

2024

## Usurping Authority: Illinois Sheriffs Declare Law Unconstitutional

Jason M. Cieslik  
*Illinois State University*

Follow this and additional works at: <https://lawcommons.luc.edu/luclj>



Part of the [Law and Politics Commons](#), [Law Enforcement and Corrections Commons](#), and the [Second Amendment Commons](#)

---

### Recommended Citation

Jason M. Cieslik, *Usurping Authority: Illinois Sheriffs Declare Law Unconstitutional*, 55 Loy. U. Chi. L. J. 869 (2024).

Available at: <https://lawcommons.luc.edu/luclj/vol55/iss4/5>

This Article is brought to you for free and open access by LAW eCommons. It has been accepted for inclusion in Loyola University Chicago Law Journal by an authorized editor of LAW eCommons. For more information, please contact [law-library@luc.edu](mailto:law-library@luc.edu).

## Usurping Authority: Illinois Sheriffs Declare Law Unconstitutional

*Jason M. Cieslik\**

*In January of 2023, Illinois signed the Protect Illinois Communities Act into law. The law's passage caused concern for those who were strong proponents of the Second Amendment. The law prohibited the possession, ownership, distribution, and sale of assault weapons. As a result, approximately ninety Illinois county sheriffs issued statements opposing the law as an infringement of one's right to bear arms. Furthermore, many of the county sheriffs stated that they would not enforce the law because it was unconstitutional. In most states, the office of county sheriff is created through the state constitution. A county sheriff's duties, including enforcement of the law, are codified by statute. Those duties do not include declaring a law unconstitutional. The actions taken by the county sheriffs present a concerning situation to the public it is sworn to protect. This Article examines the circumstances in which an elected county sheriff could be removed absent voter approval. The removal of a county sheriff, however, presents some obstacles procedurally and legally. Historically, the removal of a county sheriff is an uncommon practice outside of an election. Regardless, some legal theories, although untested, exist that could hold county sheriffs accountable for exceeding their authority and usurping power away from the courts.*

---

The editors chose to deviate from the *Bluebook* for conciseness. – Eds.

\* Assistant Professor and Academic Advisor of Legal Studies, Department of Politics & Government, Illinois State University; J.D., Thomas M. Cooley Law School, 2004.

INTRODUCTION .....	871
I. THE CONSTITUTIONAL SHERIFF MOVEMENT .....	873
II. CONSTITUTIONAL AUTHORITY .....	877
<i>A. The Constitutional Formation of the Office of Sheriff in Illinois</i> .....	878
<i>B. Statutory Duties of a Sheriff in Illinois</i> .....	879
<i>C. No Constitutional Authority to Unilaterally Declare a Law Unconstitutional</i> .....	882
III. EXERCISING DISCRETION OR BREACHING A MINISTERIAL DUTY? ..	884
IV. REMOVAL FROM OFFICE.....	888
<i>A. Removal by Election Process</i> .....	888
<i>B. Removal Through Recall</i> .....	889
<i>C. Removal by Governor</i> .....	893
<i>D. Removal as a Result of a Conviction of a Crime</i> .....	894
1. Fails to Perform Any Mandatory Duty as Required by Law .....	895
2. Performs an Act He Knows is Forbidden by Law to Perform .....	897
3. Constitutional Basis to Remove a County Sheriff .....	899
<i>E. Contempt of Court</i> .....	901
<i>F. Mandamus</i> .....	902
CONCLUSION.....	903

## INTRODUCTION

The Protect Illinois Communities Act (PICA) was signed into law by Governor J. B. Pritzker on January 10, 2023.<sup>1</sup> PICA prohibits possessing, selling, and distributing assault weapons (such as the popular AR-15) and high-capacity magazines.<sup>2</sup> PICA, however, allows gun owners who lawfully possessed the prohibited firearms before enacting the law to continue to own these firearms without penalty.<sup>3</sup> In this instance, the gun owners must submit an endorsement affidavit to the Illinois State Police and provide the owner's Firearm Owner's Identification Card number and firearm's specifications.<sup>4</sup>

This legislation, in large part, was in response to the 2022 Fourth of July shooting at a parade in a Chicago suburb where a high-powered rifle was used, and to improve the overall safety for Illinois' communities due to the increase in mass shootings involving assault weapons.<sup>5</sup> The bill's passage made Illinois the ninth state to ban assault weapons.<sup>6</sup> It passed largely along party lines in which both chambers are controlled by Democrats. However, the passage of PICA did not move forward without criticism.<sup>7</sup> Republicans objected by criticizing the registration requirement and arguing that the law would not reduce gang violence.<sup>8</sup> The Illinois State Rifle Association vowed to fight the legislation, declaring the law unconstitutional.<sup>9</sup> Others believed that the registration requirement amounted to an unnecessary burden on otherwise law-abiding

---

1. Protect Illinois Communities Act, Ill. Pub. Act No. 102-1116 § 1 (codified at 720 ILL. COMP. STAT. 5/24-1.9-1.10); *Illinois Assault Weapons Ban*, ILL. STATE POLICE (Jan. 10, 2023), <https://perma.cc/9U6E-SE89>.

2. 720 ILL. COMP. STAT. 5/24-1.9 (2023).

3. *Id.* § 24-1.9(d).

4. *Id.*

5. See Shawna Mizelle, *Illinois Governor Signs Extensive Ban On Firearms and High-Capacity Magazines*, CNN (Jan. 11, 2023), <https://perma.cc/NB7A-UPXW> (“[W]e must keep fighting, voting and protesting to ensure future generations will only have to read about massacres like Highland Park, Sandy Hook or Uvalde in their history books.” (quoting J.B. Pritzker, Governor Ill.)).

6. Jessica D’Onofrio, Craig Wall & Eric Hornig, *Assault Weapons Ban Illinois: Gov. Pritzker Signs Gun Law After House Passes Amended Version*, AM. BROAD. CO. (chi.) (Jan. 10, 2023), <https://perma.cc/W2MY-N8ZV>.

7. Mizelle, *supra* note 5.

8. See *id.* (referencing statements issued by two Republican State Representatives, Dave Severin and Charlie Meier, who also criticized registration requirements and the impact this legislation would have on “law-abiding gun owners”).

9. D’Onofrio et al., *supra* note 6 (“We’re going to fight for your rights. We’re going to try and overturn this and declare this unconstitutional . . .”).

citizens, potentially making them felons for failing to register their lawfully owned firearms.<sup>10</sup>

Many Illinois county sheriffs stated that they would not enforce the law.<sup>11</sup> “[I]n a state with 102 counties,” approximately “90 county sheriffs” issued statements calling PICA unconstitutional and refused to enforce it.<sup>12</sup> DuPage County Sheriff James Mendrick released a statement that read, in part, “I, among many others, believe that HB 5471 is a clear violation of the 2nd Amendment to the US Constitution.”<sup>13</sup> Mendrick further stated:

Therefore, as the custodian of the jail and chief law enforcement official for DuPage County, that neither myself nor my office will be checking to ensure that lawful gun owners register their weapons with the State, nor will we be arresting or housing law-abiding individuals that have been arrested solely with non-compliance of this Act.<sup>14</sup>

This statement was consistent with a template that was drafted by the executive director of the Illinois Sheriff’s Association, Jim Kaitschuk.<sup>15</sup>

The sheriff of Peoria County opposed the bill, arguing that Chicago policy was being pushed downstate on otherwise law-abiding gun owners.<sup>16</sup> Tazewell County Sheriff Jeff Lower said he would “steadfastly protect the Second Amendment and all other individual rights guaranteed by the Constitution.”<sup>17</sup> When asked how he would respond to critics who argue it is not the sheriff’s duty to interpret the Constitution, Kane County Sheriff Ron Hain stated: “There are questions about the constitutionality of [PICA] . . . and so yes, it is actually my job to do my best to research that, and ensure that I am, you know, having an equal balance of justice here.”<sup>18</sup>

---

10. *See id.* (“Here we are today. We’re gonna make felons out of taxpayers.” (quoting Chapin Rose, Illinois State Sen. (R-Ill.))).

11. Andy Kravetz, *Can Illinois Sheriffs Refuse to Enforce New Gun Law? The Court System Will Have a Say*, PEORIA J. STAR (Jan. 20, 2023), <https://perma.cc/89ZX-LJDH>.

12. Eric Lutz, *Can Illinois’s Assault Weapons Ban Survive Scores of Rogue Sheriffs?*, VANITY FAIR (Jan. 27, 2023), <https://perma.cc/D4YM-FRWY>.

13. Press Release, James Mendrick, DuPage Cnty. Sheriff, Update on Recent Passage of House Bill 5471 (Jan. 13, 2023), <https://perma.cc/V9UL-TZU3>; *see also* Editorial, *Mendrick: ‘HB 5471 is a Clear Violation of the 2nd Amendment to the US Constitution’*, DUPAGE POL’Y J. (Jan. 18, 2023), <https://perma.cc/F7L5-FJTF> (“Sheriffs across the state are refusing to implement the Protect Illinois Communities Act—HB 5471—that bans over 100 commonly owned firearms.”).

14. Press Release, James Mendrick, *supra* note 13.

15. Lutz, *supra* note 12.

16. Kravetz, *supra* note 11.

17. *Id.*

18. Megan Hickey, *More County Sheriffs Say They Won’t Enforce Illinois Assault Weapons Ban*, CBS NEWS (Jan. 13, 2023), <https://perma.cc/5AE3-25G4>.

In response to the sheriff's refusals to enforce the law, Governor Pritzker emphasized that these sheriffs took an oath to uphold the law.<sup>19</sup> Governor Pritzker went on to state that law enforcement was expected to do its job and could not choose which laws the public should follow.<sup>20</sup> In Pritzker's view, the collective stance against enforcing PICA was nothing more than "political grandstanding" and threatened to "fire" those who did not enforce the law.<sup>21</sup> Pritzker's threat came from the idea that sheriffs who refuse to "do their job . . . won't be in their job."<sup>22</sup> Attorney General Kwame Raoul was more diplomatic, stating that if the county sheriffs chose not to enforce PICA, other overlapping law enforcement agencies would enforce the law.<sup>23</sup>

This Article proceeds in four parts. Part I provides an overview of the Constitutional Sheriff Movement and the evolution of how quickly Illinois sheriffs changed course in their role as sheriffs toward assault weapons legislation. Part II identifies the sheriff's constitutional authority and statutory duties. Part III distinguishes a sheriff's discretionary power versus their ministerial duties. Finally, Part IV explores the various procedural methods and legal theories in which a sheriff could be removed from office.

## I. THE CONSTITUTIONAL SHERIFF MOVEMENT

A decade ago, Illinois lawmakers attempted to enact legislation to ban assault weapons similar to PICA.<sup>24</sup> The Illinois Sheriffs' Association opposed the bill, issuing the following resolution in February of 2013: "The doctrine of judicial review grants to the United States Supreme Court and the lower courts the power to determine the constitutionality of any law and sheriffs do not possess the legal authority to interpret the

---

19. Hannah Meisel, *Sheriffs Say They Want No Role in Enforcing State's Assault Weapon Registry*, CAPITOL NEWS ILL. (Jan. 12, 2023), <https://perma.cc/5FG3-45H4>.

20. *Id.*

21. Kravetz, *supra* note 11 ("They took an oath of office to enforce the laws of the state of Illinois, and they will do so . . . [t]hey don't get to choose which laws they enforce." (quoting J.B. Pritzker, Governor Illinois)).

22. Peter Charalambous, *At Least 74 Illinois Sheriff's Departments Vow to Defy State Assault Weapons Ban*, AM. BROAD. CO. NEWS (Jan. 14, 2023) (quoting J.B. Pritzker, Governor Illinois), <https://perma.cc/89BH-MZSE>.

23. Greg Bishop, *Attorney General Says if Sheriffs Won't Enforce Gun Ban 'There Are Other People There to Do the Job'*, CTR. SQUARE (Jan. 13, 2023), <https://perma.cc/C6V5-8SEA>.

24. Rick Pearson & Jeremy Gorer, *Illinois Sheriffs' Opposition to Enforcing Weapons Ban Signals Rightward Movement About Constitutional Authority*, CHI. TRIB. (Mar. 19, 2023), <https://perma.cc/2R9S-F2CZ> ("Back then, the sheriffs explicitly said the power to determine a law's constitutionality lies exclusively with the courts, not themselves.").

constitutionality of any law.”<sup>25</sup> In 2015, the United States Court of Appeals for the Seventh Circuit, in *Friedman v. City of Highland Park, Illinois*, held that an ordinance prohibiting possession of an assault weapon did not violate the Second Amendment.<sup>26</sup> Regardless of the opinions of certain sheriffs within Illinois at that time regarding the Second Amendment, it appeared that based on the Illinois Sheriffs’ Association February 2013 resolution, they understood the judiciary’s role and would abide by the future ruling of the Seventh Circuit that prohibited possession of an assault weapon.<sup>27</sup> More recently, a resolution by the National Sheriffs’ Association, adopted on June 22, 2021, read as follows:

W[hereas], America’s Sheriffs strongly support our citizens protected rights to bear arms under the Second Amendment of the U.S. Constitution; nevertheless, the individual Offices/Departments of Sheriff do not possess the judicial nor legal authority under any State Constitution nor under the U.S. Constitution to interpret the constitutionality of any State or Federal law/statute . . . .<sup>28</sup>

Both the resolutions from the Illinois Sheriffs’ Association, and the National Sheriffs’ Association are contrary to what the Illinois Sheriffs’ Association and several other county sheriffs immediately stated following the signing of PICA.<sup>29</sup> Some have questioned whether the shift from 2013 by a majority of the county sheriffs in Illinois is related to a right-

---

25. Press Release, Greg Sullivan, Exec. Dir., Ill. Sheriffs’ Ass’n, ISA on House Bill 132 (Feb. 8, 2013), <https://perma.cc/FNS2-V62E>; see also Pearson & Gerner, *supra* note 24 (contrasting a February 2013 resolution deferring to the courts with their present shift to “declaring themselves the arbiter[s] of . . . constitutional compliance”). For information on the Illinois Sheriffs’ Association, see ILL. SHERIFFS’ ASS’N, <https://perma.cc/79LJ-YMFM> (last visited May 29, 2024).

26. *Friedman v. City of Highland Park, Ill.*, 784 F.3d 406, 412 (7th Cir. 2015).

27. Press Release, Greg Sullivan, *supra* note 25 (“Now, therefore, be it resolved, the Illinois Sheriffs’ Association supports the rights conferred by the Second Amendment and further recognizes the ultimate authority of the courts in interpreting the scope of those constitutional rights.” (emphasis omitted)); Pearson & Gerner, *supra* note 24.

28. Resolution 2021-01, Nat’l Sheriffs’ Ass’n, The Nat’l Sheriffs’ Ass’n Acknowledges the Elected Off. of Sheriff as the Chief Local L. Enforcement Off. Throughout Our Nation (June 22, 2021) [hereinafter Resolution 2021-01, Nat’l Sheriffs’ Ass’n], <https://perma.cc/JNT8-Z94G>.

29. Cf. Press Release, James Mendrick, *supra* note 13 (“I, among many others, believe that HB 5471 is a clear violation of the 2nd Amendment to the US Constitution. Therefore, as the . . . chief law enforcement official for DuPage County, that neither myself nor my office will be checking to ensure that lawful gun owners register their weapons with the State, nor will we be arresting or housing law-abiding individuals that have been arrested solely with non-compliance of this Act.”). See also Ryan Ledendecker, *Illinois Sheriff Strikes Ban on Assault Weapons Ban, Takes Stand to Protect Citizens’ 2A Rights*, PJ MEDIA (Jan. 12, 2023), <https://perma.cc/8PMD-99KC> (showing Sheriff Neal Rohlfing’s Facebook post, which adopted the same language as Sheriff Mendrick’s statement released after the governor signed PICA).

leaning trend in what has become known as the “Constitutional Sheriff Movement.”<sup>30</sup>

The Constitutional Sheriff Movement was started in 2011 by Richard Mack, the founder of The Constitutional Sheriffs & Peace Officers Association (CSPOA).<sup>31</sup> The CSPOA was formed with the purpose of teaching sheriffs, police, and the public about the authority and responsibility provided by the U.S. Constitution to those who take an oath to uphold it.<sup>32</sup> The CSPOA focuses its efforts on combating legislation they deem as threats to citizens’ rights—such as gun control measures, illegal immigration, pronoun enforcement, mask mandates, and mandatory medical treatments.<sup>33</sup> Before starting this movement, Richard Mack served as a county sheriff in Arizona and co-founded the Oath Keepers militia.<sup>34</sup> In 1997, he, along with another chief law enforcement officer (CLEO), Jay Printz, challenged the constitutionality of provisions with the Brady Handgun Violence Prevention Act, which commanded CLEOs to perform background checks in *Printz v. United States*.<sup>35</sup> The CSPOA claims that the Court in *Printz* held that “[s]heriffs have the authority and duty to enforce the constitution and to protect their citizens from the overreach of an out-of-control federal government.”<sup>36</sup> Rather, the Court held that Congress cannot force the States officers through a federal regulatory program to enforce a federal regulatory program.<sup>37</sup>

Since the formation of the CSPOA, Mack claims he has been involved in training more than 400 sheriffs in interpreting the Constitution, as well as resisting authorities and laws that violate it.<sup>38</sup> On their website, the CSPOA, in part, states that “[t]he law enforcement powers held by the sheriff supersede those of any agent, officer, elected official or employee

---

30. Pearson & Gorner, *supra* note 24.

31. *Id.*; see also Press Release, Const. Sheriffs & Peace Officers Ass’n, CSPOA Press Intro (June 7, 2023) [hereinafter CSPOA Press Intro], <https://perma.cc/FH37-9NSQ> (“Mack and six other sheriffs refused to enforce the federal law and instead sued the Clinton administration. The case eventually made it all the way to the Supreme Court of the United States where the SCOTUS ruled in favor of the Sheriffs.” (referencing *Printz v. United States*, 521 U.S. 898 (1997))).

32. CSPOA Press Intro, *supra* note 31.

33. *Id.*

34. Pearson & Gorner, *supra* note 24.

35. *Printz v. United States*, 521 U.S. 898, 902–03 (1997); Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, § 102, 107 Stat. 1536, 1536–41 (1993) (codified as amended at 18 U.S.C. § 922(s), (t) (2018) (amended 2022)).

36. CSPOA Press Intro, *supra* note 31.

37. *Printz*, 521 U.S. at 935.

38. Julia Harte & R. Jeffrey Smith, *Constitutional Sheriffs: The Cops Who Think the Government is Our ‘Greatest Threat’*, NBC NEWS (Apr. 18, 2016), <https://perma.cc/B9UY-XQBN>.



from any level of government when in the jurisdiction of the county.”<sup>39</sup> The Constitutional Sheriffs & Peace Officers Association, provide that “it is this responsibility that grants a Sheriff the Constitutional authority to check and balance all levels of government within the jurisdiction of the County.”<sup>40</sup>

Over the past few years, there have been several instances around the country where county sheriffs have refused to enforce a law on constitutional grounds. For example, in the Fall of 2018, the sheriff of Klickitat County stated that he would not enforce the State of Washington’s newly approved gun control legislation because it violated the Second Amendment and would not enforce it until the Supreme Court stated otherwise. Moreover, in April 2020, sheriffs in Washington, Michigan, and Wisconsin refused to enforce stay-at-home orders to protect against the coronavirus pandemic because it was believed such orders infringed upon one’s constitutional rights.<sup>41</sup> Some sheriffs refused to enforce the mask mandates claiming it infringed upon one’s constitutional rights.<sup>42</sup> The CSPOA has also been actively promoting the uncorroborated and disproven stolen election claims, calling on the “posse” to contact their county sheriff to investigate these claims.<sup>43</sup> In addition, an initiative called ProtectAmerica.vote, aims to “provide local sheriffs with information, resources, and tools to support election integrity in their

---

39. *About*, CONST. SHERIFFS & PEACE OFFICERS ASS’N (2024), <https://perma.cc/D59M-RJQE>.

40. *Id.*

41. See Brooke Wolford, *Sheriffs Across the US Are Not Enforcing Coronavirus Stay-at-home Orders. Is that Legal?*, MIA. HERALD (Apr. 21, 2020), <https://perma.cc/6DUB-99R4> (discussing various sheriffs’ refusal to enforce coronavirus stay-at-home orders).

42. See Sophie Lewis, *Growing Number of Texas Sheriffs Refuse to Enforce Governor’s Mask Requirement*, CBS NEWS (July 8, 2020), <https://perma.cc/2BX3-QGVH> (explaining the justification, according to some sheriffs, for regarding their refusal to enforce coronavirus stay-at-home orders).

43. See *Sheriff Mack Issues Posse Alert: Window to Investigate Voter Fraud is Closing*, CONST. SHERIFFS & PEACE OFFICERS ASS’N (Aug. 23, 2022), <https://perma.cc/DC85-9Y8R> (discussing Sheriff Mack’s urge for an investigation of the 2020 election for fraud). *Contra* Hope Yen & David Klepper, *AP Fact Check: On Jan. 6 Anniversary, Trump Sticks to Election Falsehoods*, PBS NEWS HOUR (Jan. 6, 2022), <https://perma.cc/GPP5-Z8Y5> (describing that alleged cases of voter fraud would not have changed the outcome of the 2020 election); see also Andrew Eggers, Haritz Garro & Justin Grimmer, *No Evidence for Systematic Voter Fraud: A Guide to Statistical Claims About the 2020 Election*, 118 PROC. NAT’L ACAD. OF SCI. 1 (2021) (arguing that there is no evidence for systemic voter fraud); Richard Hasen, *Identifying and Minimizing the Risk of Election Subversion and Stolen Elections in the Contemporary United States*, 135 HARV. L. REV. F. 265 (2022) (proposing solutions to decrease the potential for election fraud in the 2024 presidential election in light of many believing the false claim that the 2020 election was stolen); Wes Henricksen & Broderick Betz, *The Stolen Election Lie and the Freedom of Speech*, 127 PENN. ST. L. REV. 111 (2023) (analyzing the stolen election lie and proposing a lack of First Amendment protections for fraudulent political speech).

county.”<sup>44</sup> One of the goals of ProtectAmerica.vote is to unite citizens and sheriffs together to protect the voice of the voters.<sup>45</sup>

These instances among county sheriffs highlight a trend that parallels a core principle of CSPOA: “[L]aw enforcement powers held by the sheriff supersede those of any agent, officer, elected official or employee from any level of government when in the jurisdiction of the county.”<sup>46</sup> The CSPOA believes that sheriffs possess the Constitutional authority to check and balance all levels of government within their respective counties.<sup>47</sup> The fundamental function of the courts is to interpret the law. The actions taken by the Illinois sheriffs to declare PICA unconstitutional, and the encouragement and principles held by CSPOA conflict with the fundamental functions of the separation of powers.

## II. CONSTITUTIONAL AUTHORITY

The term “sheriff” does not appear anywhere in the U.S. Constitution.<sup>48</sup> Yet, sheriffs from all over the country have found refuge in the U.S. Constitution to justify not enforcing laws that they deem unconstitutional and infringe upon the rights of those they serve. However, as established in *Marbury v. Madison*, the federal courts have the jurisdiction and power to determine whether laws violate the U.S. Constitution,<sup>49</sup> not sheriffs. But what about state constitutions? In most states, the state constitution creates the county sheriff’s office as an elected office.<sup>50</sup> The

44. *ProtectAmerica.Vote Citizens and Sheriffs*, TRUE THE VOTE (June 22, 2022), <https://perma.cc/S95V-NL8R>.

45. *Id.* (discussing the unification goals of ProtectAmerica.vote).

46. CONST. SHERIFFS & PEACE OFFICERS ASS’N, *supra* note 39.

47. *Id.*

48. *See generally* U.S. CONST.

49. *See Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177–78 (1803) (“It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each. So if a law be in opposition to the constitution; if both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty.”).

50. ALA. CONST. art. V, § 138; ARIZ. CONST. art. XII, § 3; ARK. CONST. art. VII, § 46; CAL. CONST. art. XI, § 1(b); COLO. CONST. art. XIV, § 8; DEL. CONST. art. III § 22; FLA. CONST. art. VIII, § 1(d); GA. CONST. art. IX, § 1, para. III; IDAHO CONST. art. XVIII, § 6; ILL. CONST. art. VII, § 4(c); IND. CONST. art. VI, § 2; KAN. CONST. art. IX, § 2; KY. CONST. § 99; LA. CONST. art. V, § 27; ME. CONST. art. IX, § 10; MD. CONST. art. IV, § 44; MASS. CONST. amend. art. XIX; MICH. CONST. art. VII, § 4; MISS. CONST. art. V, § 135; NEV. CONST. art. IV, § 32; N.H. CONST. pt. 2, art. LXXI; N.J. CONST. art. VII, § 2, para. 2; N.M. CONST. art. X, § 2, para. B; N.Y. CONST. art. XIII, § 13; N.C. CONST. art. VII, § 2; N.D. CONST. art. VII § 8; OKLA. CONST. art. XVII, § 2; OR. CONST. art. VI, § 6; PA. CONST. art. IX, § 4; S.C. CONST. art. V, § 24; TENN. CONST. art. VII § 1;

sheriff's authority arises from the states' constitution and states' statutes.<sup>51</sup>

Section II.A of this article reviews the Constitutional provisions and the common law basis for the office of the sheriff. Section II.B explores the statutory duties of the sheriff, and Section II.C summarizes why a county sheriff in Illinois lacks the authority to declare a law unconstitutional.

#### A. *The Constitutional Formation of the Office of Sheriff in Illinois*

Sheriffs are independently elected county officers and answer to the electorate of the county in which they are elected.<sup>52</sup> In fact, the Illinois Constitution provides that “[e]ach county shall elect a sheriff . . . .”<sup>53</sup> Once elected, the sheriff must take an oath outlined in Section 3, Article XIII of the Illinois Constitution.<sup>54</sup> That oath provides that:

Each prospective holder of a State office or other State position created by this Constitution, before taking office, shall take and subscribe to the following oath or affirmation: I do solemnly swear (affirm) that I will support the Constitution of the United States, and the Constitution of the State of Illinois, and that I will faithfully discharge the duties of the office of . . . . to the best of my ability.<sup>55</sup>

Once the county sheriff has taken the oath, they are required to be commissioned by the governor.<sup>56</sup> Sheriffs in Illinois retain all of the authority and duties they had at common law, as well as the statutory duties imposed by the legislature.<sup>57</sup> The common law, outlined in *Carver v. Sheriff of La Salle County*, provided that the sheriff was the “keeper of the king’s peace” and could make warrantless arrests for breach of the peace.<sup>58</sup> The

TEX. CONST. art. V, § 23; VT. CONST. ch. II, § 53; VA. CONST. art. VII, § 4; WASH. CONST. art. XI, § 5; W. VA. CONST. art. IX, § 1; WIS. CONST. art. VI, § 4.

51. See *Christopher v. Sussex Cnty.*, 77 A.3d 951, 958 (Del. 2013) (describing the nationwide source of the sheriff’s authority).

52. See *Carver v. Sheriff of La Salle Cnty.*, 787 N.E.2d 127, 136 (Ill. 2003) (discussing the political mechanics of what the sheriff position entails in Illinois).

53. ILL. CONST. art. VII, § 4(c).

54. 55 ILL. COMP. STAT. 5/3-6004 (1990).

55. ILL. CONST. art. XIII, § 3.

56. 55 ILL. COMP. STAT. 5/3-6001 (1990).

57. See *Gibbs v. Madison Cnty. Sheriff’s Dep’t*, 760 N.E.2d 1049, 1052 (Ill. App. Ct. 2001) (“The legislature did not expressly exclude local correctional officers from coverage or declare that they were not eligible employees under the Act. Sheriffs elected under the Illinois Constitution assume all of the statutory duties imposed by the legislature and, in addition, retain all of the authority and duties they had at common law.” (first citing ILL. CONST. art. VII, § 4; and then citing *Dahnke v. People*, 48 N.E. 137, 141 (Ill. 1897))).

58. *Id.* (citing *People ex rel. Walsh v. Board of Comm’rs of Cook Cnty.*, 74 N.E.2d 503, 509 (Ill. 1947)); *Carver v. Sheriff of La Salle Cnty.*, 787 N.E.2d 127, 136 (Ill. 2003).

Illinois Supreme Court adopted rationale from an earlier case in *Dahnke v. People*, stating:

“The very name and office of sheriff imply the possession by that functionary of all the powers, and the obligation to perform all the duties, of a common-law sheriff, except so far as those powers and duties have been modified by state constitutions or constitutional statutes.” The same author also says: “When the office of sheriff is a constitutional office in any state, recognized and designated *eo nomine* by the constitution as a part of the machinery of the state government, the sheriff, *ex vi termini*, must possess, in that state, all the substantial powers appertaining to the office by common law. It is competent for the state legislature to impose on him new duties growing out of public policy or convenience, but it cannot strip him of his time-honored and common-law functions, and devolve them upon incumbents of other offices, created by legislative authority.” It has accordingly been held that the legislature cannot transfer to other officers elected by the board of supervisors the power of the sheriff to have the custody and control of the jail and the prisoners therein, when the constitution provides for the election of sheriffs without designating what their powers shall be.<sup>59</sup>

The Illinois First District Appellate Court in *Dahnke* held that the sheriff is given the responsibility to enforce the law by virtue of the common law and the constitution.<sup>60</sup> Provided by statute, he is responsible for peace and order in the courthouse and the county, and is required to enforce the order of the courts.<sup>61</sup> Illinois sheriffs, therefore, obtain their power and authority from the Illinois Constitution, common law traditions, and the Illinois statutes.

### B. Statutory Duties of a Sheriff in Illinois

The Illinois State Legislature has imposed statutory duties upon the Sheriff’s Office, including, but not limited to: “custody and care of the courthouse and jail within their county”;<sup>62</sup> “control the internal operations of their office”;<sup>63</sup> serve and execute warrants;<sup>64</sup> and attend the court

---

59. *Dahnke v. People*, 48 N.E. 137, 141 (Ill. 1897) (quoting WILLIAM L. MURFREE, SR., A TREATISE ON THE LAW OF SHERIFFS AND OTHER MINISTERIAL OFFICERS §§ 41–42 (Eugene McQuillin 2d ed., 1890)). For cases on the legislative scope of delegation for sheriffs, see State *ex rel. Kennedy v. Brunst*, 26 Wis. 412 (1870); *People ex rel. McEwan v. Keeler*, 29 Hun. 175 (N.Y. 1883).

60. See *Dahnke v. People*, 57 Ill. App. 619, 625 (1st Dist. 1895) (explaining the basis on which Illinois sheriffs are responsible for enforcing the law).

61. *Id.*

62. 55 ILL. COMP. STAT. 5/3-6017 (1990).

63. *Id.* § 3-6018.

64. *Id.* § 3-6019.

in their respective county when in session.<sup>65</sup> Although there are no reported cases in Illinois interpreting how any of the foregoing statutory duties would apply to a county sheriff who refuses to enforce a law, the foregoing cases demonstrate that a county sheriff does, in fact, have a duty to prevent crime and enforce the law.<sup>66</sup>

The statutory scheme also provides that the sheriff is the “Conservator of the Peace.”<sup>67</sup> As conservator of the peace, the Sheriff “*shall prevent crime and maintain the safety and order of the citizens of that county; and may arrest offenders on view, and cause them to be brought before the proper court for trial or examination.*”<sup>68</sup> In *Gibbs v. Madison County Sheriff's Department*, the court reviewed this “conservator of the peace” statutory duty.<sup>69</sup> The court stated that “[a]s a conservator of the peace, he has the duty to prevent crime and keep the peace and order in his county . . . .”<sup>70</sup>

In an earlier case involving the same statute, the court in *Morris v. Faulkner* was asked to determine whether plaintiffs were improperly removed from a bar.<sup>71</sup> The bar owner had instructed his employee that the plaintiffs were permanently banned from the establishment.<sup>72</sup> When the plaintiffs entered the bar, the employee contacted Sheriff Faulkner, of Johnson County, Illinois, to have them removed.<sup>73</sup> According to the plaintiffs, the employee made false accusations that the plaintiffs would cause trouble.<sup>74</sup> Upon arrival, Sheriff Faulkner requested and directed the plaintiffs to leave.<sup>75</sup> The plaintiffs alleged they were required to leave against their will and were falsely imprisoned by being removed from the bar, although no arrest occurred.<sup>76</sup> In balancing the plaintiffs’ rights of liberty and freedom to move freely against the property rights of the tavern owner, the court reasoned that the plaintiffs were not welcome guests; rather, they were prohibited from entering the establishment.<sup>77</sup> In

---

65. *Id.* § 3-6023.

66. *Id.* § 3-6021 (conservator of the peace); 725 ILL. COMP. STAT. 5/107-16 (1996) (apprehension of offender); 55 ILL. COMP. STAT. 5/3-6035 (1990) (supervisor of safety).

67. 55 ILL. COMP. STAT. 5/3-6021 (1998).

68. *Id.* (emphasis added).

69. *Gibbs v. Madison Cnty. Sheriff's Dep't*, 760 N.E.2d 1049, 1052–53 (Ill. App. Ct. 2001).

70. *Id.* at 1053.

71. *Morris v. Faulkner*, 361 N.E.2d 112, 113 (Ill. App. Ct. 1977) (explaining the factual circumstances surrounding plaintiffs’ claim).

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.* at 113, 116.

77. *Id.* at 115.

reaching its conclusion, the court cited an earlier version of the conservator of the peace statute, which read in part: “Each sheriff shall be conservator of the peace in his county, and shall keep the same, . . . and prevent crime; and may arrest offenders on view . . . .”<sup>78</sup> The court held that a bar requires special attention to protect the public’s health, safety, and welfare.<sup>79</sup> In this case, the court found that the Sheriff was acting within the scope of his authority to keep the peace.<sup>80</sup>

The Illinois legislature also created the “Supervisor of Safety” position to be held by the sheriff of each county.<sup>81</sup> The statute instructing on the powers and duties of the “Supervisor of Safety” states that “[t]he Supervisor of Safety *shall enforce all the laws of this State* and, within the municipalities in his county, the ordinances of such municipalities relating to the regulation of motor vehicle traffic and the promotion of safety on public highways.”<sup>82</sup> This particular statute is of significant interest due to the fact that it commands the sheriff to “enforce all the laws of this state.”<sup>83</sup> Nothing within this phrase would allow a sheriff to speculate, interpret, or declare a law unenforceable.

Similarly, the Code of Criminal Procedure imposes the same duty on a county sheriff.<sup>84</sup> The “Apprehension of Offender” statute states:

It is the duty of every sheriff, coroner, and every marshal, policeman, or other officer of an incorporated city, town, or village, having the power of a sheriff, when a criminal offense or breach of the peace is committed or attempted in his or her presence, forthwith to apprehend the offender and bring him or her before a judge, to be dealt with according to law; to suppress all riots and unlawful assemblies, and to keep the peace, and without delay to serve and execute all warrants and other process to him or her lawfully directed.<sup>85</sup>

In *Garner v. City of Chicago*, the deceased was an off-duty police officer who was killed while attempting to confront an assailant brandishing a gun.<sup>86</sup> The family sued the City of Chicago, which denied benefits on the basis that the slain police officer was not acting in the performance of his duty.<sup>87</sup> Citing the “Apprehension of Offender” statute, the court

---

78. *Id.*

79. *Id.* at 116.

80. *Id.*

81. 55 ILL. COMP. STAT. 5/3-6035 (1990).

82. *Id.* § 3-6036 (emphasis added).

83. *Id.*

84. 725 ILL. COMP. STAT. 5/107-16 (1996).

85. *Id.*

86. *Garner v. City of Chi.*, 744 N.E.2d 867, 869–70 (Ill. App. Ct. 2001).

87. *Id.* at 870.

stated that the family's complaint raised an issue of whether the slain officer was injured "in the performance of duty" at the time he died—and explained that Illinois courts have interpreted "performance of duty" very broadly.<sup>88</sup> The court quoted case law:

The nature of a policeman's job is that he be fit and armed at all times, whether on or off duty, and subject to respond to any call to enforce the laws and preserve the peace. However, since he is always obligated to attempt to prevent the commission of crime in his presence, any action taken by him toward that end, even in his official off-duty hours, falls within the performance of his duties as a police officer.<sup>89</sup>

Regardless of the title held by a law enforcement officer or official, a duty exists to enforce the law. Each of these cases illustrates the duty of police and sheriffs to enforce the law and preserve the peace. Refusal to enforce the law because a sheriff holds the opinion that the law is unconstitutional conflicts with the explicit statutory duties set forth by the legislature.

Finally, in *Harroun v. Addison Police Pension Board*, the plaintiff, a police officer, suffered serious injuries while attempting to subdue an offender while off duty.<sup>90</sup> The court also cited the "Apprehension of Offender" statute to reinforce the fact that a police officer has a duty to act when a crime is committed, whether they are on- or off-duty.<sup>91</sup>

### C. No Constitutional Authority to Unilaterally Declare a Law Unconstitutional

The U.S. Constitution, the Illinois Constitution, Illinois common law, and Illinois statutes do not provide for sheriffs to determine the constitutionality of a law. There simply is no legal basis. The statutory duties established by the Illinois legislature provide that one of a sheriff's primary duties is law enforcement.<sup>92</sup> Furthermore, "[s]tatutes enjoy a strong presumption of constitutionality because the legislature is principally responsible for determining the public policy of our state."<sup>93</sup> Addressing the role of the courts, the Illinois Supreme Court has previously held that:

The powers of government, both National and State, are divided into three departments—legislative, executive and judicial. Neither of these departments is subordinate to or can assume overlordship of either of the others. The domain of the judiciary is in the field of the administration of justice under the law. It interprets, construes and applies the law,

---

88. *Id.* at 871.

89. *Id.* (quoting *Banks v. City of Chi.*, 297 N.E.2d 343, 349 (Ill. App. Ct. 1973)).

90. *Harroun v. Addison Police Pension Bd.*, 865 N.E.2d 273, 275 (Ill. App. Ct. 2007).

91. *Id.* at 278.

92. 55 ILL. COMP. STAT. 5/3-6021, 5/3-6036 (1998); 725 ILL. COMP. STAT. 5/107-16 (1996).

93. *Rowe v. Raoul*, 2023 IL 129248, ¶ 20, 223 N.E.3d 1010, 1016–17.

but it does not interfere with the conduct of government by entering into a field of conflict for the control of executive discretion by judicial action.<sup>94</sup>

The Illinois Constitution, on the separation of powers, provides that “[t]he legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another.”<sup>95</sup> “In both theory and practice, the purpose of the provision is to ensure that the whole power of two or more branches of government shall not reside in the same hands.”<sup>96</sup> The United States Supreme Court held that:

Police are charged to enforce laws until and unless they are declared unconstitutional. The enactment of a law forecloses speculation by enforcement officers concerning its constitutionality . . . . Society would be ill-served if its police officers took it upon themselves to determine which laws are and which are not constitutionally entitled to enforcement.<sup>97</sup>

Following the logic presented in *DeFillippo*, a county sheriff in Illinois shall, therefore, prevent crime as a conservator of the peace,<sup>98</sup> enforce all the laws of this State as the Supervisor of Safety,<sup>99</sup> and be duty-bound to apprehend an offender when a crime is committed in his presence.<sup>100</sup>

Just prior to PICA being passed, Illinois passed the SAFE-T Act in February of 2021, which eliminated cash bail; many were against the new Act.<sup>101</sup> The State’s Attorneys, for example, filed an application for a stay in a circuit court pending appeal with the Illinois Supreme Court.<sup>102</sup> Courts, judges, and sheriffs prepared to implement this new system even

---

94. *People ex rel. Woll v. Graber*, 68 N.E.2d 750, 755 (Ill. 1946).

95. ILL. CONST. art. II, § 1.

96. *People v. Hammond*, 2011 IL 110044, ¶ 51, 959 N.E.2d 29, 44 (citing *People v. Walker*, 519 N.E.2d 890, 892 (1988)).

97. *Michigan v. DeFillippo*, 443 U.S. 31, 38 (1979).

98. 55 ILL. COMP. STAT. 5/3-6021 (1998).

99. *Id.* § 3-6036.

100. 725 ILL. COMP. STAT. 5/107-16 (1996).

101. See Madeline Buckley & Jeremy Gorner, *Despite Legal Limbo, Illinois’ Elimination of Cash Bail Set to Take Effect Jan. 1*, CHI. TRIB. (Dec. 30, 2022), <https://perma.cc/B3EW-LT8A> (discussing the passage of the SAFE-T Act).

102. Emergency Motion for Supervisory Order at 1, *People ex rel. Berlin v. Raoul*, No. 129249 (Ill. Dec. 30, 2022), 2022 Ill. Cir. LEXIS 1380; see also *Rowe v. Raoul*, 2023 IL 129248, ¶ 52, 223 N.E.3d 1010, 1023 (“On December 31, 2022, this court granted a supervisory order staying the effect of pretrial release provisions in [the Safe-T Act] . . . . Sixty days after the filing of this opinion, on September 18, 2023, this court’s stay of pretrial release provisions in [the Safe-T Act] . . . shall be vacated. On that date, the circuit courts are directed to conduct hearings consistent with [the Safe-T Act] . . . and Illinois Supreme Court rules implementing those pretrial release provisions shall become effective.”); 62 *Illinois State’s Attorneys File Suit to Declare Safe-T Act Unconstitutional*, WSILTV (Nov. 7, 2022), <https://perma.cc/RL3B-VUZP> (reporting that many State’s Attorneys sued in an attempt to render the SAFE-T Act unconstitutional).



before the circuit judge's ruling found the statute unconstitutional. The proper way to challenge the constitutionality of a statute is by asking a court to consider the arguments of both sides and provide a ruling. A county sheriff's statement declaring a law unconstitutional strips a court of its basic function to interpret the law.

When one branch usurps the power from another, lines become blurred. In the case of PICA, some county sheriffs have assumed the power of the courts to determine the constitutionality of a statute by unilaterally declaring PICA unconstitutional.<sup>103</sup>

Presumably, the sheriffs know they cannot do this.<sup>104</sup> All Illinois sheriffs are elected officials and could possibly be pandering to their populace, knowing that this alignment would be a favorable position.<sup>105</sup> Alternatively, many voters may believe the misguided rhetoric that the county sheriffs have the constitutional authority to declare a law unconstitutional. Nevertheless, since there is no constitutional or statutory basis to declare a law unconstitutional, could county sheriffs argue that they were simply exercising discretion?

### III. EXERCISING DISCRETION OR BREACHING A MINISTERIAL DUTY?

When numerous county sheriffs in Illinois publicly stated they would not enforce PICA, Governor Pritzker replied, "the laws are on the books, you don't get to choose which [laws] people are going to follow."<sup>106</sup> Jim Kaitschuck of the Illinois Sheriffs' Association was unconvinced by Pritzker's threat and analogized his stance to pulling someone over for speeding.<sup>107</sup> He then posed the question, "If I pull somebody over for speeding going 65 in a 55, and I don't write them a ticket, does that mean I'm not enforcing (the law)? . . . [M]y point on this is that officers have discretion."<sup>108</sup>

---

103. See Press Release, James Mendrick, *supra* note 13 ("I, among many others, believe that HB 5471 is a clear violation of the 2nd Amendment to the US Constitution."); Press Release, Robb Tadelman, Sheriff, McHenry Cnty. Sheriff's Off., Statement from Sheriff Tadelman Regarding House Bill 5471 (Jan. 11, 2023), <https://perma.cc/S9KH-E2DA>; see also Pearson & Goner, *supra* note 24 ("[T]he roughly 90 Illinois' sheriffs have declared their opposition to the law, proclaimed it unconstitutional and said they won't enforce it.").

104. The resolutions from the Illinois Sheriffs' Association in 2013 and the National Sheriffs' Association in 2021 specifically state that, although they may disagree, they do not possess the power to interpret the Constitution. Press Release, Greg Sullivan, *supra* note 25; Resolution 2021-01, Nat'l Sheriffs' Ass'n, *supra* note 28.

105. Cf. ILL. CONST. art. VII, § 4(c) ("Each county shall elect a sheriff . . .").

106. Meisel, *supra* note 19.

107. *Id.*

108. *Id.*

To Sheriff Kaitschuck's point, Illinois courts have recognized that when a police officer issues a warning ticket instead of a uniform traffic citation, they are exercising discretion.<sup>109</sup> The Illinois Code of Criminal Procedure provides that a "peace officer *may arrest* a person when: [h]e has reasonable grounds to believe that the person is committing or has committed an offense."<sup>110</sup> This statute has been interpreted to mean that the officer possesses the discretion to make an arrest at any time, if ever.<sup>111</sup> The definition of "peace officer" includes a county sheriff.<sup>112</sup>

Ministerial acts, however, do not require the exercise of judgment or discretion by the public official.<sup>113</sup> Further, the county sheriff is often called a ministerial officer around the country.<sup>114</sup> Illinois, in fact, also recognizes that a sheriff is a ministerial officer.<sup>115</sup> While a discretionary duty involves judgment, planning, or policy decisions, a ministerial duty involves enforcing or administering a mandatory duty at the operational level.<sup>116</sup> Within the statutory scheme established by the Illinois legislature, the sheriff "shall prevent crime,"<sup>117</sup> "shall enforce all the laws of this State,"<sup>118</sup> and under the Illinois Code of Criminal Procedure, the sheriff must apprehend an offender when a criminal offense is committed within their presence.<sup>119</sup>

---

109. *People v. Hammond*, 2011 IL 110044, ¶ 65, 959 N.E.2d 29, 47–48.

110. 725 ILL. COMP. STAT. 5/107-2(1)(c) (2020) (emphasis added).

111. *Hammond*, ¶ 65, 959 N.E.2d at 48.

112. *See* 720 ILL. COMP. STAT. 5/2-13 (2021) ("'Peace officer' means (i) any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses, or (ii) any person who, by statute, is granted and authorized to exercise powers similar to those conferred upon any peace officer employed by a law enforcement agency of this State.").

113. *See Kirshbaum v. Vill. of Homer Glen*, 848 N.E.2d 1052, 1056 (Ill. App. Ct. 2006) (discussing the lack of judgment or discretion required by a public official in connection with ministerial acts).

114. *See Crosse v. Bd. of Supervisors of Elections*, 221 A.2d 431, 435 (Md. App. Ct. 1966) ("The office of sheriff, under our Constitution, is ministerial in nature; a sheriff's function and province is to execute duties prescribed by law."); *see also Seay v. Cleveland*, 508 S.E.2d 159, 160 (Ga. 1998) (discussing the characterization of the official function of county sheriffs to include ministerial acts); *George v. Cnty. of San Luis Obispo*, 78 Cal. App. 4th 1048, 1051 (2000) (characterizing a sheriff as a ministerial officer).

115. *See Cowper v. Nyberg*, 2015 IL 117811, ¶ 15, 28 N.E.3d 768, 773 (referring to sheriffs as ministerial officers).

116. *Jackson v. Kelly*, 557 F.2d 735, 738 (10th Cir. 1977); 55 ILL. COMP. STAT. 5/3-6001–6042.

117. 55 ILL. COMP. STAT. 5/3-6021 (1998).

118. *Id.* § 3-6036.

119. 725 ILL. COMP. STAT. 5/107-16 (1996).

County sheriffs in Illinois have discretionary authority when enforcing the law.<sup>120</sup> Certainly, law enforcement officials are dependent on their ability to exercise discretion in performing their job.<sup>121</sup> The statutory scheme, however, establishes several ministerial duties of a county sheriff that deviate from this ability to exercise discretion.<sup>122</sup> Within that statutory scheme appear commands such as “shall prevent crime”<sup>123</sup> and “shall enforce all the laws of this State.”<sup>124</sup> The structure and position of a county sheriff differ from those of a municipal police officer. A police officer “shall” be a conservator of the peace and “shall have the power . . . to arrest.”<sup>125</sup> A county sheriff, on the other hand, “shall enforce *all* the laws of this State”<sup>126</sup> and “shall prevent crime.”<sup>127</sup> “Shall” is defined as “[h]as a duty to,” or “is required to.”<sup>128</sup> “Shall” is a command and does not lend itself to discretionary actions. The ministerial duty to enforce the law does not permit them to pick and choose which laws to enforce.

Indeed, enforcement of a law can occur with an arrest, without an arrest, or with a warning<sup>129</sup>—which is the essence of discretion.<sup>130</sup>

120. *Id.* § 107-2(1)(c).

121. *See* *People v. Marion*, 2015 IL App (1st) 131011, ¶ 38, 31 N.E.3d 773, 781 (“We hold that the State has vested police officers with discretionary authority to decide whether or not to arrest persons apparently violating criminal laws, and to decide whether or not to report the apparent violations.”).

122. *See* 55 ILL. COMP. STAT. 5/3-6002 (2021) (“The sheriff shall enter upon the duties of his or her office on the December 1 following his or her election.”); *id.* § 3-6004 (“He or she shall also, before entering upon the duties of his or her office, take and subscribe the oath or affirmation prescribed by Section 3 of Article XIII of the Constitution. . . .”); *id.* § 3-6007 (“Each sheriff shall obtain at least 20 hours of training . . . .”); *id.* § 3-6017 (“He or she shall have the custody and care of the courthouse and jail of his or her county, except as is otherwise provided.”); *id.* § 3-6019 (“Sheriffs shall serve and execute, within their respective counties, and return all warrants, process, orders and judgments of every description that may be legally directed or delivered to them. . . . Each sheriff shall keep and maintain his or her office at the county seat of the county for which he or she is the sheriff, and shall in counties having a population of less than 500,000 keep his or her office open and attend to the duties thereof from 8 o’clock in the forenoon to 5 o’clock in the afternoon of each working day. . . .”); *id.* § 3-6023 (“Each sheriff shall, in person or by deputy, county corrections officer, or court security officer, attend upon all courts held in his or her county when in session, and obey the lawful orders and directions of the court, and shall maintain the security of the courthouse.”).

123. *Id.* § 3-6021.

124. *Id.* § 3-6036.

125. 65 ILL. COMP. STAT. 5/11-1-2 (1997).

126. 55 ILL. COMP. STAT. 5/3-6036 (1998) (emphasis added).

127. *Id.* § 3-6021.

128. *Shall*, BLACK’S LAW DICTIONARY (11th ed. 2019).

129. *People v. Hammond*, 2011 IL 110044, ¶ 65, 959 N.E.2d 29, 47–48.

130. *See Discretion*, BLACK’S LAW DICTIONARY (11th ed. 2019) (“Wise conduct and management exercised without constraint; the ability coupled with the tendency to act with prudence and propriety. Freedom in the exercise of judgment; the power of free decision-making.”).

However, the discretion to enforce a law does not involve law enforcement personnel unilaterally determining whether that law is unconstitutional. Discretion allows a county sheriff the ability to determine how they will enforce the law—it does not permit them to ignore the existence of the law.

The Illinois county sheriffs exercised an unauthorized authority cloaked in “discretion” when they refused to enforce PICA because they believed it was unconstitutional. This situation is far different from a police officer choosing not to issue a traffic citation, as illustrated by Jim Kaitschuck.<sup>131</sup> When a police officer uses their discretion to make an arrest or issue a citation, they are not doing so because they determined the law is unconstitutional. Rather, police officers make this decision because facts and circumstances either (1) do not warrant a citation or an arrest, or (2) they simply decide not to act even though they can. When the ninety Illinois sheriffs issued statements not to enforce PICA,<sup>132</sup> they did not exercise “discretion” as permitted by the statute. They declared they would not enforce the law because it was unconstitutional—a conclusion reserved for the judiciary.<sup>133</sup>

When the county sheriff declares they will not enforce a law due to their interpretation of unconstitutionality, they message the public that laws are suggestive.<sup>134</sup> What prevents a driver from arguing with a police officer that they should not be cited for speeding because the driver believes that the mandatory speed set for that road is too slow? Or an individual arrested for possession of narcotics who argues that the narcotics they possess should be legalized? Laws are created by the legislature, interpreted by the judiciary, and enforced by the executive branch, and “[n]o branch shall exercise powers properly belonging to another.”<sup>135</sup> “Society would be ill-served if its police officers took it upon themselves to determine which laws are and are not constitutionally entitled to enforcement.”<sup>136</sup>

---

131. Meisel, *supra* note 19.

132. Lutz, *supra* note 12.

133. *Baker v. Carr*, 369 U.S. 186, 211 (1962) (“[It] is a responsibility of this Court to act as the ultimate interpreter of the Constitution.”).

134. See Patrick Kenneally, *Public Officials Can’t Selectively Choose Which Laws to Execute*, CHI. TRIB. (Feb. 2, 2023), <https://perma.cc/MUX7-CHN9> (“[N]ot enforcing a law because one subjectively believes it to be unconstitutional betrays a fundamental misapprehension of constitutional law.”).

135. ILL. CONST. art. II, § 1.

136. *Michigan v. DeFillippo*, 443 U.S. 31, 38 (1979).

## IV. REMOVAL FROM OFFICE

It cannot be disputed that a county sheriff exceeds his or her authority when they decide not to enforce a law because they deem it unconstitutional. What are the consequences of such an act? Part IV reviews the procedures by which a sheriff may be removed. These possible methods include election, as discussed in Section IV.A; through recall, as examined in Section IV.B; by the Governor, as explained in Section IV.C; or by a conviction of a crime, as described in Section IV.C. Subsequently, Section IV.E addresses whether the sheriff's actions would merit contempt of court, and Section IV.F evaluates the mandamus procedure.

## A. Removal by Election Process

The most effective method to hold county sheriffs accountable in a democratic society is through the voting process.<sup>137</sup> Sheriffs are elected in forty-five states,<sup>138</sup> including Illinois.<sup>139</sup> The power to remove a sheriff, therefore, resides with the voters. Interestingly, one study showed that 60 percent of sheriffs nationwide run unopposed.<sup>140</sup> In the 2022 Illinois election for county sheriffs, of twenty-one random counties, only two were contested.<sup>141</sup> Seventeen of the uncontested county sheriff

137. ILL. CONST. art. VII, § 4(c) (codifying an election process for county sheriffs); *see also* Carver v. Sheriff of La Salle Cnty., 787 N.E.2d 127, 136 (Ill. 2003) (reviewing the sheriff election process as set legislatively and by case law).

138. *See, e.g.*, ALA. CONST. art. V, § 138; ARIZ. CONST. art. XII, § 3; ARK. CONST. art. VII, § 46; CAL. CONST. art. XI, § 1(b); COLO. CONST. art. XIV, § 8; DEL. CONST. art. III § 22; FLA. CONST. art. VIII, § 1(d); GA. CONST. art. IX, § 1, para. III; IDAHO CONST. art. XVIII, § 6; ILL. CONST. art. VII, § 4(c); IND. CONST. art. VI, § 2; KAN. CONST. art. IX, § 2; KY. CONST. § 99; LA. CONST. art. V, § 27; ME. CONST. art. IX, § 10; MD. CONST. art. IV, § 44; MASS. CONST. amend. art. XIX; MICH. CONST. art. VII, § 4; MISS. CONST. art. V, § 135; NEV. CONST. art. IV, § 32; N.H. CONST. pt. 2, art. LXXI; N.J. CONST. art. VII, § 2, para. 2; N.M. CONST. art. X, § 2, para. B; N.Y. CONST. art. XIII, § 13; N.C. CONST. art. VII, § 2; N.D. CONST. art. VII § 8; OKLA. CONST. art. XVII, § 2; OR. CONST. art. VI, § 6; PA. CONST. art. IX, § 4; S.C. CONST. art. V, § 24; TENN. CONST. art. VII § 1; TEX. CONST. art. V, § 23; VT. CONST. ch. II, § 53; VA. CONST. art. VII, § 4; WASH. CONST. art. XI, § 5; W. VA. CONST. art. IX, § 1; WIS. CONST. art. VI, § 4. *See also* All Things Considered, *Do Elected Sheriffs Have Outsized Power in the U.S.?*, NPR (July 25, 2020), <https://perma.cc/2FM5-5HTM> (“[S]heriffs . . . enjoy really unparalleled autonomy and really a remarkable lack of accountability.”).

139. ILL. CONST. art. VII, § 4(c).

140. All Things Considered, *supra* note 138.

141. For the two contested counties, see WHITESIDE CNTY., STATEMENT OF VOTES CAST, GENERAL ELECTION FINAL RESULTS (Nov. 22, 2022), <https://perma.cc/2ZPQ-U29X>; *Lake County Sheriff, Official Results*, LAKE CNTY. ILL. (Nov. 30, 2022), <https://perma.cc/H8XV-2WAL>. The uncontested counties range in location and population across Illinois. *See McHenry County Sheriff, Official Results*, MCHENRY CNTY. ILL. (Nov. 30, 2022), <https://perma.cc/U2P2-G3RA> (showing an uncontested Republican county Sheriff's candidate); SHELBY CNTY., STATEMENT OF VOTES CAST, GENERAL ELECTION FINAL RESULTS 10 (Nov. 11, 2022), <https://perma.cc/9UJ5-KWC4> (same); STEPHENSON CNTY., GENERAL ELECTION SUMMARY REPORT, FINAL RESULTS (Nov. 22,

elections were won by Republicans.<sup>142</sup> When the Illinois sheriffs declared they would not enforce PICA, they presumably understood that most of their Republican voters would support such a statement. If most of these county sheriff's elections are unopposed, what recourse do the voters have to remove a county sheriff from office?

### B. Removal Through Recall

Absent the opportunity to vote a sheriff out of office, some states permit the recall of a county sheriff.<sup>143</sup> Illinois is not one of those states.<sup>144</sup> As is the case in the State of Washington, any legal voter may demand a recall of any elected official by preparing a written allegation.<sup>145</sup> Of the states that permit a recall of a county sheriff—by virtue

---

2022), <https://perma.cc/G85P-LD34> (same); OGLE CNTY., PECINCT GENERAL ELECTION SUMMARY REPORT OFFICIAL RESULTS (Nov. 18, 2022), <https://perma.cc/D54N-NE7W>; PIKE CNTY., OFFICIAL BALLOT GENERAL ELECTION (Sept. 16, 2022), <https://perma.cc/4P64-PFE4> (same); *Sangamon County, General Election Unofficial Results*, SANGAMON CNTY. ILL. (Nov. 22, 2022), <https://perma.cc/B76V-P759> (same); PEORIA CNTY., 2022 GENERAL ELECTION CUMULATIVE RESULTS REPORT (Nov. 22, 2022), <https://perma.cc/87Q9-M58T> (same); STATE OF ILL., COUNTY OF VERMILLION, CERTIFICATION OF RESULTS 56–60 (Nov. 22, 2022), <https://perma.cc/K4K8-MEY8> (same); MONTGOMERY CNTY., GENERAL ELECTION, OFFICIAL RESULTS (Nov. 18, 2022), <https://perma.cc/LGU5-6UBN> (same); *Illinois—Cumberland County, 2022 General Election Unofficial Results*, CUMBERLAND CNTY. (Nov. 9, 2022), <https://perma.cc/49JP-B7XD> (same); JONATHAN MCLEAN, MONROE CNTY. CLERK, 2022 GENERAL ELECTION OFFICIAL CANVASS OF VOTES 10 (Nov. 29, 2022), <https://perma.cc/VG3S-VU9E> (same); *Unofficial Richland County Primary Election Results*, EFFINGHAM RADIO (June 30, 2022, 9:21 AM), <https://perma.cc/H9L5-QGYN> (same); HAMILTON CNTY. ILL., GENERAL ELECTION UNOFFICIAL RESULTS 2 (Nov. 9, 2022), <https://perma.cc/A2XG-BQVE> (same); *Election Results, Sheriff*, WASHINGTON CNTY. (Nov. 22, 2022), <https://perma.cc/WCH3-NBYG> (same); *Election Results, For County Sheriff*, MORGAN COUNTY (Nov. 8, 2022), <https://perma.cc/LC2S-YE38> (same); JACKSON CNTY., STATEMENT OF VOTES CAST FOR JURISDICTIONAL WIDE OFFICIAL RESULTS 27–28 (Nov. 22, 2022), <https://perma.cc/7V6R-EBWS> (showing an uncontested Democratic county Sheriff's candidate); Editorial, *Unofficial Results In for General Election*, METROPOLIS PLANET (Nov. 14, 2022), <https://perma.cc/5TUB-7AS7> (“Mas-sac County . . . County Sheriff—Incumbent Chad Kaylor (Republican) received 4,276 votes in an uncontested race.”); *id.* (“Pope County . . . County Sheriff: Jerry Suits (Republican) received 1,515 votes.”); KHQA Staff, *Duffy Earns Hancock Sheriff's GOP Nomination*, AM. BROAD. CO. NEWS (June 29, 2022), <https://perma.cc/JP7X-GCCR> (“With no Democratic candidates on the ballot, Duffy is the likely winner in the November [Hancock County] general election.”).

142. See *supra* note 141 and accompanying text.

143. These states include Arizona, California, Colorado, Georgia, Idaho, Kansas, Louisiana, Michigan, Montana, Nevada, New Jersey, North Dakota, Oregon, Washington, and Wisconsin. ARIZ. CONST. art. VIII, §§ 1–6; CAL. CONST. art. II, §§ 13–19; COLO. CONST. art. XXI; GA. CONST. art. II, § 2.4; IDAHO CONST. art. VI, § 6; KAN. CONST. art. IV, § 3; LA. CONST. art. X, § 26; MICH. CONST. art. II, § 8; MONT. CODE ANN. § 2-16-603 (2007); NEV. CONST. art. II, § 9; N.J. CONST. art. I, § 2(b); N.D. CONST. art. III, § 10; OR. CONST. art. II, § 18; WASH. CONST. art. I, §§ 33–34; WIS. CONST. art. XIII, § 12.

144. ILL. CONST. art. III, § 7.

145. WASH. REV. CODE § 29A.56.110 (2004).

of that state’s constitution or statute—common grounds for recall, *inter alia*, include “acts of malfeasance,”<sup>146</sup> “have violated his or her oath of office,”<sup>147</sup> or “conviction of a felony.”<sup>148</sup> In Washington, the petition is then filed and served upon the official,<sup>149</sup> and subsequently heard by the court to determine the sufficiency of the charges.<sup>150</sup> If the court determines that the charges are sufficient, the sponsor(s) of the petition must obtain signatures in support of the recall.<sup>151</sup> Washington requires at least “twenty-five percent of the total number of votes cast for all candidates for the office.”<sup>152</sup> If there are enough signatures, a special election will be held.<sup>153</sup>

In 2021, the Supreme Court of Washington was asked to determine whether recall charges filed against the Snohomish County sheriff were factually and legally sufficient in *In re Recall of Fortney*.<sup>154</sup> Adam Fortney was elected as Snohomish County sheriff in November of 2019.<sup>155</sup> In February of 2020, the governor issued a statewide emergency stay-at-home order to help prevent the spread of COVID-19.<sup>156</sup> In response to the emergency order, Fortney posted the following statements on the Snohomish County Sheriff’s Facebook page:

I have no intention of carrying out enforcement for a stay-at-home directive. . . . I have not carried out any enforcement for the current . . . stay-at-home order. . . . I have received a lot of outreach from concerned members of our community asking if [the governor’s] order is a violation of our constitutional rights. As your Snohomish County Sheriff, yes I believe that preventing business owners to operate their businesses and provide for their families intrudes on our right to life, liberty and pursuit of happiness . . . . The impacts of COVID 19 no longer warrant the suspension of our constitutional rights. . . . [T]he Snohomish County Sheriff’s Office will not be enforcing an order preventing religious freedoms or constitutional rights.<sup>157</sup>

---

146. GA. CODE ANN. § 21-4-3(7)(B)(i) (2023); WASH. CONST. art. I, § 33.

147. GA. CODE ANN. § 21-4-3(7)(B)(ii) (2023); *see also* MONT. CODE ANN. § 2-16-603 (2007) (“[V]iolation of his oath of office . . . .”); WASH. CONST. art. I, §§ 33–34 (“[W]ho has violated his oath of office . . . .”).

148. KAN. STAT. ANN. § 25-4302 (2003); MONT. CODE ANN. § 2-16-603 (2007).

149. WASH. REV. CODE § 29A.56.120 (2004).

150. *Id.* § 56.140.

151. *Id.* § 56.150.

152. *Id.* § 56.180.

153. *Id.* § 56.210.

154. *In re Recall of Fortney*, 478 P.3d 1061, 1063 (Wash. 2021).

155. *Id.* at 1064.

156. *Id.* at 1065.

157. *Id.* at 1065–66.

A recall petition was filed against Sheriff Fortney, alleging, *inter alia*, that he violated his statutory duties and oath of office by inciting members of the public to violate the governor's stay-at-home order.<sup>158</sup> The court affirmed the trial court's ruling that the incitement charge was legally and factually sufficient.<sup>159</sup> Specifically, the court found that Fortney unambiguously declared the stay-at-home order unconstitutional.<sup>160</sup> Fortney used the county sheriff's office to leverage his enforcement authority to nullify a state law.<sup>161</sup> In no uncertain terms, the court stated that "Fortney does not have the authority as 'your elected Sheriff' to effectively nullify a state law. Fortney does not have the authority as Snohomish County Sheriff to determine the constitutionality of laws. That is the role of the courts."<sup>162</sup> Furthermore, there was evidence that Fortney's statements encouraged a small business owner to open his barbershop to a line of unmasked customers, giving rise to the incitement claim.<sup>163</sup> Ultimately, the Court of Washington held that the allegations were sufficient to permit the voters to decide the issue of incitement in a recall.<sup>164</sup>

Since 2009, there have been forty attempts to recall county sheriffs nationwide.<sup>165</sup> Of those forty attempts, only five of the recall votes were approved,<sup>166</sup> and only two involved instances where the county sheriff

---

158. *Id.* at 1064. Sheriff Fortney had a total of five petitions for recall filed against him under Washington State law. *Id.* Under Illinois law, the only government official capable of being recalled is the Governor. ILL. CONST. art. III, § 7. However, at least one local jurisdiction allows for recalls of local officials. MOUNT PROSPECT, ILL., ORDINANCE ch. 8, art. XVII, § 4744 (1995).

159. *Fortney*, 478 P.3d at 1065.

160. *Id.* at 1066.

161. *Id.* at 1068.

162. *Id.*

163. *Id.* at 1066.

164. *Id.* at 1068.

165. *Sherriff Recalls*, BALLOTPEDIA (Mar. 16, 2024), <https://perma.cc/MX2Q-S9Q3>.

166. See *Wally Krenzke Recall, Price County, Wisconsin, 2009*, BALLOTPEDIA (Mar. 16, 2024), <https://perma.cc/9VY7-LYH5> (noting that after the sheriff terminated a search for a woman with dementia, who was found deceased a day later due to hypothermia, a recall election was held in August of 2009 and was approved); *Thomas Hanna Recall, Sedgwick County, Colorado (2016)*, BALLOTPEDIA, <https://perma.cc/5JE7-HQDC> (stating that the sheriff was recalled after being arrested for allegedly sexually assaulting a disabled inmate in January 2017); *Lance Fitzgerald Recall, Ouray County, Colorado (2020)*, BALLOTPEDIA (Mar. 16, 2024), <https://perma.cc/ZV69-WNGY> (noting that a recall election was approved for the sheriff in June 2020, who was arrested in November 2019 for driving under the influence); *Jerry Hatcher Recall, Benton County Washington (2020–2021)*, BALLOTPEDIA (Mar. 16, 2024), <https://perma.cc/6Z7Y-KHVR> (noting that the Sheriff was removed from office after a recall election as a result of allegations of failing to perform his duties, committing illegal acts, and violating his oath of office); *Clinton Smith Recall, Dundy County, Nebraska (2023)*, BALLOTPEDIA (May 21, 2024), <https://perma.cc/S7U7-NARU> (noting that a sheriff was successfully recalled "because of misrepresentations in work history, criminal and traffic history").



refused to enforce a law, claiming the law was unconstitutional.<sup>167</sup> For example, in 2015, Clark County, Wisconsin, Sheriff Greg Herrick stated that, “Significant portions of Act 377 are unconstitutional and, therefore, unenforceable. Those provisions will not be enforced within Clark County by the Clark County Sheriff’s Office . . . .”<sup>168</sup> The recall in this case did not go to a vote due to a lack of signatures.<sup>169</sup>

Following the *Fortney* decision, the Supreme Court of Washington was again asked to determine the legal sufficiency of a recall petition involving a county sheriff who allegedly refused to enforce a mask mandate by the Washington State secretary of health in *In re Recall of Snaza*.<sup>170</sup> A recall petition was filed by a legal voter who alleged that the sheriff’s public refusal to enforce the mask mandate was a recallable offense.<sup>171</sup> Ultimately, the Supreme Court found that the sheriff’s actions were not a question of whether he would decide to enforce the order; instead, how his office would enforce the order.<sup>172</sup> The court found that Sheriff Snaza decided to take measures to educate the public and work with public health staff rather than criminally enforce the mask mandate.<sup>173</sup> In distinguishing the facts in *Snaza* from those in *Fortney*,<sup>174</sup> the Supreme Court of Washington found that “Snaza did not announce a blanket refusal to enforce the Order. Nor did he denounce the mask mandate and encourage people to violate the Order. Rather, he declined only to criminally enforce the Order. Law enforcement officers’ duties are not solely criminal law enforcement.”<sup>175</sup>

---

167. *Fortney*, 478 P.3d at 1066 (posting a statement criticizing the Governor’s response as unconstitutional as the reason for why Fortney refused to carry out enforcement); see also *In re Recall of Snaza*, 480 P.3d 404, 407 (Wash. 2021) (announcing he would not require officers to wear a mask because to “protect officers’ safety and their ability to adequately respond to emergency situations,” “the decision of whether to wear a mask would be left to each other’s discretion”); Liz Welter, *Clark County Sheriff Won’t Enforce New State Law*, MARSHFIELD NEWS HERALD (May 2, 2015), <https://perma.cc/VL5L-VWHZ> (calling a new state law regulating the weight limits of vehicles traveling on roads is “unrealistic and unattainable and, consequently, unenforceable”).

168. Welter, *supra* note 167 (quoting Greg Herrick, Clark Cnty. Sheriff).

169. *Greg Herrick Recall, Clark County, Wisconsin*, (2016), BALLOTPEdia (Mar. 16, 2024), <https://perma.cc/SBT4-ASWQ> (“[N]o signatures were turned in to the county clerk.”).

170. *Snaza*, 480 P.3d at 406.

171. *Id.* at 407.

172. *Id.* at 409–10.

173. *Id.* at 410.

174. *Id.*

175. See *id.* at 410 n.3 (distinguishing the facts from *Fortney* by highlighting Fortney’s complete refusal to enforce the stay-at-home order and statement the directive was unconstitutional).

Officers are provided the ability to make decisions to perform their job.<sup>176</sup> Discretion is important to how they enforce the law, as was pointed out in *Snaza*.<sup>177</sup> However, discretionary authority does not permit a sheriff to determine the constitutionality of laws.<sup>178</sup>

### C. Removal by Governor

Some states permit a governor to remove a county sheriff from elected office.<sup>179</sup> In these states, the county sheriff sought to be removed is entitled to notice and a hearing.<sup>180</sup>

When the county sheriffs in Illinois distributed their statements that they would not enforce PICA, Governor Pritzker stated that if the county

---

176. See *supra* Part III (discussing instances where Illinois courts have recognized officers use discretion in performing their duties, such as issuing warning tickets); see also *People v. Marion*, 2015 IL App (1st) 131011, 31 N.E.3d 773, 780 (“We hold that the State has vested police officers with discretionary authority to decide whether or not to arrest persons apparently violating criminal laws, and to decide whether or not to report the apparent violations.”).

177. See *Snaza*, 480 P.3d at 409 (“[D]iscretion is endemic to an officer’s duties, even when, as in this case, such discretion has the potential to affect many—potentially negatively, given the COVID-19 epidemic.”)

178. See *In re Recall of Fortney*, 478 P.3d 1061, 1068 (Wash. 2021) (noting it is the role of the courts, not a county sheriff, to determine the constitutionality of laws).

179. ME. CONST. art. IX, § 10 (2013) (“Whenever the Governor upon complaint, due notice and hearing shall find that a sheriff is not faithfully or efficiently performing any duty imposed upon the sheriff by law, the Governor may remove such sheriff from office . . . .”); MICH. COMP. LAWS § 168.207 (2023) (“The governor may remove any [county sheriff] when he shall be satisfied from sufficient evidence submitted to him, as hereinafter provided, that such officer has been guilty of official misconduct, or of wilful neglect of duty, or of extortion, or habitual drunkenness, or has been convicted of being drunk, or whenever it shall appear by a certified copy of the judgment of a court of record of this state that such officer, after his election or appointment, shall have been convicted of a felony; but the governor shall take no action upon any such charges made to him against any such officer until the same shall have been exhibited to him in writing, verified by the affidavit of the party making them, that he believes the charges to be true.”); N.Y. CONST. art. XIII, § 13(a) (2022) (“The governor may remove any elective sheriff, county clerk, district attorney or register within the term for which he or she shall have been elected; but before so doing the governor shall give to such officer a copy of the charges against him or her and an opportunity of being heard in his or her defense.”); N.D. CENT. CODE § 44-11-01 (2023) (“The governor may remove from office any . . . sheriff, . . . whenever it appears to the governor by a preponderance of the evidence after a hearing as provided in this chapter, that the officer has been guilty of misconduct, malfeasance, crime in office, neglect of duty in office, or of habitual substance abuse or gross incompetency.”); 16 PA. CONS. STAT. § 450 (2023) (“[T]he sheriffs . . . and any other officers of the several counties, whether elected or duly appointed to fill a vacancy, shall be removable from office only by impeachment, or by the Governor for reasonable cause after due notice and full hearing on the advice of two-thirds of the Senate, or upon conviction of misbehavior in office, or of any infamous crime in accordance with the Constitution of this Commonwealth . . . .”); WIS. CONST. art. VI, § 4(4) (“The governor may remove any elected county officer mentioned in this section except a county clerk, treasurer, or surveyor, giving to the officer a copy of the charges and an opportunity of being heard.”).

180. See *supra* note 179 and accompanying text.

sheriffs did not do their job, “they won’t be in their job.”<sup>181</sup> It is unsure what he meant by this. Did the Governor mean he would actively campaign against these county sheriffs in the next election? Or is there constitutional or statutory authority permitting the governor to remove a county sheriff for refusing to enforce a law they deemed unconstitutional? The Illinois Constitution only allows the governor to remove officers whom they appoint,<sup>182</sup> and it does not apply to a sheriff elected by constituents.<sup>183</sup>

A county sheriff in Illinois can be removed from office on grounds provided for by statute.<sup>184</sup> For example, if a prisoner in the custody of a county sheriff or deputy is lynched, the sheriff shall be suspended.<sup>185</sup> At that point, the governor must appoint an acting sheriff and hold a hearing to determine whether the sheriff did all they could to protect the prisoner.<sup>186</sup> A new sheriff will be elected if the governor finds the sheriff guilty.<sup>187</sup> In addition, if upon their election, a county sheriff fails to give a bond or take the oath of office required within thirty days, the office will be deemed vacant.<sup>188</sup>

#### *D. Removal as a Result of a Conviction of a Crime*

A sheriff can be removed for a conviction of a crime, including official misconduct.<sup>189</sup> The Illinois Criminal Code has codified “Official misconduct” as a “Class 3 felony.”<sup>190</sup> It states that, “[a] public officer or employee . . . commits misconduct when, in his official capacity [he] . . . (1) [i]ntentionally or recklessly fails to perform any mandatory duty as required by law; or (2) [k]nowingly performs an act which he knows he is forbidden by law to perform . . . .”<sup>191</sup>

---

181. Jim Hagerty, *Pritzker Threatens to Fire Police for Not Enforcing Illinois Gun Ban*, WGN (Jan. 11, 2023), <https://perma.cc/6DD7-7L3R>.

182. ILL. CONST. art. V, § 10 (“The Governor may remove for incompetence, neglect of duty, or malfeasance in office any officer who may be appointed by the Governor.”).

183. See *People ex rel. Davis v. Nellis*, 94 N.E. 165, 169 (Ill. 1911) (highlighting the relevant section of the Illinois Constitution only applies to offices appointed by the Governor and does not include “an elective officer such as a sheriff, who is a county officer . . . elected by the people”).

184. ILL. CONST. art. XII, § 1; 720 ILL. COMP. STAT. 5/25-6(b) (2023); 55 ILL. COMP. STAT. 5/3-6005 (2023); 10 ILL. COMP. STAT. 5/25-2 (2023).

185. 720 ILL. COMP. STAT. 5/25-6(b) (2023).

186. *Id.*

187. *Id.*

188. 55 ILL. COMP. STAT. 5/3-6005 (2023).

189. 10 ILL. COMP. STAT. 5/25-2(5) (2023).

190. 720 ILL. COMP. STAT. 5/33-3(c) (2023).

191. *Id.* § 33-3(a)(1)–(2).

### 1. Fails to Perform Any Mandatory Duty as Required by Law

The following cases provide examples of situations in which an elected official violated their mandatory duties in their official capacity.

First, in *People v. Campbell*, the Fifth District Appellate Court interpreted the official misconduct statute as it applied to mandatory duties.<sup>192</sup> The court acknowledged that there were no cases that had interpreted this statute concerning mandatory duties.<sup>193</sup> However, reviewing past cases, the court found importance in identifying whether the duty was ministerial or discretionary.<sup>194</sup> This particular case involved trustees charged with official misconduct.<sup>195</sup> It was alleged that the trustees entered into contracts for work more than the statutory amount permitted.<sup>196</sup> The statute stated, “that all contracts for work . . . shall be let to the lowest bidder.”<sup>197</sup> The court found that this was a mandatory duty created by statute and, as such, could provide a sufficient basis to charge for the offense of official misconduct.<sup>198</sup>

Next, in *People v. Cornille*,<sup>199</sup> the court found that the State of Illinois had proven beyond a reasonable doubt that the defendant, the sheriff of Massac County, was guilty of official misconduct.<sup>200</sup> The evidence established that the sheriff breached his mandatory duty by failing to turn over money from the sheriff’s office to the county treasurer.<sup>201</sup>

Third, although not a case from Illinois, an Ohio court was asked to determine whether a sheriff should be removed from office for refusing and willfully neglecting to perform duties imposed on him by law by

---

192. *People v. Campbell*, 279 N.E.2d 123, 125–26 (Ill. App. Ct. 1972).

193. *Id.* at 126.

194. *See id.* at 126–27 (“[I]t must be shown that there was palpable omission of a duty imperatively required by law, in a matter involving no discretion, or a wilful and corrupt, as well as palpable, neglect of a discretionary duty.” (quoting *Eyman v. People*, 6 Ill. 4, 8 (Ill. 1844))); *Summers v. People*, 109 Ill. App. 430, 433 (1903) (“Whether the road in question was or was not a public highway, was, under the circumstances of this case, a question for appellant to determine according to his best judgment, and if he acted in good faith and without any corrupt motive, he cannot be held liable criminally for any mistake of judgment, if indeed he made a mistake.”); *People v. Wleklinski*, 166 N.E.2d 469, 471 (Ill. App. Ct. 1960) (noting that the duties in *Wleklinski* appear to be discretionary); *People v. Hughley*, 47 N.E.2d 77, 81 (Ill. 1943) (noting the relevant duty was mandated by statute); *People v. Gill*, 173 N.E.2d 568, 573 (Ill. App. Ct. 1961) (affirming a conviction “for the omission of duties defined in other statutes”).

195. *Campbell*, 279 N.E.2d at 124.

196. *Id.*

197. *Id.* at 127 (emphasis added).

198. *Id.* at 130. Ultimately, the court reversed the convictions holding that the State could not prove the defendants were not acting in ignorance or mistake. *Id.*

199. *People v. Cornille*, 484 N.E.2d 301 (Ill. App. Ct. 1985).

200. *Id.* at 302.

201. *Id.* at 305.

permitting gambling on horse races in *In re Removal of Sulzman*. During the hearing, the sheriff stated that during his campaign for office, he would assist any legislator in legalizing horse race betting.<sup>202</sup> The sheriff admitted that he knew that gambling was occurring within the county through common knowledge.<sup>203</sup> As complaints from citizens were brought to his attention, he failed to take any action.<sup>204</sup> The court stated:

The courts of Ohio hold a sheriff to be a law enforcement officer, and it is the view of this court that this means he shall enforce all state laws within his county, including the laws against gambling. As the chief law enforcement officer of the county he is the only officer in the county who directly represents the sovereignty of the state; he and the mayors of the municipalities are the arms of the governor in the executive branch of the state government and the enforcement of state laws. To hold that he shall be only a “process server” and shall be active only in enforcing the laws of the state when great physical outbursts are threatened, would be robbing the executive of the state of 88 assistants in the enforcement of law and would leave our citizens still more helpless under the assaults of organized crime.<sup>205</sup>

The Ohio court found him guilty and removed him from office, emphasizing that the law requires a sheriff to know and perform their duties.<sup>206</sup> The *Sulzmann* decision underscores the duty of the sheriff to enforce the law. He was not permitted to ignore the law or refuse to enforce it because he disagreed with its existence. A refusal by the Illinois Sheriffs to enforce a law that they determined to be unconstitutional would be more egregious. Not only would they be violating a mandatory duty to enforce a law, but they would also be violating their constitutional oath.

In Illinois, the county sheriff is duty-bound to enforce the law as a ministerial officer. This duty is codified by statute.<sup>207</sup> A refusal to enforce a law by declaring it unconstitutional violates the oath taken to support the Constitution of the United States and the Constitution of the State of Illinois.<sup>208</sup> The declarations made by each county sheriff were open admissions to ignore the duty and oath expected of them intentionally. The court in *Campbell* recognized that specific statutes establish mandatory duties for public officials.<sup>209</sup> Specifically, the statutory

---

202. *In re Removal of Sulzmann*, 29 Ohio N.P. (n.s.) 92, 102 (Ct. Com. Pl. 1931).

203. *Id.*

204. *See id.* at 103 (“[W]hen appeals were made to step in and stop the gambling [the sheriff] wholly neglected not only to stop it but never made a move to investigate the matter.”).

205. *Id.* at 98.

206. *Id.* at 103.

207. 55 ILL. COMP. STAT. 5/3-6021, 5/3-6036 (2023); 725 ILL. COMP. STAT. 5/107-16 (2023).

208. 55 ILL. COMP. STAT. 5/3-6004 (2023); ILL. CONST. art. XIII, § 3.

209. *People v. Campbell*, 279 N.E.2d 123, 127 (Ill. App. Ct. 1972).

scheme sets forth a number of ministerial duties of a county sheriff.<sup>210</sup> “Shall” is a command<sup>211</sup> that creates a mandatory duty,<sup>212</sup> and does not lend itself to discretion or the option to declare a law unconstitutional.<sup>213</sup> It, therefore, seems plausible that these county sheriffs could be criminally charged with “Official misconduct” under subpart (a)(1) of the Illinois statute.<sup>214</sup>

## 2. Performs an Act He Knows is Forbidden by Law to Perform

Subpart (a)(2) of the Illinois “Official misconduct” statute also prohibits “[k]nowingly perform[ing] an act which he knows he is forbidden by law to perform.”<sup>215</sup> The statutory scheme establishing the duties of the sheriff also prohibits the sheriff from practicing law<sup>216</sup>—explicitly stating: “No practice as attorney or security for another. No sheriff or deputy sheriff shall appear in any court as attorney at law for any party, or become security for any person in any civil or criminal action or proceeding.”<sup>217</sup> While no Illinois court has addressed this statute or interpreted its scope or application, this Article argues that the language within the statute is unambiguous.

In fact, the Supreme Court of Washington addressed the issue in *Fortney*.<sup>218</sup> In holding that Fortney did not have the authority to declare the stay-at-home order unconstitutional, the court brought attention to a Washington statute that prohibited a sheriff from practicing law;<sup>219</sup> the statute provides that “[n]o sheriff shall appear or practice as attorney in any court, except in their own defense.”<sup>220</sup>

Both the Washington and Illinois statutes prohibit a sheriff from appearing in court as an attorney or on behalf of another.<sup>221</sup> The Supreme Court of Washington appears to have interpreted the Washington statutes prohibiting a sheriff from providing the public with a legal opinion on the

---

210. See *supra* note 122 (detailing the statutory scheme establishing the duties and responsibilities of the County Sheriff).

211. *Shall*, BLACK’S LAW DICTIONARY (11th ed. 2019) (“[H]as the duty to . . . is required to. . .”).

212. *Campbell*, 279 N.E.2d at 127.

213. *In re Recall of Fortney*, 478 P.3d 1061, 1068 (Wash. 2021).

214. 720 ILL. COMP. STAT. 5/33-3(a)(1) (2023).

215. 720 ILL. COMP. STAT. 5/33-39(a)(2) (2023).

216. 55 ILL. COMP. STAT. 5/3-6025 (2023).

217. *Id.*

218. *Fortney*, 478 P.3d at 1068.

219. *Id.*

220. WASH. REV. CODE § 36.28.110 (2023).

221. *Id.*; 55 ILL. COMP. STAT. 5/3-6025 (2023).

constitutionality of a stay-at-home order.<sup>222</sup> The Illinois statute, however, includes the statement, “No practice as an attorney.”<sup>223</sup> If an Illinois court is to apply the plain language doctrine to a statute,<sup>224</sup> it would appear that a sheriff is prohibited from practicing as an attorney—which the Supreme Court of Illinois has defined as: “the giving of advice or rendition of any sort of service by any person . . . when the giving of such advice or rendition of such service requires the use of any degree of legal knowledge or skill. . . .”<sup>225</sup> Illinois prohibits anyone from practicing as an “attorney or counselor at law . . . without having previously obtained a license for . . . from the Supreme Court of” Illinois license.<sup>226</sup>

The public statements made by DuPage County Sheriff James Mendrick and other Illinois County sheriffs declaring PICA as unconstitutional is their interpretation of the law.<sup>227</sup> Because the Illinois sheriffs issued the statements regarding PICA in their official capacity, it is reasonable to assume that gun owners relied on these statements<sup>228</sup>—as a client would, had a licensed attorney provided them.<sup>229</sup> In essence, the Illinois sheriffs used the power of their office to nullify a state law. Regardless, neither a sheriff nor an unlicensed person can provide another individual advice that “requires the use of any degree of legal knowledge or skill.”<sup>230</sup> Publicly concluding and declaring that a statute violates the

---

222. *Fortney*, 478 P.3d at 1068.

223. 55 ILL. COMP. STAT. 5/3-6025 (2023).

224. *Hernandez v. Lifeline Ambulance, LLC*, 125 N.E.3d 429, 433 (Ill. App. Ct. 2019) (“When construing a statute, our primary objective is to ascertain and give effect to the legislature’s intent, best indicated by the plain and ordinary language of the statute. Undefined terms in the statute must be given their ordinary and popularly understood meaning. If the language of a statute is clear and unambiguous, it should be applied as written without resort to extrinsic aids of construction.”).

225. *People ex rel. Courtney v. Ass’n of Real Est. Taxpayers of Ill.*, 187 N.E. 823, 826 (Ill. 1933).

226. 705 ILL. COMP. STAT. 205/1 (2023).

227. *See supra* note 13.

228. *See also In re Recall of Fortney*, 478 P.3d 1061, 1066 (Wash. 2021) (“[Sheriff] Fortney’s words can be reasonably interpreted as an exhortation for people to return to work. Moreover, petitioners provided evidence that Fortney’s words had such an effect on a small business owner who opened the doors of his barbershop to a line of unmasked customers.”).

229. *See* MODEL PENAL CODE § 2.04(3)(b) (1962) (“[H]e acts in reasonable reliance upon an official statement of the law, afterward determined to be invalid or erroneous, contained in (i) a statute or other enactment; (ii) a judicial decision, opinion or judgment; (iii) an administrative order or grant of permission; or (iv) an official interpretation of the public officer or body charged by law with responsibility for the interpretation, administration or enforcement of the law defining the offense.”); *Miller v. Commonwealth*, 492 S.E.2d 482, 486–87 (Va. Ct. App. 1997) (describing a due process defense wherein “a defendant has reasonably relied upon affirmative assurances that certain conduct is lawful, when those assurances are given by a public officer”).

230. *Courtney*, 187 N.E. at 826.

Second Amendment would certainly exceed the skills of an unlicensed attorney.

It is established that the state of Illinois lawfully and explicitly forbids and prohibits both unlicensed individuals from giving legal advice<sup>231</sup> and sheriffs from practicing as an attorney.<sup>232</sup> Prosecuting these county sheriffs under subpart (a)(2) of the Illinois “Official misconduct” statute is therefore certainly possible, as each county sheriff made these statements with the knowledge and purpose that the public be aware of their position advocating against PICA. A county sheriff must “know” they are forbidden by law to declare a law unconstitutional and provide legal advice<sup>233</sup>—which is underscored by the fact that years earlier, the Illinois Sheriffs’ Association and the National Sheriffs’ Association both stated that it was the judiciary’s job to interpret the constitutionality of our laws.<sup>234</sup> As such, it would be difficult to argue that the county sheriffs were not aware of the functions of the courts or that legal advice and interpretation of the law required a license to practice law.

### 3. Constitutional Basis to Remove a County Sheriff

The Illinois Constitution provides that “[a] person convicted of bribery, perjury, or other infamous crime shall be ineligible to hold an office created by this Constitution.”<sup>235</sup> The Election Code also provides that an elective office would become vacant before the expiration of the term of office if “[h]is or her conviction of an infamous crime, or of any offense involving a violation of the official oath.”<sup>236</sup> Further, “[a]ny person convicted of an infamous crime as such term is defined in Section 124-1 of the Code of Criminal Procedure of 1963, as amended, shall thereafter be prohibited from holding any office of honor, trust, or profit. . . .”<sup>237</sup> While the 1963 definition of “infamous crime” was repealed in 1987,<sup>238</sup> courts reviewing section 5/29-15 of the Illinois Election Code, nevertheless, have continued to apply the annulled definition despite it being repealed.<sup>239</sup> “Infamous crime” was defined as: “the

---

231. 705 ILL. COMP. STAT. 205/1 (2023).

232. 55 ILL. COMP. STAT. 5/3-6025 (2023).

233. *Id.*

234. Pearson & Gornier, *supra* note 24; Resolution 2021-01, Nat’l Sheriffs’ Ass’n, *supra* note 28.

235. ILL. CONST. art. XIII, § 1.

236. 10 ILL. COMP. STAT. 5/25-2 (2008).

237. *Id.* § 29-15.

238. *Id.* § 124-1.

239. See *People v. Ferrell*, 2023 IL App (3d) 220292, ¶ 31, 220 N.E.3d 1237, 1246 (citing *Alvarez v. Williams*, 2014 IL App (1st) 133443, ¶ 10, 23 N.E.3d 544, 548).



offenses of arson, bigamy, bribery, burglary, deviate sexual assault, forgery, incest or aggravated incest, indecent liberties with a child, kidnaping or aggravated kidnaping, murder, perjury, rape, robbery, sale of narcotic drugs, subornation of perjury, and theft if the punishment imposed is imprisonment in the penitentiary.”<sup>240</sup> Illinois courts have stated that when determining what constitutes an infamous crime, the court may rely upon the common law definition of “infamous” that states: “when it is inconsistent with the commonly accepted principles of honesty and decency, or involves moral turpitude. . . . Infamy arises because of the nature of the crime.”<sup>241</sup>

Official misconduct is not one of the crimes listed in the previous statute;<sup>242</sup> however, determining whether a conviction for official misconduct would be considered “infamous” in Illinois, is subject to judicial interpretation.<sup>243</sup> The populous expects the county sheriff to act honestly and consistently and, most importantly, to enforce the law.<sup>244</sup> Failing or refusing to perform a mandatory duty could certainly be interpreted as an infamous act. A conviction for official misconduct could undoubtedly fall within the definition of an infamous crime that results in Constitutional ineligibility.

Not only could a county sheriff be removed as the result of a conviction for an infamous crime, but they could also be removed for violating their official oath.<sup>245</sup> In *People ex rel. Ward v. Tomek*, the court was asked to determine whether convictions of township officers for conspiracy to defraud were a violation of their oaths of office.<sup>246</sup> Although this issue was a case of first impression, the court determined that the oath was violated and reasoned that every oath that a public official takes implies that they will not engage in the conduct in which they were convicted.<sup>247</sup> Further, “common sense” would dictate that every public official who

---

240. *Id.*

241. *Id.* ¶¶ 35, 37, 220 N.E.3d at 1247, 1248.

242. 725 ILL. COMP. STAT. 5/124-1 (2007).

243. *Ferrell*, ¶ 35, 220 N.E.3d at 1247 (citing *People ex rel. Keenan v. McGuane*, 150 N.E.2d 168 (Ill. App. Ct. 1958)).

244. See 55 ILL. COMP. STAT. 5/3-6036 (1998) (“The Supervisor of Safety shall enforce all the laws of this State . . .”) (emphasis added); see also 55 ILL. COMP. STAT. 5/3-6021 (1998) (“Each sheriff shall be conservator of the peace in his or her county, and shall prevent crime and maintain the safety and order of the citizens of that county . . .”).

245. 10 ILL. COMP. STAT. 5/25-2 (2008).

246. *People ex rel. Ward v. Tomek*, 203 N.E.2d 744, 747 (Ill. App. Ct. 1964).

247. *Id.* (“The appellants cannot come before this court and say they never promised not to defraud the Township. Such a basic principle of conduct is implied in the very nature of democracy.”).

takes such an oath understands that the promise not to engage in illegal acts is implied within the oath.<sup>248</sup>

If a county sheriff were convicted of official misconduct—a Class 3 Felony<sup>249</sup>—and the court determined that this was not an “infamous crime,” they certainly could be removed for violating their oath of office. Implied in their oath to support the Constitution of the United States and the Constitution of the State of Illinois county sheriffs are to enforce all laws and not provide legal advice to the communities they serve. Acting otherwise could potentially lead to recall and criminal allegations.

### *E. Contempt of Court*

As stated, Illinois law prohibits both sheriffs and unlicensed individuals from practicing law without a license.<sup>250</sup> The statute prohibiting the practice of law without a license states that “Any person practicing . . . or holding himself or herself out to provide legal services within this State, either directly or indirectly, without being licensed to practice as herein required, is guilty of contempt of court and shall be punished accordingly . . . .”<sup>251</sup> The remedies include equitable relief, civil penalties not to exceed \$5,000, and actual damages.<sup>252</sup> Statements by the county sheriffs declaring to the public that PICA is unconstitutional under the Second Amendment may be considered a contemptuous act by practicing law without a license.<sup>253</sup> The conduct of the Illinois county sheriffs in making such declarations amounts to the same conduct Snohomish County Sheriff Fortney was accused of in *In re Recall of Fortney*.<sup>254</sup> The county sheriff “does not have the authority as . . . [c]ounty sheriff to determine the constitutionality of laws. That is the role of the courts. [State] law explicitly forbids a sheriff from practicing law.”<sup>255</sup>

---

248. *Id.*

249. 720 ILL. COMP. STAT. 5/33-3(c) (2021).

250. 705 ILL. COMP. STAT. 205/1 (2018); 55 ILL. COMP. STAT. 5/3-6025 (1990).

251. 705 ILL. COMP. STAT. 205/1 (2018).

252. *Id.*

253. *See* 55 ILL. COMP. STAT. 5/3-6025 (1990) (“No sheriff or deputy sheriff shall appear in any court as an attorney at law . . . .”); *see also* 705 ILL. COMP. STAT. 205/1 (2018) (requiring a license from the State Supreme Court to practice law).

254. *See In re Recall of Fortney*, 478 P.3d 1061, 1066 (Wash. 2021) (considering Fortney’s conduct in posting on Facebook opining that the Governor’s stay-at-home order violated constitutional rights and stating that he had not and would not carry out the order).

255. *Id.* at 1068.

*F. Mandamus*

Finally, a mandamus action could be sought against the county sheriffs.<sup>256</sup> A writ of mandamus can be used to compel a public official to perform a ministerial duty where no discretion is permitted.<sup>257</sup> The plaintiff must demonstrate that “(1) he or she has a clear and affirmative right to relief, (2) the public official has a clear duty to act, and (3) the public official has clear authority to comply with the writ.”<sup>258</sup>

In *Read v. Sheahan*,<sup>259</sup> the Cook County sheriff appealed a decision by the circuit court granting of a writ of mandamus.<sup>260</sup> At issue was the interpretation of a statute that provided that “the Sheriff shall appoint a Director . . . . The Director *shall* be appointed by the Sheriff from a list of 3 persons nominated by the members of the board.”<sup>261</sup> The sheriff appointed an individual who was not one of the three individuals nominated by the board.<sup>262</sup> The plaintiffs, members of the Cook County Board of Corrections, filed for a writ of mandamus, claiming that the statute required the sheriff to appoint from the list of nominees submitted by the board.<sup>263</sup> On appeal, the sheriff argued that the language in the statute was directory, not mandatory.<sup>264</sup> The court held that the statute at issue requiring the sheriff to appoint a director from the nominees submitted by the board was mandatory.<sup>265</sup> In affirming the circuit court’s decision to grant the mandamus, the court stated that although the sheriff’s discretion was limited here to appointing a director from the list provided by the board, and not the discretion to choose a person not on the list.<sup>266</sup>

A mandamus action may be a difficult hurdle to overcome in which the county sheriffs have declared PICA unconstitutional. Although the county sheriff “shall enforce all the laws of this State”<sup>267</sup> and “shall

---

256. See 735 ILL. COMP. STAT. 5/14-101 (1983) (“In all proceedings commenced under Article XIV of this Act the name of the person seeking the relief afforded by this Article shall be set out as plaintiff without the use of the phrase ‘People ex rel.’ or ‘People on the relation of.’”).

257. See *Sharp v. Baldwin*, 2020 IL App (2d) 181004, ¶ 9, 151 N.E.3d 725, 728 (describing *mandamus* as “an extraordinary remedy”).

258. *Gassman v. Clerk of the Circuit Court of Cook County*, 2017 IL App (1st) 151738, ¶ 13, 71 N.E.3d 783, 788.

259. *Read v. Sheahan*, 833 N.E.2d 887 (Ill. App. Ct. 2005).

260. *Id.* at 889.

261. *Id.* at 890.

262. *Id.* at 889.

263. *Id.*

264. *Id.* at 890.

265. *Id.* at 893.

266. *Id.* at 895.

267. 55 ILL. COMP. STAT. 5/3-6036 (1998).

prevent crime,”<sup>268</sup> the sheriff still has the discretion to choose *how* to enforce the law and prevent crime. Nevertheless, the county sheriffs do not have the discretion to declare a law unconstitutional. This declaration is contrary to their statutory duty to enforce the law and prevent crime. A court may have difficulty fashioning a remedy through a mandamus action. “Mandamus cannot be used to direct a public official or body to reach a particular decision or to exercise its discretion in a particular manner.”<sup>269</sup> Because enforcement of the law involves discretion as to how the law is to be enforced, the court would be overstepping its authority if it were to instruct a county sheriff on how to enforce the law.<sup>270</sup> A mandamus action may only be appropriate if a county sheriff were aware of a gun owner in violation of PICA and took no action at all, similar to that of *In re Removal of Sulzmann*.<sup>271</sup> In that circumstance, the court may order a directive that the county sheriff enforce the law against that particular gun owner. The sheriff would then have the discretion to determine how to enforce the law against the gun owner but, indeed, not the discretion to determine the law’s constitutionality.

#### CONCLUSION

County sheriffs in Illinois have a mandatory duty to enforce the laws that are passed by the state legislature. While they possess the discretion to determine how to enforce the law, they do not possess constitutional or statutory authority to determine the validity of a law. A function reserved for the judiciary to decide, when usurped by the county sheriffs, and goes unchecked, begins to erode in a Democratic system constantly facing challenges. This is particularly frightening because county sheriff’s elections are often uncontested. In a time in which various political issues have become particularly polarizing, the powers of elected officials must be kept in check by the people who put them in a position of power. Although elections serve as the primary method to remove or prevent a candidate from serving that office, it may take a period of four years to

---

268. *Id.* § 3-6021.

269. *Read*, 833 N.E.2d at 895 (“[E]ven if the judgment or discretion has been erroneously exercised”).

270. *Compare* *Burke v. Barrett*, No. 2022AP2104, 2023 WL 9016525 (Wis. Ct. App. Dec. 29, 2023) (“Here, we agree with the circuit court’s conclusion that the sheriff cannot be compelled by writ of mandamus to investigate Burke’s complaints. Our case law establishes that the sheriff’s duty to investigate alleged crimes is generally discretionary and not a positive and plain duty that can be compelled by mandamus.”); *with* *Whirl v. Clague*, 2015 IL App (3d) 140853, ¶¶ 16, 21, 42 N.E.3d 466, 470 (reversing the circuit court’s decision in denying plaintiff’s mandamus relief wherein the petition alleged the County Sheriff refused to comply with the correctional center’s procedures regarding inmate marriages thus violating his right to marry).

271. *In re Removal of Sulzmann*, 183 N.E. 531, 532 (Ohio 1932) (per curiam).

finally hold that elected official accountable, if ever. When the voting process fails to hold an elected official accountable, the public can request the courts to hold elected officials accountable. While the voters should be informed on what county sheriffs can and cannot do, many are not. In this circumstance, the courts are the last resort to protect the public.