Carol's complaint, HCM filed a motion to dismiss or, alternatively, for a summary judgment on the ground that HCM is a limited-liability company created by the University of South Alabama ("USA") and that, as such, HCM was entitled to State immunity under Article I, § 14, of the Alabama Constitution of 2022. In support of its motion, HCM attached an affidavit from the chief financial officer ("CFO") of USA, Kristen Roberts, who testified that "USA is the sole member and manager of [HCM]"; that HCM "was created by USA for the exclusive purpose of serving as part of [USA's] administrative structure that would support the management and operation of the hospitals, clinics, and other healthcare facilities ... comprising the USA healthcare

system"; that "USA retains ownership of and is entitled to all proceeds from the operation of ... [HCM]"; that HCM "is considered by USA to be an 'integral part' of USA, operates as a subdivision of USA, and for all practical purposes is treated as a disregarded entity for federal and state tax purposes"; that "USA's financial statements report [HCM] as a blended component unit to comply with the reporting requirements of the Government Accounting Standards Board"; that HCM's "cash flow is attributable to [USA and] it does not file separate tax returns"; and that HCM "is wholly included within USA's budget [and,] thus, any judgment against [HCM] would directly affect the financial status of USA and the State Treasury." HCM also attached orders from circuit courts in other cases commenced against HCM in which those circuit courts had granted motions to dismiss or summary-judgment motions, premised on State immunity, in favor of HCM.

On August 13, 2025, Carol filed a response in opposition to HCM's motion. Carol argued that HCM was not entitled to State immunity because, she said, it had not been established by the Alabama Legislature; instead, she said, HCM had been created under "generally-applicable Alabama Limited Liability Law, Ala. Code §§ 10A-5A-1.01, et

seq. ... as a separate and independent subsidiary to employ and supervise physicians, nurses, administrators, and other workers who staffed the USA Health System and its various hospitals and clinics." Carol contended that USA had created HCM "as a liability shield to save it from incurring significant retirement contribution liability imposed by State law." In short, Carol argued that USA had purposefully created HCM as a separate legal entity and that, therefore, HCM should not be considered part of the State.

On January 9, 2026, the circuit court held a hearing on HCM's motion. On January 23, 2026, the circuit court entered an order granting HCM's summary-judgment motion. On February 20, 2026, Carol filed an unopposed motion asking the circuit court to certify its order as a final judgment pursuant to Rule 54(b), Ala. R. Civ. P. Carol noted that the claims that remained to be adjudicated in the case were asserted against individual healthcare providers whose defenses did not implicate State immunity and that, therefore, there was no potential for the intertwining of claims.

On February 24, 2026, the circuit court amended its earlier order, stating: "The Court expressly directs entry of final appealable judgment

in favor of [HCM] because it expressly finds that there is no just reasons for delay and that [HCM] is entitled to a final appealable judgment as a matter of law." On March 4, 2026, Carol appealed.

II. Standard of Review

> "'Summary judgment is appropriate only when "there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law." Rule 56(c)(3), Ala. R. Civ. P., Young v. La Quinta Inns, Inc., 682 So. 2d 402 (Ala. 1996). A court considering a motion for summary judgment will view the record in the light most favorable to the nonmoving party, Hurst v. Alabama Power Co., 675 So. 2d 397 (Ala. 1996), Fuqua v. Ingersoll-Rand Co., 591 So. 2d 486 (Ala. 1991); will accord the nonmoving party all reasonable favorable inferences from the evidence, Fuqua, supra, Aldridge v. Valley Steel Constr., Inc., 603 So. 2d 981 (Ala. 1992); and will resolve all reasonable doubts against the moving party, Hurst, supra, Ex parte Brislin, 719 So. 2d 185 (Ala. 1998).
>
> "'An appellate court reviewing a ruling on a motion for summary judgment will, de novo, apply these same standards applicable in the trial court. Fuqua, supra, Brislin, supra. Likewise, the appellate court will consider only that factual material available of record to the trial court for its consideration in deciding the motion. Dynasty Corp. v. Alpha Resins Corp., 577 So. 2d 1278 (Ala. 1991), Boland v. Fort Rucker Nat'l Bank, 599 So. 2d 595 (Ala. 1992), Rowe v. Isbell, 599 So. 2d 35 (Ala. 1992).'"

Ex parte Turner, 840 So. 2d 132, 135 (Ala. 2002) (Ex parte Rizk, 791 So. 2d 911, 912-13 (Ala. 2000)).

III. Analysis

A. The Creation of HCM

Analyzing whether HCM is entitled to State immunity requires knowledge about the creation of HCM. According to USA's vice president for finance and administration, G. Scott Weldon,

> "[i]n 2010, the Board of Trustees of [USA] ('the Board') decided to form a limited liability company that would become the employer of the USA health system's workforce and [HMC] was created. USA was and is the sole member and manager of [HCM].
>
> "4. For a variety of financial, administrative and operational reasons, the Board determined that the creation of this single-member limited liability corporation would be in the best interests of [USA]. Establishment of [HCM] as the employer of the USA health system workforce created significant savings that allowed USA to continue providing medical services to the underserved community in the Mobile area. [HCM's] employees are not covered by the Teachers' Retirement System of Alabama's ('TRS') retirement plan, permitting a cost savings to USA. This organizational shift allowed USA to stop making the mandatory TRS contributions on behalf of its healthcare employees who shifted employment from USA to [HCM]."

(Citations omitted; emphasis added.)

The resolution of the Board of Trustees of USA that authorized the formation of HCM confirms Weldon's account, stating:

> "**WHEREAS**, as a result of rising costs within the health care industry, the need to align related employee benefits with those of similarly-situated providers, and the need to facilitate more efficient management and operation of

the health care enterprises of [USA], and given the effects of proration and reduced funding levels for public universities and institutions of higher education within the State of Alabama, the Board of Trustees has determined it necessary to explore operational options, without sacrificing education standards, the quality of patient care or the quality of employment within the health services programs of [USA]; and

"**WHEREAS**, the Board of Trustees has determined that [USA] could achieve operational efficiencies through the formation of a limited liability company, the sole member of which would be [USA] ('[HCM]'), in order to, on behalf of and as agent for [USA], manage and operate various aspects of, and to provide general personnel support for, [USA's] health services programs, including but not limited to managing and operating certain of the health care enterprises of [USA] and employing individuals who will perform services for and on behalf of said programs ....

"....

"**NOW, THEREFORE, BE IT RESOLVED**, that the Board of Trustees has determined it best and in furtherance of the purposes for which [USA] was created that [HCM] be created as a limited liability company, the sole member of which shall be [USA], for the purpose of managing and operating, on behalf of and as agent for [USA], substantially all the health care enterprises of [USA], including, but not limited to, employing personnel to manage and operate the Hospital, the clinics, and the [Mitchell Cancer Institute], and in that regard become part of [USA's] academic medical center. ...

"**FURTHER RESOLVED**, by the members of the Board of Trustees that the President of [USA] is hereby authorized and directed to adopt and cause to be adopted and implemented such policies and to undertake such actions as

> shall be necessary or desirable to fulfill the objectives of this resolution, respecting the staffing, operation, and provision of employee benefits, of [USA's] academic health care enterprise, including without limitation, once established, [HCM]; and, as existing employees of [USA] become employees of [HCM], the elimination of the employment positions with [USA] occupied thereby ...."

(Bold typeface and capitalization in original; other emphasis added.)

USA's former treasurer, Robert Davis, provided specific details concerning HCM's formation.

> "The reason for the formation of HCM was, at that point in time, the clinical employees of USA Health System were all employees of [USA], and as such, were covered by the Teacher Retirement System of Alabama. In order to -- The employer's contribution to the teacher's retirement system defined benefit plan was an is today fairly expensive and was causing USA Health System to be non-competitive in its ability to provide services to the -- necessary services to the members of the community that needed healthcare services.
>
> "So, in conjunction with the discussions with the Retirement System of Alabama, the HCM was formed so that its employees would be covered by a different retirement plan and not the teacher retirement system plan so that the employer's contribution to the retirement plan would be significantly less to allow [USA] to have sufficient funds to continue to provid[e] medical services to, especially, the under served community in Mobile."

In short, HCM was created as a limited-liability company ("LLC") for the purpose of shifting USA's healthcare workforce from being designated as State employees, for whom USA was required to make

mandatory employer contributions to the Teacher's Retirement System of Alabama ("TRS"), to being designated as private employees. USA's Board of Trustees determined that such a shift would save USA significant costs. Indeed, in her appellate brief, Carol estimates that, to date, USA "has saved over $105,000,000.00 by its creation of HCM." Carol's brief, p. 24.[1] According to Davis, "the USA Health System [is] staffed almost entirely by employees of HCM."

"The Articles of Organization of USA Healthcare Management, LLC," which were submitted to the Mobile Probate Court on July 20, 2010, confirm that

> "[HCM] is organized for the exclusive purpose of supporting [USA] in connection with the management and operation of hospitals, clinics and other health care facilities comprising the USA healthcare system and academic medical center (collectively, the 'USA Health System'), including, without limitation, providing management, administrative and staffing services to the USA Health System."

[1]We note that Carol reaches the cost-savings number she provides through estimates and math calculations, not from specific figures stated in the record on appeal. However, we also note that HCM has not disputed Carol's numbers and itself admits that "[t]he establishment of an LLC that could be listed as the employer of USA Health's workforce created significant savings for USA." HCM's brief, p. 12; see also id., p. 22.

The Articles of Organization further provide that "USA, as the sole member of [HCM], shall not have the right to admit additional members to [HCM]" and that "USA shall not sell, transfer, or assign all or any portion of its membership interest in [HCM] to any other person, company, corporation, partnership, association or entity."

The "Operating Agreement of USA Healthcare Management, LLC," that was executed between USA and HCM on July 20, 2010, defines HCM as "the Company" and USA "as the sole member of the Company." The Operating Agreement repeats verbatim the purpose of HCM that is stated in the Articles of Organization. It provides that USA is "the sole Member of [HCM]" and that "[HCM] is being organized [as] a single member limited liability company and is intended to be treated as an 'integral part' of USA for federal and state tax purposes." The Operating Agreement provides:

> "Management of the business and affairs of [HCM] shall be vested in a single manager (the 'Manager') which shall be USA. ... [USA] shall have full and complete authority, power and discretion to manage and control the business, affairs and properties of [HCM], to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of [HCM's] business on the terms set forth in this Agreement and in the Articles of Organization of [HCM]. [USA] shall have the unrestricted authority to bind [HCM]."

However, the Operating Agreement also provides that "[USA] shall not be required to make any capital contributions to [HCM], but [USA] shall be permitted to make capital contributions to [HCM] at such times and in such amounts as [USA] deem[s] appropriate," and that "[USA] shall not have any liability for the obligations or liabilities of [HCM] except to the extent, if any, provided in the [Alabama Limited Liability Company] Act." (Emphasis added.)

The "Management Services Agreement" between USA and HCM ("the MSA"), which became effective on October 1, 2010, defines HCM as the "Manager" in the document. The MSA states that "[HCM] is a limited liability company organized and existing under the laws of the State of Alabama for the purpose of managing and operating the USA Health System." Among other provisions, the MSA states:

> "**1.1 Engagement of Manger**. ... USA retains [HCM] to render management, administration and support services to the USA Health System on the basis set forth in this Agreement. [HCM] shall be responsible for administering the day-to-day operations of the USA Health System in accordance with the goals, policies and objectives of USA and subject to all reasonable and appropriate quality of care performance standards adopted thereby.
>
> "....

"**1.5 Relationship of the Parties**. The parties hereto acknowledge that the relationship created herein shall be of [HCM] as independent contractor to USA.

"....

"**2.1 Management Services**. Except as provided in Section 2.4 below, and subject to oversight and review by USA and the Governing Body [USA's Board of Trustees], [HCM] shall render the following services, direction, and supervision:

"(a) Direct the day-to-day operations of the USA Health System to ensure said operations are conducted in a business-like manner;

"....

"(c) Employ, provide, supervise and discharge such employees of [HCM] as [HCM] and USA shall determine are necessary and appropriate for orderly functioning of the USA Health System;

"....

"(h) Arrange for the purchase by USA of general liability, property, and other necessary insurance coverage for the Components [USA's hospitals and clinics] in such amounts as are deemed sufficient by USA;

"....

"(j) Provide for materials management services, including, without limitation, purchasing or leasing all supplies, equipment and other items used in, or necessary for, the operation of the Components, all in accordance with the budgets and process approved by the Governing Body and subject to applicable state and federal laws;

"....

"**2.2 Financial Services**. Subject to the review and oversight of USA, [HCM] shall provide for the preparation, direction and supervision of the following financial services for USA in the operation of the USA Health System:

"(a) Receipt for and deposit in bank accounts selected by [HCM] and in the name of USA or the Components, all funds received from the operation of the Components and supervise the disbursement of such funds for the operating expenses of the Components;

"....

"(e) Prepare payroll checks from time sheet summaries prepared under [HCM's] supervision;

"(f) Supervise preparation of USA's payroll tax returns for employees of the Components who are employed by USA (any fees paid to independent accountants will be the responsibility of USA);

"....

"(j) Prepare and present to USA for approval an annual operating and capital expenditure budget for the Components and operate the Components in accordance with such approved budgets;

"....

"**3.1 Reimbursement of Expenses**. USA shall reimburse [HCM] on a monthly basis, for all direct expenses incurred in connection with the services provided pursuant to this Agreement, including without limitation, (i) expenses associated with the provision of [HCM's] employees to Hospitals, including, without limitation, salaries, payroll

> taxes, employee benefits and business expenses, and (ii) expenses for equipment and supplies purchased pursuant to this Agreement. USA shall also reimburse [HCM] and its affiliates for any third-party expenses incurred on behalf of the USA Health System, including management information systems, insurance, outside legal expenses, outside accounting expenses and outside consulting expenses. ...
>
> "**3.2 Fee**. As consideration for the services rendered pursuant to this Agreement, including but not limited to the services specified in Section 2 of this Agreement, USA shall pay to [HCM] a monthly fee equal to two-tenths percent (.2%) of the Net Revenues of the USA Health System during such month, provided the monthly fee shall not exceed Eight Thousand Three Hundred and Thirty-Three Dollars ($8,333) in any given month. ...
>
> "....
>
> "**5. No Indemnification**. <u>USA is a governmental entity and shall not indemnify or hold harmless [HCM]. Each party shall be responsible for its own acts and omissions with respect to the Hospitals and in performance under this Agreement</u>."

(Bold typeface in original; other emphasis added.)

Consistent with the affidavit from Roberts that was submitted along with HCM's summary-judgment motion, Davis testified that "the [USA] payroll department ... prepare[s] the payroll of HCM," but he also stated that "HCM does have checking accounts in its own name." Davis stated that USA puts the money in the HCM payroll account to pay the HCM employees. Davis also explained that HCM sponsors a private

retirement plan for its employees that is "administered by the [USA] human resources department." Also consistent with Roberts's affidavit, Davis testified that USA files tax returns that include HCM's taxable activities. In a letter to the State Comptroller's Office in May 2012, Davis stated:

> "The financial and accounting books and records of HCM and its operations are maintained in a separate chart of accounts on [USA's] information systems, with employees of both HCM and [USA] involved in recording transactions for both entities. [USA's] Division of Financial Affairs is responsible for preparing the financial statements of HCM and prepares monthly reports of HCM's operations .... Under financial accounting standards issued by the Government Accounting Standards Board, HCM is treated as a blended component unit in [USA's] financial statements, meaning its assets, liabilities, net assets and operations are consolidated with [USA] for financial reporting purposes."

(Emphasis added.) (Rec. vol. II, C. 239.)

B. Davis and the Staudt Factors

In Health Care Authority for Baptist Health v. Davis, 158 So. 3d 397 (Ala. 2013), this Court addressed whether the Health Care Authority for Baptist Health ("HCABH") was entitled to State immunity. HCABH was a healthcare authority ("HCA") created under the Health Care Authorities Act of 1982 ("the HCA Act"), Ala. Code 1975, § 22-21-310 et seq., pursuant to a resolution from the University of Alabama Board of

Trustees. That resolution authorized the University of Alabama at Birmingham Health System to enter an affiliation agreement with a private hospital entity, Baptist Health, which had operated certain hospitals in Montgomery. The affiliation agreement provided for the establishment of HCABH -- the entity to which Baptist Health had transferred its hospitals and related assets and that was a defendant in the medical-malpractice action that precipitated the appeal in Davis. See Davis, 158 So. 3d at 400-01.

> "Section 14 of the Alabama Constitution of 1901 states that '[t]he State of Alabama shall never be made a defendant in any court of law or equity.' It is well established that '"the use of the word 'State' in Section 14 was intended to protect from suit only immediate and strictly governmental agencies of the State."' Tallaseehatchie Creek Watershed Conservancy Dist. v. Allred, 620 So. 2d 628, 631 (Ala. 1993) (quoting Thomas v. Alabama Mun. Elec. Auth., 432 So. 2d 470, 480 (Ala. 1983)); see also Ex parte Greater Mobile-Washington County Mental Health-Mental Retardation Bd., Inc., 940 So. 2d 990, 997 (Ala. 2006) (also quoting Thomas, 432 So. 2d at 480).
>
> "Tallaseehatchie Creek and Greater Mobile-Washington County Mental Health Board relied on Armory Commission of Alabama v. Staudt, 388 So. 2d 991 (Ala. 1980), in which this Court identified three factors that determine whether an action against a body created by legislative enactment is an action against the State for purposes of the doctrine of State immunity:

> "'Whether a lawsuit against a body created by legislative enactment is a suit against the state depends on [1] the character of power delegated to the body, [2] the relation of the body to the state, and [3] the nature of the function performed by the body. All factors in the relationship must be examined to determine whether the suit is against an arm of the state or merely against a franchisee licensed for some beneficial purpose.'

"388 So. 2d at 993 (emphasis added).

"In Ex parte Department of Human Resources, 999 So. 2d 891, 897 (Ala. 2008), this Court stated 'that the same factors ("the Staudt factors") are informative in determining whether an entity established by a State agency at the direction of the legislature is part of that agency for purposes of sovereign immunity.' Likewise, in Vandenberg v. Aramark Educational Services, Inc., 81 So. 3d 326, 339 (Ala. 2011), this Court explained:

> "'The immunity that comes from § 14 and that is associated with being part of the State ... does not automatically attach to all public corporations; some public corporations are entitled to it while others are not. In Armory Commission of Alabama v. Staudt, 388 So. 2d 991, 993 (Ala. 1980), we explained what more is required before a public corporation may claim that immunity....'

"When applying the three Staudt factors, this Court 'emphasizes substance over form.' Tallaseehatchie Creek, 620 So. 2d at 630. As this Court noted in Alabama Girls' Industrial School v. Reynolds, 143 Ala. 579, 583, 42 So. 114, 115 (1904):

> "'If the suit instituted against it is practically and really against the State -- if the judgment and decree obtained against it must be satisfied, if at

> all, out of the property held by it, and this property belongs to the State, though the title is eo nomine in the [defendant] as an agent of the State -- then clearly to permit an action or suit against it would be doing by indirection that which cannot be done directly. In other words, if the [defendant] is a mere State agency -- a representative of the State, instituted and maintained by the sovereignty for the exercise of a governmental function -- a suit against it is a suit against the State....'
>
> "(Emphasis added.)"

Davis, 158 So. 3d at 402-03 (footnote omitted; some emphasis added).

It is undisputed that USA is a State agency that is entitled to State immunity under Article I, § 14, of the Alabama Constitution. See Ex parte University of S. Alabama, 183 So. 3d 915, 919 (Ala. 2015) ("USA is a State institution of higher learning and, as a matter of law, is a State agency entitled to the absolute immunity of § 14."). Carol contends that HCM does not share that immunity. Based on the foregoing summary of the law from Davis, determining whether HCM is an arm of the state that is entitled to immunity or is a franchisee licensed for a beneficial purpose requires considering the three factors first enunciated in Armory Commission of Alabama v. Staudt, 388 So. 2d 991 (Ala. 1980): the character of the powers delegated to HCM, the nature of the functions performed by HCM, and HCM's relationship to USA.

We note, however, that HCM seeks to distinguish -- and even altogether disclaim -- our decision in Davis from the facts presented in this case. HCM argues that Davis is inapplicable because it employed the factors from Staudt to "'determine whether an action against **a body created by legislative enactment** is an action against the State.'" HCM's brief, p. 44 (quoting Davis, 158 So. 3d at 402 (bold typeface added by HCM)). HCM states:

> "Unlike the entity at issue in Davis, [HCM] is not an HCA created under the HCA Act. [Carol] has failed to explain in any degree of detail how the Court's holding in that case means that argument on the Staudt factors might be required for a subdivision of a State agency to make a prima facie showing that it is entitled to dismissal of the claims against it on grounds of immunity."

HCM's brief, p. 45.

We find this to be a curious argument for several reasons. First, HCM seems to imply that the Staudt factors are relevant only to entities -- such as the HCABH -- created under the authority of a specific legislative enactment like the HCA Act. However, the passage we quoted from Davis expressly observed that the Staudt factors are relevant for determining whether any entity established by a State agency is entitled to State immunity, not just entities created under a specific statute. See

Davis, 158 So. 3d at 403 (quoting Vandenberg v. Aramark Educ. Servs., Inc., 81 So. 3d 326, 339 (Ala. 2011), and Ex parte Department of Hum. Res., 999 So. 2d 891, 897 (Ala. 2008)); see also Ex parte Troy Univ., 961 So. 2d 105, 109 (Ala. 2006) (reiterating the Staudt factors when stating that "[t]his Court considers several factors in determining whether an entity is 'an immediate and strictly governmental agenc[y]'" (quoting Rodgers v. Hopper, 768 So. 2d 963, 966 (Ala. 2000))). Second, as we detailed in part A of our analysis, HCM was created under a specific statutory scheme: the Alabama Limited Liability Company Law ("the Alabama LLC Law"), Ala. Code 1975, § 10A-5A-1.01 et seq. Consequently, under the Court's language in Davis, the Staudt factors are central to whether HCM is entitled to State immunity.

To the extent that HCM is arguing that Davis is inapplicable because the HCA Act concerns the establishment of a specific kind of public corporation while, in contrast, USA created an LLC under the Alabama LLC Law, we find the argument even more perplexing. The legislature expressly enacted the HCA Act for the purpose of helping institutions like USA to be more efficient and competitive in operating publicly owned hospitals. See § 22-21-312, Ala. Code 1975. According to

HCM's organizing documents, that is the same reason USA decided that it needed to create HCM. Thus, the analysis employed in Davis is even more relevant to whether HCM is entitled to State immunity than it would be for evaluating governmental entities that have no relation to public hospitals.

HCM is, of course, correct that Davis involved "the immunity status of a different type of entity" -- an HCA rather than an LLC. HCM's brief, p. 50. HCM is also correct that "both public and private entities were involved in the creation of HCABH." Id. But, in focusing on those details of Davis, HCM misses the broader point that Davis applied the Staudt factors to a governmental entity created by a public university for its hospital system. There are differences between an HCA and an LLC. But the question is whether those differences are material to the issue whether HCM is entitled to State immunity.

In Davis, the Court evaluated the first and third factors -- the character of the power delegated to the entity and the nature of the functions performed by the entity -- together "[g]iven the similarity and overlap of these two Staudt factors." 158 So. 3d at 403 n.4. Davis first noted that the HCA Act empowered HCAs "to arrange for the provision

of health-care services to the indigent and to promote public health." Id. at 404. The Court observed that such powers "are legitimate ends of government, [but] they certainly are not functions unique to government. ... [T]he power ... is not of the same character, for example, as the power granted an entity that is charged with a strictly governmental function, e.g., law enforcement." Id.

The powers granted to HCM are similarly geared toward public health -- the Articles of Organization state that HCM's "exclusive purpose" is to support USA "in connection with the management and operation of hospitals, clinics, and other health care facilities comprising the USA healthcare system." Likewise, the resolution in which the Board of Trustees of USA authorized the formation of HCM stated that HCM was being created because of "the need to facilitate more efficient management and operation of the health care enterprises of [USA]." The management and operation of healthcare facilities is not a unique government function.

Davis next noted that many of the powers granted to HCAs under the HCA Act "may be exercised by any number of private or for profit business entities." 158 So. 3d at 405. A perusal of the MSA demonstrates

that the same is true for HCM. Among other services, HCM provides corporate management services such as employing, supervising, and discharging employees; "maintain[s] all licenses, certifications, permits and accreditations as are necessary for" the USA Health System; "[n]egotiate[s] and executes ... contracts with third party payors and any other contracts or agreements regarding the provision of health care related items or services by" the USA Health System; "[e]stablish[es] staffing schedules, wage structures and personnel policies for all employees" of the USA Health System; "[p]rovide[s] for material management services, including, without limitation, purchasing or leasing all supplies, equipment and other items used in, or necessary for, the operation of" the USA Health System; and "[p]rovide[s] for marketing and corporate communication services." Additionally, HCM provides a whole range of financial services, including receiving and depositing "in bank accounts selected by [HCM] ... all funds received from the operation of the [USA Health System] and supervis[ing] the disbursement of such funds for the operating expenses of the [USA Health System]"; "[m]aintain[ing] ... the applicable books of account, including all journals and ledgers, check register and payroll records"; "[p]rocess[ing] vendors'

invoices and other accounts payable"; "[p]repar[ing] payroll checks from time sheet summaries"; and "[p]repar[ing] monthly profit and loss statements." Thus, HCM's responsibilities mirror those of "any number of private or for profit business entities." Davis, 158 So. 3d at 405.

Davis next observed that "it is especially hard for this Court to overlook the fact that the legislature, which is responsible for the creation of health-care authorities, expressly contemplated that such authorities would be entities subject to suit." 158 So. 3d at 405. As an LLC, the same is true of HCM: § 10A-5A-1.04(d)(1), Ala. Code 1975, provides that an LLC possesses the power to "sue and be sued." Discussing the legislature's delegation of such a power to the Alabama Building Renovation Finance Authority, this Court reasoned: "Although[] such a clause is not determinative of an Authority's status, it does show the intent of the legislature to create a separate entity rather than an agency or arm of the state." Stallings & Sons, Inc. v. Alabama Bldg. Renovation Fin. Auth., 689 So. 2d 790, 792 (Ala. 1997).

Additionally, Carol notes that the MSA provides that HCM has the power to purchase liability insurance for the USA Health System. HCM objects that this Court previously has concluded that "an intent to waive

governmental immunity should not be presumed from the purchase of liability insurance." Alabama State Docks v. Saxon, 631 So. 2d 943, 946 (Ala. 1994). In the context of the Staudt factors, possessing the power to purchase liability insurance, like having the power to sue and be sued, does not settle HCM's status, but those powers certainly dovetail with one another, and they provide further indications of an intention by USA to establish HCM as a separate entity.

The MSA also grants HCM the powers to enter contracts with third parties and to acquire property and purchase all equipment and supplies for the USA Health System. In Rodgers v. Hopper, 768 So. 2d at 967, the Court found those powers integral to its determination that the Alabama Corrections Institute Finance Authority ("ACIFA") was not entitled to State immunity. Davis also pointed to HCABH's power to acquire hospital facilities as an indication of its independence from the State. See Davis, 158 So. 3d at 406.

In sum, the character of the powers granted to HCM and the nature of the functions it performs augur in favor of finding that it is a separate entity rather than a State agency.

The other Staudt factor is the relationship of the entity to the State. In Davis, there was a particular subsection of the HCA Act, § 22-21-318(c), Ala. Code 1975, that, HCABH contended, demonstrated that HCAs are agencies or instrumentalities of the State. The Court rejected that contention, reading § 22-21-318(c) in context to mean that "a health-care authority acts as an agency or instrumentality of its authorizing subdivision and as a political subdivision of the State only in connection with its engagement in anticompetitive conduct." 158 So. 3d at 408. There is no statutory provision similar to § 22-21-318(c) that declares an LLC created by a State agency to be an instrumentality or agency of the State in any sense. In fact, the core principle of an LLC is that it "is a legal entity distinct from its members." Zackery v. Huntley, 419 So. 3d 46, 49 (Ala. Civ. App. 2024).

HCM seeks to draw attention away from HCM's legal status as an LLC by emphasizing the fact that USA has supervisory authority over HCM. The Operating Agreement, for example, expressly states that "[USA] shall have full and complete authority, power and discretion to manage and control the business, affairs and properties of [HCM], to make all decisions regarding those matters and to perform any and all

other acts or activities customary or incident to the management of [HCM's] business ...." However, that argument is very similar to one this Court rejected in Rodgers. Like HCM, the ACIFA possessed several characteristics common to private and for-profit business entities, but the ACIFA objected that "it is organizationally intertwined with the State by virtue of the State's oversight power regarding ACIFA's chief operating activity -- prison construction." Rodgers, 768 So. 2d at 967. The Court declined to find the existence of such authority as being determinative of the ACIFA's status:

> "This oversight power, however, is not different from the power to direct operations that is commonly exercised by the owner of any ordinary business. In this case, the State's power to direct operations includes the power to approve prison-construction plans and the use of prison labor. ACIFA's relationship with the State does not persuade us to accept its argument."

Id. Likewise, USA's role in guiding HCM's decisions does not change the fact that HCM is an LLC, which is, by definition, "a separate legal entity." § 10A-5A-1.04(a).

Carol argues that "the whole point of an LLC is to shield the owner of the LLC's debts." Carol's brief, p. 34. Indeed, § 10A-5A-3.01, Ala. Code 1975, provides:

> "A member of a limited liability company is not liable, solely by reason of being a member, for a debt, obligation, or liability of the limited liability company or a series thereof, whether arising in contract, tort, or otherwise or for the acts or omissions of any other member, agent, or employee of the limited liability company or a series thereof."

The Comment to § 10A-5A-3.01, in pertinent part, states:

> "This section sets forth one of the major characteristics of the limited liability company: a member, as such, is not liable for the debts and obligations of the limited liability company or for the conduct of employees, agents or other members of the limited liability company. Thus, this section retains the Prior LLC Law's liability shield for members."

(Emphasis added.) Carol concludes that HCM's legal status as an LLC means that any judgment against HCM would not be against USA and that, therefore, it would not be paid from the coffers of a State entity.

Carol highlights the provisions from HCM's organizational documents that support her contention, such as the Operating Agreement's stipulation that USA is not required to make any capital contributions to HCM and that "[USA] shall not have any liability for the obligations or liabilities of [HCM]." Similarly, the MSA provides that "USA is a governmental entity and shall not indemnify or hold harmless [HCM]. Each party shall be responsible for its own acts and omissions with respect to the Hospitals and in performance under this Agreement."

The MSA also directly states that "the relationship created" between USA and HCM "shall be of [HCM] as independent contractor to USA." According to Carol, "[i]f the State/USA has no obligation to indemnify or fund HCM, the State Treasury is not subject to execution for any judgment against HCM." Carol's brief, p. 35.

HCM counters by contending that Carol is cherry-picking from the organizational documents.

> "While the provisions say what they say, they do not and cannot change the reality of the existing situation, a situation that has been proven through substantial evidence. That situation is USA's establishment of [HCM] as an internal subdivision of [USA] and its continuing control over, and funding of, this single-member LLC."

HCM's brief, p. 18. In fact, HCM baldly states that "USA and [HCM] are, for all practical purposes, one and the same." Id., p. 23 (emphasis added). For support, HCM points to the following facts: that USA is, and must be, HCM's only member; that the Operating Agreement states that "[USA] shall have full and complete authority, power and discretion to manage and control the business, affairs and properties of [HCM]"; that the MSA provides that "USA shall reimburse [HCM] on a monthly basis, for all direct expenses incurred in connection with the services provided pursuant to this Agreement"; that HCM's employees are paid from USA's

accounts; that the financial services HCM provides for the USA Health System are "[s]ubject to review and oversight of USA"; that HCM's budget is incorporated with USA's budget and USA's financial statements report HCM as a "blended component unit in [USA's] financial statements" such that HCM "is treated as a disregarded entity for federal and state tax purposes"; and that USA owns all facilities and equipment where HCM's employees work.

In essence, HCM asks this Court to disregard the fact that it was legally formed as an LLC and to ignore any language in its organizational documents indicating that it is separate from USA -- to the point of being labeled an "independent contractor" in the MSA -- because, in substance, HCM says, there is no distinction between USA and HCM. Indeed, concerning Carol's contention that USA established an entity separate from itself and thus separate from the State when it created HCM, HCM asserts that, "[i]f this was USA's intent, then it certainly did a poor job of it because no separation was created by making itself the sole member and manager of [HCM]." HCM's brief, p. 26. HCM directs us to "consider[] the larger context of the full documents and the overall situation" rather

than focusing on certain portions of the organizational documents. HCM's brief, p. 33.

The problem with HCM's arguments is that it ignores the elephant in the room: that USA created HCM as an LLC for the express purpose of designating all USA Health System employees as private employees rather than State employees. HCM states no less than four times in its brief that HCM "is simply a pass-through entity for salary payments originating from USA's payroll department." HCM's brief, p. 41; see also id., pp. 42, 51, 55. In other words, USA asserts that HCM is nothing more than a shell corporation, but a simple review of the MSA flatly contradicts that assertion, because HCM performs numerous services for USA by running its healthcare system.[2] It is no exaggeration to say that HCM's employees are the heart of the USA Health System, and it is frankly shocking to this Court that HCM would suggest otherwise. See, e.g.,

[2]HCM goes so far as to claim that it "acts as a pass through for money that has been generated by USA facilities, not by any separate action of its own." HCM's brief, p. 55. Thus, we are supposed to accept that all the employees for the USA Health System do not generate revenue for the hospital system, they merely exist in the facilities owned by USA. That claim's fallacy is its own refutation: patients do not come to hospitals to be in the buildings; they come to receive service from people who provide healthcare services.

Faust v. Woods Props. & Invs., LLC, 431 So. 3d 194, 200 (Ala. 2025) (observing that "a corporate entity... 'can act only through its servants, agents, or employees'" (quoting United States Fid. & Guar. Co. v. Russo Corp., 628 So. 2d 486, 488 (Ala. 1993))). But we gather that the reason HCM shies away from that reality here is because focusing on HCM's employees draws attention to the glaring contradiction in its argument: HCM asserts that it is an arm of the State, and thus is entitled to State immunity, while at the same time it receives undisputedly significant financial benefits from the fact that its employees do not work for the State. We fail to see how both of those claims simultaneously can be true.

The explanation HCM repeatedly offers is that the decision to shift USA's healthcare workforce from State employment to the private sector not only offered financial benefits to USA, but also benefited the community the USA Health System serves because it allowed the system to be competitive in the healthcare industry, i.e., competitive in acquiring and retaining quality workers. But whether the decision served only USA's financial bottom line or also benefited the public is beside the point with regard to how HCM should be characterized with respect to its entitlement to State immunity. The undisputed fact is that, by creating

HCM, USA was able to stop enrolling its healthcare employees in the TRS, and, consequently, HCM did not need to make the State-mandated employer contributions into the TRS because those employees were now employed by a private LLC and no longer State employees. HCM essentially characterizes that maneuver as a business decision that carries no legal consequences. Indeed, HCM comes perilously close to stating that the creation of the LLC was a legal fiction:

> "[Carol] argues that, in order to find [HCM] has immunity, the Court would have to disregard [HCM's] corporate form and that this would be inequitable. But, even if such a disregard is required, consideration of the equities supports doing so to prevent yet another attempted end run around USA's sovereign immunity. The underlying constitutional policy behind sovereign immunity clearly favors disregard of the corporate form when necessary to protect state coffers, as it is here."

HCM's brief, p. 57 (emphasis added). The tenor of HCM's entire argument is that it is a private LLC only on paper while in reality it is, for all intents and purposes, USA. But that position obstinately ignores the legal status of HCM's employees. In other words, HCM claims to be

an agency of the State of Alabama, yet it is staffed solely by private employees.[3]

HCM insists we must ignore that contradiction because HCM's finances are swallowed by USA -- to the point that HCM contends that USA funds everything for HCM. However, a careful examination of USA's financial statements, HCM's organizational documents, and the statements from USA's current CFO and its former treasurer reveal that the union of HCM's budget with that of USA is done for federal and state

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[3]In the Alabama Code chapter that establishes the TRS, § 16-25-1(3), Ala. Code 1975, generally defines a "teacher" as "[a]ny teacher, principal, superintendent, supervisor, college professor, administrative officer, or clerk employed in any public school or public college within the state ...." (Emphasis added.) The reason employees in the USA Health System initially qualified for the TRS was because they were "employed in ... [a] public college within the state," i.e., they were employed by USA. But when USA set up HCM, it consciously separated the employment status of its healthcare workforce: the employees were no longer "employed" by USA but, rather, by a private LLC, which is why those employees no longer qualify for participation in the TRS.

Moreover, § 16-25-2(b), Ala. Code 1975, expressly states that "the Teachers' Retirement System of Alabama and the Employees' Retirement System of Alabama" are "instrumentalities of the state funded by the state, [and] the retirement systems, their officers, and employees shall be immune from suit to the same extent as the state, its agencies, officers, and employees." Thus, the TRS is an instrumentality of the State, and its employees are immune from suit, but HCM employees purposefully have been separated from that system.

tax purposes, not because HCM does not generate its own income. Both the Articles of Organization and the Operating Agreement expressly state that "[HCM] may engage only in those activities and pursue only those purposes that are permitted for an organization exempt from federal income tax under Code Section 501(c)(3)." USA's financial statements declare that "[USA's] discreetly presented component units, except for [USA Health Care Authority], are tax-exempt entities under Section 501(a) of the Internal Revenue Code as organizations described in Section 501(c)(3)." Former USA treasurer Davis admitted to the State Comptroller that "[t]he financial and accounting books and records of HCM and its operations are maintained in a separate chart of accounts on [USA's] information systems" but that "its assets, liabilities, net assets and operations are consolidated with [USA] for financial reporting purposes." Davis also testified that HCM has checking accounts in its own name, an indication of its independent legal existence that is entirely unsurprising given that the MSA states that USA must pay HCM "a monthly fee" from "the Net Revenues of the USA Health System" "[a]s consideration for the services rendered pursuant to this [MSA]." In short, the revenue HCM generates is kicked back to USA and then a large

portion of it is returned to HCM to pay for its direct expenses, along with a fee for services provided -- all so that USA can reap the financial advantages that come with being a tax-exempt entity while maintaining HCM as a separate LLC so that all HCM employees can be designated as private-sector employees.

The Internal Revenue Service, the State Comptroller's Office, and the Retirement Systems of Alabama ("the RSA") apparently have no issues with that arrangement,[4] and how USA chooses to organize its finances is not the issue directly presented to us. But the Alabama LLC Law expressly provides that "[a] limited liability company's status for tax purposes shall not affect its status as a separate legal entity formed under this chapter."[5] § 10A-5A-1.04(a). Thus, the emphasis HCM places

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[4]In its brief, HCM states that "the shifting of employees from the TRS retirement plan to a private plan[] was an action taken in broad daylight ... and with the full blessing of [the] RSA." HCM's brief, p. 22. HCM provides no record citation for its assertion that [the] RSA approved USA's maneuver to shift its hospital-system employees to the private sector, and our examination of the record has not revealed details regarding such approval, but Carol does not dispute that assertion.

[5]The legal principle stated in § 10A-5A-1.04(a) is unsurprising given that "[t]he LLC is a state-created organization that combines the partnership characteristic of flow-through tax treatment with the corporate characteristic of owner limited liability." Debra R. Cohen, Limited Liability Company Citizenship: Reconsidering an Illogical and

on how USA treats HCM for tax purposes does not determine whether HCM is a State agency or a franchisee licensed for a beneficial purpose.

In sum, all the Staudt factors favor the conclusion that HCM is not a State agency. HCM's powers are geared toward the management and operation of healthcare facilities, a purpose that is not a unique government function. Its powers are the same as those exercised by private or for-profit business entities. As an LLC, HCM is subject to being sued, a fact that this Court in multiple cases has considered crucial in determining that an entity is not entitled to State immunity. HCM is also empowered to purchase liability insurance, which dovetails with HCM's being subject to suit, a characteristic of LLCs. HCM is also empowered to enter contracts with third parties and to acquire property, which are also powers this Court has previously determined point to an entity's being independent of the State. Even more important in this instance is HCM's

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Inconsistent Choice, 90 Marq. L. Rev. 269, 271 (2006). An LLC is "state-created" in the sense that it is "'a separate legal entity that is created by filing a formal document with the government and whose existence and powers are granted by positive law. See §§ 10A-5A-1.04 and -2.01, Ala. Code 1975.'" Ex parte Rivers, [Ms. SC-2025-0301, Sept. 26, 2025] __ So. 3d __, __ (Ala. 2025) (quoting with approval Ex parte Alabama Power Co., 369 So. 3d 662, 672 (Ala. 2022) (Mitchell, J., concurring in the result)).

relationship with USA. Although USA clearly has supervisory authority over HCM, it is an undisputed fact that USA deliberately created HCM as an LLC so that "an LLC ... could be listed as the employer of USA Health's workforce[, which] created significant savings for USA." HCM's brief, p. 12. An LLC is, by definition, "a separate legal entity" from its members. § 10A-5A-1.04(a). Moreover, "[a] member of a limited liability company is not liable ... for a debt, obligation, or liability of a limited liability company." § 10A-5A-3.01. Provisions in HCM's Operating Agreement and MSA echo those legal principles. HCM objects that its finances are united with that of USA, but that is clearly done for federal and state tax purposes, which "shall not affect [an LLC's] status as a separate legal entity." § 10A-5A-1.04(a).

In essence, HCM seeks simultaneously to claim the financial benefits of being a private LLC while also claiming the liability protection of being a State agency. The law cannot support such a stark contradiction. Instead, we recognize HCM for what it claims to be: a legal entity separate from USA created for a beneficial purpose, not an immediate and strictly governmental State agency. Consequently, we conclude that HCM is not entitled to State immunity.

IV. Conclusion

For the foregoing reasons, we reverse the circuit court's summary judgment in favor of HCM and remand the case for further proceedings.

REVERSED AND REMANDED.

Stewart, C.J., and Bryan and McCool, JJ., concur.

Cook, J., concurs specially, with opinion.

Sellers, J., dissents, with opinion, which Wise, J., joins.

Parker, J., dissents, with opinion.

Shaw, J., recuses himself.

COOK, Justice (concurring specially).

I concur fully with the main opinion. I write specially to address a point raised by Justice Sellers in his dissent.

Justice Sellers asserts that our Court has "previously considered" the issue presented in this case and has "affirm[ed] a summary judgment in favor of HCM based on its entitlement to § 14 immunity -- albeit by an order of affirmance having no precedential value." ____ So. 3d at ____ (Sellers, J., dissenting). In support of this assertion, he relies on a decision in which our Court affirmed the trial court's judgment without an opinion -- Autrey v. USA Health Care Mgmt., LLC, 380 So. 3d 1002 (Ala. 2022) (table). He then states that, "[b]ased on that affirmance, it would not be unreasonable for the lawyers representing HCM in this appeal to assume that the issue of immunity has been settled, thus curtailing briefing on more preliminary issues, such as the formation of HCM in particular and the legal implications of single-member LLCs in general." ____ So. 3d at ____ (Sellers, J., dissenting) (emphasis added).

I disagree with his reasoning, and I disagree with citing to unpublished orders or memorandums of affirmance. Rule 53(d), Ala. R. App. P., makes clear that

> "[a]n order of affirmance issued by the Supreme Court by which a judgment or order is affirmed without an opinion … shall have no precedential value and shall not be cited in arguments or briefs and shall not be used by any court within this state, except for the purpose of establishing the application of the doctrine of law of the case, res judicata, collateral estoppel, double jeopardy, or procedural bar."

Stated simply, the very point of our Court's choosing to affirm a judgment without publishing an opinion is to ensure that the decision in a particular case is not precedential. An order of affirmance simply constitutes a ruling on the result in that particular action -- not on the legal issues underlying the appeal. In short, it is a mistake, and a violation of the Rules of Appellate Procedure, for parties to cite unpublished orders or memorandums of affirmance.

Given that the point of not publishing an opinion is that there is no precedent created -- and given this express rule -- it certainly would have been "unreasonable for the lawyers representing HCM in this appeal to assume that the issue of immunity has been settled." ____ So. 3d at ____ (Sellers, J., dissenting).[6]

[6]I note that, unlike in 2022 when the order affirming the judgment in Autrey without an opinion was issued, our Court today has a new pilot program through which we often provide the parties with a copy of the unpublished memorandum that is drafted in support of an order of affirmance. I lobbied for that pilot program and continue to support it.

In addition to the above, I respectfully disagree with Justice Sellers's discussion of the merits of this case. The main opinion does a thorough job of explaining why a separate, ordinary for-profit corporate entity -- formed for the very purpose of not being the State -- is not the State.

However, even with the implementation of this new procedure, our stance on the precedential value of unpublished decisions has not changed. We continue to make clear to the parties that such decisions cannot be cited as precedent. In fact, the disclaimer at the top of the unpublished memorandums expressly states:

> "This memorandum in support of affirmance will not be published. This unpublished memorandum may not be cited as precedent, may not be cited in arguments or briefs, and may not be used by any court within this state, except for the purpose of establishing the application of the doctrine of law of the case, res judicata, collateral estoppel, double jeopardy, or procedural bar. Notwithstanding the foregoing, a party may quote or cite this unpublished memorandum in an application for rehearing."

(Emphasis added.) I note that, because the order affirming the trial court's judgment without an opinion in Autrey was issued in 2022 and, therefore, no one received the unpublished memorandum in that case, there would be even less reason for the lawyers representing HCM to "to assume that the issue of immunity has been settled." ____ So. 3d at ____ (Sellers, J., dissenting).

SELLERS, Justice (dissenting).

I respectfully dissent. It is undisputed that the University of South Alabama ("USA") is a state agency entitled to immunity under Article I, § 14, of the Alabama Constitution of 2022. See Ex parte University of S. Alabama, 183 So. 3d 915, 919 (Ala. 2015). Here, the issue presented is whether U.S.A. Healthcare Management, LLC ("HCM"), the Alabama limited-liability company ("LLC") created by USA to manage and operate USA's Health System, is also an arm of the State and, thus, entitled to § 14 immunity. This Court has previously considered that very issue, affirming a summary judgment in favor of HCM based on its entitlement to § 14 immunity -- albeit by an order of affirmance having no precedential value. See Autrey v. USA Health Care Mgmt., LLC, 380 So. 3d 1002 (Ala. 2022) (table). Based on that affirmance, it would not be unreasonable for the lawyers representing HCM in this appeal to assume that the issue of immunity has been settled, thus curtailing briefing on more preliminary issues, such as the formation of HCM in particular and the legal implications of single-member LLCs in general. Nonetheless, in determining whether HCM is entitled to immunity, this Court should look past HCM's formal business title and focus instead on whether HCM

was structured to operate separately from and independently of USA's supervision and control. And, most critically, as with all immunity cases, it should be determined who pays a legal judgment entered against HCM. See Galette v. New Jersey Transit Corp., 607 U.S. 509, 523-24 and 525 (2026) (noting that, "[a]lthough the Court's arm-of-the-State cases have accounted for various considerations over time, those precedents have consistently, and predominantly, examined whether the State structured the entity as a legally separate entity liable for its own judgments" and further noting that, "[i]f the State is formally liable for judgments against an entity, that entity is more likely to be an arm of the State because its liabilities necessarily undermine the State's ability to make choices about how to allocate the State fisc."). Here, although HCM was formed as an LLC for a specific business purpose, USA presented a plethora of evidence indicating that HCM was not structured as a legally independent entity; rather, it was considered an "integral part" of USA's Health System, operating as a subdivision thereof. Specifically, HCM is completely owned, operated, and controlled by USA. HMC has no officers, directors, or administrators; it does not own any property; it is fully funded by USA; and USA is entitled to all proceeds from, and incurs

all liabilities of, HCM. Kristen Roberts, the chief financial officer of USA, summarized in her affidavit that USA is the "sole member and manager" of HCM; that USA "retains ownership of and is entitled to all proceeds from the operations" of HCM; that HCM is "considered by USA to be an 'integral part' of USA, operates as a subdivision of USA, and for all practical purposes is treated as a disregarded entity for federal and state income tax purposes"; that USA's financial statements report HCM as a "blended component unit to comply with the reporting requirements of the Governmental Accounting Standards Board"; that HCM's "cash flow is attributable to [USA] [and] it does not file separate tax returns"; and that "HCM is wholly included within USA's budget [and,] thus, any judgment against [HCM] would directly affect the financial status of USA and the State Treasury." Thus, the complete ownership and control exercised by USA demonstrate that HCM is not an autonomous commercial actor but, rather, an agent executing and extending USA's specific governmental purpose. See Galette, 607 U.S. at 525 ("The ultimate question remains whether the State structured the entity as part of itself or as legally independent."). Most importantly, as Roberts testified in her affidavit, HCM is included within USA's budget and any

judgment against HCM would directly affect the financial status of USA and, by extension, the State treasury. In short, a single-member LLC is a hybrid organization that is a separate entity for some purposes, is disregarded for other purposes, but is nonetheless useful in our modern world of business organization to achieve a number of objectives, and, if its single member is a governmental entity, it always derives and retains the governmental attributes and exempt purposes of its single-member parent. Here, the trial court recognized that HCM was not sufficiently structured as an independent entity and, more importantly, that any judgment entered against it would affect the State treasury. Thus, I would affirm the trial court's summary judgment in favor of HCM on the basis that it is entitled to § 14 immunity.

Wise, J., concurs.

PARKER, Justice (dissenting).

I respectfully dissent. Although this case strikes me as presenting a close call, I understand the Court's arm-of-the-State precedents to require a more flexible approach than the main opinion lets on (even if the main opinion's approach might be more consistent with the original meaning of the Alabama Constitution). The main opinion emphasizes HCM's formal separateness as a distinct entity and that the University of South Alabama created HCM for the "express purpose" of designating HCM employees as "private employees rather than State employees" for purposes of retirement benefits. ___ So. 3d at ___. But I am skeptical of this reasoning given the current state of our caselaw.

I.

For one thing, I am not convinced that the employees' treatment for retirement purposes settles the matter. As best I can tell, membership in the Teachers' Retirement System does not turn on generalized characterizations of someone's employment status as a "private" rather than a "State" employee. Membership in the Teachers' Retirement System instead appears to turn on whether someone is a "teacher" as defined by governing statutes. See Ala. Code 1975, § 16-25-3. And the

definition of "teacher," in turn, includes several categories of employees who might in ordinary conversation be considered "private employees rather than State employees": Employees of a nonprofit "private nondenominational school," for example, may be members of the Teachers' Retirement System when serving "children of school age residing within a district where no public school is available for the children." Ala. Code 1975, § 16-25-1(3). As I read them, these provisions demonstrate that someone can be a member of the Teachers' Retirement System without being a state employee. The converse, presumably, is also true: Someone can be a state employee without being a member of the Teachers' Retirement System.

More broadly, our arm-of-the-State precedents seem to reject formal separateness as a dispositive or even primary consideration. That is because "[w]hether a governmental body is immune from suit cannot turn on labels placed on the body by the legislature" (or here, by the University of South Alabama). Armory Comm'n of Alabama v. Staudt, 388 So. 2d 991, 992 (Ala. 1980). And that is why our existing precedents require us to sift through a dizzying array of contextual factors: "Since our Constitution unqualifiedly prohibits suits against the state, the

legislature [here, the University] may not consent to such a suit" even if it wants to do so and tries to do so. Id. (citing Dunn Constr. Co. v. Board of Adjustment, 234 Ala. 372, 175 So. 383 (1937)).

II.

In the present case, HCM appears to be in substance an "alter ego" of the University of South Alabama, which is undisputedly an arm of the State. Our precedents place considerable weight on the extent of the State's control over a given entity, see, e.g., Ex parte Greater Mobile-Washington Cnty. Mental Health-Mental Retardation Bd., Inc., 940 So. 2d 990 (Ala. 2006), and especially the extent to which a judgment against the entity would -- from a purely practical perspective -- "adversely affect the state treasury," Staudt, 388 So. 2d at 994. In my view, both of those factors point in favor of calling HCM an arm of the State.

So, too, does HCM's role in performing a governmental function -- here, the conduct of a public-university hospital -- suggest that it is an arm of the State. See Deal v. Tannehill Furnace & Foundry Comm'n, 443 So. 2d 1213, 1216-17 (Ala. 1983). The University exists to "establish and provide for the maintenance and operation of a state university in Mobile County." Ala. Code 1975, 16-55-3. I would therefore be leery of HCM's

position if evidence showed that HCM strayed so far beyond the University's educational function as to "enter the healthcare industry" rather than simply preparing future medical personnel for entry into that industry. Marsh's brief, pg. 27. But I do not see evidence in the current record to substantiate this particular concern.

III.

None of the foregoing considerations should be taken as expressing enthusiasm for our arm-of-the-State doctrine. In Galette v. New Jersey Transit Corp., the United States Supreme Court undertook a similar analysis and concluded that its own precedents have "consistently, and predominantly," considered whether the State structured a given entity as "legally separate" and formally "liable for its own judgments." 607 U.S. 509, 523-24 (2026). This conclusion has the benefit of offering a clean, administrable, black-letter rule. It also appears conceivable that such a rule is more consistent than our current doctrine with the original meaning of Alabama's constitutional provision conferring immunity on "the State." Ala. Const. of 2022 art. I, § 14; see Galette, 607 U.S. at 520-21 (providing historical overview of doctrinal development). In future cases, I would be open to hearing arguments about whether and how to

follow Galette's lead -- subject to any substantial-reliance interests that may have accrued under our current doctrine.

In future cases, I am also eager to hear more arguments (like the one here about HCM employees' retirement benefits) concerning whether a given entity asserting State immunity has consistently acted as if it were part of the State. As noted above, I am skeptical that HCM employees' exclusion from the Teachers' Retirement System automatically makes them "private" employees. But I am entirely sympathetic with the notion that any given entity must take the bitter aspects of state equivalence along with the sweet.

Just some of the potential questions along these lines include:

- Does the entity consider itself prohibited from "incurring" "new debt"? Ala. Const. 2022, art. XI, § 213.

- Does the entity submit to the jurisdiction of the State Board of Adjustment, which exists to pay claims against the State "where in law, justice, or good morals the same should be paid"? Ala. Code 1975, § 41-9-60.

- Does the entity consider its records to be "public record[s] of this state" for purposes of the State's public-records law? Ala. Code 1975, § 36-12-40(a).

- Does the entity act as a "governmental bod[y]" for purposes of the Alabama Open Meetings Act? Ala. Code 1975, § 36-25A-1 et seq.

There are surely other questions that could be asked in this same spirit.

The current case does not afford us a full opportunity to consider this line of thought. Instead, we are left to apply the Court's current precedents. And, here, I conclude under those precedents that HCM is an arm of the State given that it (1) was created by the University of South Alabama, (2) is controlled by the University of South Alabama, (3) is practically financed by the University of South Alabama, and (4) appears to perform the University of South Alabama's governmental function.